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28 *and typical individuals and the general public*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SPYNSIR TUCKER, for herself, all other
similarly-situated individuals and the general
public,

Plaintiff,

v.

ZUM SF, INC., ZUM SERVICES, INC.,
RITU NARAYAN, ABISHEK GARG
AND VIVEK GARG,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

- 1) Rest Period Violations Under The California Labor Code;
- 2) Failure To Pay Minimum Wages In Violation Of The California Labor Code;
- 3) Failure To Provide Accurate Wage Statements In Violation Of The California Labor Code;
- 4) Failure To Timely Pay All Wages Due And Owing In Violation Of The California Labor Code;

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
03/29/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

CGC-22-598935

- 5) Unfair Business Practices;
- 6) Private Attorneys General Act Violations;
- 7) California Invasion Of Privacy Act Violation;
- 8) Invasion Of Privacy In Violation Of The Common Law Tort Of Intrusion; And
- 9) Invasion Of Privacy In Violation Of The California Constitution.

JURY TRIAL DEMANDED

1. Plaintiff SPYNSIR TUCKER (“Plaintiff”), for herself, all other similarly-situated and typical individuals, and the general public, hereby makes the following allegations against ZUM SF, INC., ZUM SERVICES, INC., RITU NARAYAN, ABISHEK GARG, and VIVEK GARG (“Defendants”) concerning her acts and status upon actual knowledge and concerning all other matters upon information, belief and the investigation of her counsel, with each allegation being likely to have evidentiary support after a reasonable opportunity for further investigation and discovery:

NATURE OF THE ACTION

2. Zum SF, Inc. and Zum Services, Inc. are companies that, working together and with shared ownership and control, provide student transportation services to schools in and around San Francisco, Los Angeles, and San Diego, California. Defendants employ school bus drivers to provide these services. Defendants typically assign Zum drivers to work a split-shift schedule that includes a morning route (driving an assigned route to pick up children at their homes and take them to school), a split-shift break (free time in which drivers have no work-related responsibilities and are not paid any wages) and an afternoon route (picking-up children from school and driving an assigned route to take them home).

3. Plaintiff brings this action to redress common policies and practices that violate the California Labor Law and the California Business and Professions Code by: (i) requiring Zum drivers to engage in work-related activities before clocking-in for their morning route and after clocking-out for their afternoon route, preventing Defendants’ drivers from logging this work for

1 payroll purposes and failing to pay Zum drivers any wages for this work, which is performed with
2 Defendants' knowledge and for Defendants' benefit; and (ii) failing to offer or provide Zum drivers
3 rest breaks during their workday.

4 4. Plaintiff also brings this action to redress common policies and practices that violate
5 California privacy laws by representing that video cameras installed in Zum drivers' vehicles only
6 worked when the vehicle engine was running, giving Zum drivers an expectation of privacy during
7 their split-shift breaks but in truth, causing these cameras to record continuously, intruding on Zum
8 drivers' personal autonomy, dignity, and serenity during their split-shift breaks. Defendants'
9 conduct in this regard is highly offensive to a reasonable person because despite affirmatively
10 representing that time spent in their vehicles during split-shift breaks would be private, Defendants
11 intentionally recorded drivers' break time activities and continued to do so even after learning they
12 were routinely capturing drivers engaging in personal and private activities.

13 **JURISDICTION AND VENUE**

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16 5. The Superior Court of the State of California, for the County of San Francisco, has
17 original jurisdiction over the state law claims alleged herein pursuant to the California Constitution.

18 6. Venue is proper in this Court because the Named-Plaintiff lives in, and performed
19 work for Defendants in this judicial District.

20 **PARTIES**

21
22 7. Plaintiff Spynsir Tucker is an individual who resides in San Francisco, California,
23 and has worked as an hourly-paid Zum driver from a depot in San Francisco, California, since
24 approximately August 1, 2020. Plaintiff is personally familiar with and has been personally affected
25 by, the policies and practices described in this Complaint as a result of her employment with
26 Defendants.
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8. Zum SF, Inc. is a student transportation company based at 275 Shoreline Dr., Ste. 200 in Redwood City, CA. *See* <https://www.linkedin.com/company/ridezum/about/> (accessed Feb. 4, 2022). Zum, Inc. provides student transportation services in and around San Francisco, Los Angeles and San Diego, California. *See* <https://www.ridezum.com/service-areas.html> (accessed Feb. 4, 2022).

9. Zum Services, Inc. is a company based at 275 Shoreline Dr., Ste. 200 in Redwood City, CA, that designs and develops application software to determine and schedule school bus routes and track rides in progress. See <https://www.bloomberg.com/profile/company/1534446D:US> (accessed Feb. 4, 2022); <https://www.bbb.org/us/ca/redwood-city/profile/transportation/zum-services-inc-ridezumcom-1116-548620> (accessed Feb. 4, 2022).

10. Ms. Ritu Narayan is the CEO of Zum and an adult resident of California. *See* <https://www.linkedin.com/in/ritunarayan/> (accessed Feb. 24, 2022); <https://www.corporationwiki.com/p/2kvphi/zum-services-inc/#people> (accessed Feb. 24, 2022).

11. Abishek Garg is the CTO of Zum and an adult resident of California. *See* <https://www.linkedin.com/in/abhishekgarg/> (accessed February 24, 2022); <https://www.corporationwiki.com/p/2kyphi/zum-services-inc#people> (accessed February 24, 2022).

12. Vivek Garg is the COO of Zum and an adult resident of California. *See* <https://www.linkedin.com/in/vivekgarg2/> (accessed February 24, 2022); <https://www.corporationwiki.com/p/2kvyphi/zum-services-inc#people> (accessed February 24, 2022).

JOINT EMPLOYMENT ALLEGATIONS

13. Throughout the relevant period, Zum SF, Inc. and Zum Services, Inc. have been integrated enterprises with inter-related operations, systems, policies, and practices, and Ritu Narayan, Abishek Garg, and Vivek Garg have worked jointly and in concert as each other's agents and principals, to control virtually every aspect of the day-to-day work performed by Zum drivers, including:

- 1 a. Determining where Zum would provide transportation services and
2 determining its staffing levels;
- 3 b. Setting common criteria for hiring and firing Zum drivers and
4 controlling their hiring and termination decisions;
- 5 c. Promulgating common job descriptions for Zum drivers, containing
6 their duties and responsibilities;
- 7 d. Assigning Zum drivers' work schedules;
- 8 e. Promulgating common wage and hour policies and practices for
9 Zum drivers;
- 10 f. Promulgating a common employee code of conduct for Zum drivers;
- 11 g. Setting the standards used to evaluate Zum drivers' work;
- 12 h. Determining the vehicles, equipment, and technology Zum drivers
13 used to perform their assigned duties and how Zum drivers would use these
14 vehicles, equipment, and technology to perform their assigned duties;
- 15 i. Training Zum drivers about their job duties and responsibilities and
16 the policies and practices applicable to their work;
- 17 j. Establishing the electronic databases, programs, software, and
18 systems used to enable and support Zum drivers' work;
- 19 k. Promulgating policies requiring Zum drivers to record their daily
20 start-time for payroll purposes immediately before beginning their morning route
21 and record their daily end-time for payroll purposes immediately after completing
22 their post-trip inspection;
- 23 l. Promulgating a timekeeping policy that does not cause or allow Zum
24 drivers to record their required pre-shift or post-shift work for payroll purposes;
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1 m. Promulgating payroll policies and procedures that pay Zum drivers
2 all legally required wages for all hours worked between their daily time punches,
3 but no wages for the pre-shift and post-shift work they are required to perform each
4 day;

5 n. Setting, calculating, and paying the wages provided to Zum drivers;
6 and

7 o. Engaging in additional joint activities relating to Zum drivers'
8 training, supervision, work, timekeeping, and wages.
9

10 14. Throughout the relevant period, Zum drivers' work jointly benefitted Defendants.

11 15. Throughout the relevant period, by virtue of their extensive, regular, and shared
12 control over all Zum drivers and their work, Defendants have been joint employers under the
13 California Labor Law, the California Business and Professions Code, and California privacy laws
14 and are jointly, severally and personally responsible for Plaintiff's claims and damages.
15

16 **STATEMENT OF COMMON FACTS**

17 16. Defendants employ hourly school bus drivers who, among other things, operate and
18 maintain Defendants' vehicles, provide safe, high-quality transportation services to Defendants'
19 customers, perform pre- and post-trip vehicle inspections, complete written reports concerning
20 passengers, accidents, and incidents, and provide excellent customer service.
21

22 17. Defendants maintain common compensation, hours of work, scheduling, and
23 timekeeping policies and procedures for their hourly school bus drivers, who are typically assigned
24 to work approximately 32-36 hours each week, meaning that the unpaid pre-shift and post-shift
25 work sought in this action is owed at a straight-time rate or, at the very least, a minimum wage rate.
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Unpaid Pre-Shift Work

18. Defendants assign their drivers a route start-time each day (*i.e.*, 6:30 a.m.) that represents the time they are expected to drive their vehicle out of their depot to begin their morning route. If drivers do not drive their vehicle out of their depot by their scheduled route start-time, they are marked late and subject to progressive discipline up to and including termination.

19. To begin their morning route on time, Defendants' drivers must arrive at their depot at least 20-30 minutes early to perform work-related activities that include: walking from the parking lot to the dispatch office to receive their vehicle assignment and keys, walking back from the dispatch office to the parking lot to find their assigned vehicle, completing an extensive pre-trip inspection, warming-up their bus, starting-up their on-board electronic tablet, recording their daily start-time for payroll purposes and pulling their vehicle out of the depot to begin their route.

20. Following this required procedure causes Defendants' drivers to routinely record daily start-times that are at least 20-30 minutes after the time they actually started working each day, meaning that Defendants do not track – or pay their drivers to perform – approximately 1.7 to 2.5 hours of pre-shift work each week.

21. Defendants know their drivers are performing unpaid pre-shift work because they: set drivers' scheduled start-times, set drivers' pre-trip routine, including all tasks to be done, interact with drivers during their pre-trip routine, and train drivers that they may only log-in using their on-board electronic tablets after completing their daily pre-trip routine and immediately before pulling out of the parking lot to begin their route.

22. Throughout her employment, Plaintiff has spoken to other Zum drivers about performing unpaid pre-shift work. Based on these discussions, Plaintiff has learned that Defendants' failure to track time or pay wages for pre-shift work are significant problems about which drivers routinely complain, both among each other and to management.

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Unpaid Post-Shift Work

23. As soon as they return their vehicle to the depot at the end of their route, Defendants' drivers park their vehicle, turn off their vehicle, record their mileage, complete their post-trip inspection and use their on-board electronic tablet to record their daily end-time for payroll purposes.

24. After Defendants' drivers are "off-the-clock" for payroll purposes, they are required to perform additional work-related activities that include: shutting down and securing their on-board electronic tablet, walking from their parking space to the dispatch office, waiting in line to turn-in their keys and paperwork, turning-in their keys and paperwork to the dispatcher, checking with their manager and addressing any work-related issues their manager may raise.

25. Following this required procedure causes Defendants' drivers to record daily end-times that are at least 15-20 minutes before the time they actually finish working each day, meaning that Defendants do not track – or pay their drivers to perform – roughly 1.25 to 1.7 hours of post-shift work each week.

26. Defendants know their drivers are performing unpaid post-shift work because they: set drivers' post-trip routine, including all tasks to be done, interact with drivers during their post-trip routine, and train drivers that they must log-out using their on-board electronic tablets immediately after completing their daily post-trip routine on the bus, but before they leave the vehicle to complete the rest of their required work.

27. Throughout her employment, Plaintiff has spoken to other Zum drivers about performing unpaid post-shift work. Based on these discussions, Plaintiff has learned that Defendants' failure to track time or pay wages for post-shift work are significant problems about which drivers routinely complain, both among each other and to management.

Invasion of Privacy / Intrusion Upon Seclusion

28. In the week before Defendants begin operations in a new location, they hold a “Dress Rehearsal Week” that includes a mandatory, in-person meeting with Zum’s CEO, CTO and COO.

29. During these meetings, Zum’s officers announce that all vehicles will be equipped with three interior video cameras, one in the front and two in the rear. Zum’s officers claim these cameras have only two purposes: to ensure safe driving by discouraging drivers from using their phones while on the road; and to inform any complaints about driver behavior.

30. During these meetings, drivers inevitably raise concerns about having their private activities recorded during split-shift breaks.

31. During these meetings, Zum’s CTO answers these concerns by explaining that the interior video cameras are “smart cameras” that stop recording within 30 seconds of the vehicle engine being turned off, so do not record drivers’ private activities in the vehicle during split-shift breaks.

32. Following these meetings, Defendants reinforce this explanation with other communications and training that describe the “sole aims” of their interior cameras as being to ensure safe driving by discouraging drivers from using their phones while on the road and to inform any complaints about driver behavior.

33. By making these statements in the Dress Rehearsal Week meeting and thereafter, Defendants intentionally give all Zum drivers a reasonable expectation that any activities they perform in their vehicle during split-shift breaks with the motor turned off are private.

34. After they finish their morning route, Defendants’ drivers’ clock-out with their onboard electronic tablets and begin their split-shift break, typically a four-hour period that ends when they clock-in for their afternoon route.

1 35. During their split-shift break, although Defendants' drivers retain possession of their
2 vehicle, they are off-duty, have no interaction with students, and do not transport any passengers.

3 36. Because most of Defendants' drivers live too far from their depot to drive home and
4 back before their afternoon shift, they typically spend their split-shift break in their vehicle,
5 engaging in activities like making personal phone calls (including to family members, healthcare
6 providers, union representatives, co-workers, and lawyers), sleeping, running errands, going to the
7 gym and changing clothes.

8 37. Drivers have a reasonable expectation of privacy in the time they spend on their
9 vehicles during split-shift breaks because of Defendants' representations that the Company's
10 interior video cameras do not record when the vehicle engine is turned off and the Company's
11 consistent public statements recognizing that drivers engage in personal and private activities on
12 their vehicles during split-shift breaks and acknowledging that they are entitled to do so without
13 having those activities recorded.

14 38. In direct contradiction to their consistent public statements, Defendants actually
15 cause the interior video cameras in their vehicles to record continuously throughout the day,
16 including during drivers' split shift breaks when their vehicle engines are turned off, capturing all
17 of their drivers' personal and private activities.

18 39. Defendants' conduct is highly offensive to a reasonable person because it occurred
19 after Defendants expressly, publicly, and repeatedly acknowledged drivers' need and right to
20 engage in personal, private activities during their split-shift breaks.

21 40. Defendants' conduct is highly offensive to a reasonable person because it occurred
22 during a time that drivers were off-duty, off-the-clock, and supposedly free to use their time as they
23 chose.

1 41. Defendants' conduct is highly offensive to a reasonable person because their interest
2 in ensuring safe driving or discouraging drivers from using their phones while on the road could
3 not be served by monitoring drivers' conduct during split-shift breaks.

4 42. Defendants' conduct is highly offensive to a reasonable person because their interest
5 in informing complaints about driver behavior could not be served by monitoring drivers' conduct
6 during split-shift breaks.

7 43. Defendants' conduct is highly offensive to a reasonable person because it involves
8 an intentionally concealed, surreptitious intrusion into drivers' personal autonomy, dignity, and
9 serenity.

10 44. Defendants' conduct is highly offensive to a reasonable person because they
11 continued to record drivers' split shift breaks despite knowing they were routinely capturing drivers
12 engaging in personal, private activities like making personal phone calls (including to family
13 members, healthcare providers, union representatives, co-workers, and lawyers), sleeping, running
14 errands, going to the gym and changing clothes.

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17 **CALIFORNIA CLASS ACTION ALLEGATIONS**

18 45. Plaintiff re-alleges and incorporates by this reference all the paragraphs above in
19 this Complaint as though fully set forth herein.

20 46. Plaintiff brings this action for herself and, under California Code of Civil Procedure
21 § 385, as a class action on behalf of the following similarly situated and typical persons:

22 All California residents who have worked as a Zum school bus
23 driver at any time within four (4) years from the date of filing this
24 complaint through the date of any judgment entered in this action
25 (the "Class").

26 47. The Class may be further subdivided into the following sub-classes of similarly
27 situated and typical individuals based upon the divergent statute of limitations period for various
28 claims asserted herein (collectively "the Sub-classes" or "Sub-class Members"):

1 Itemized Wage Statement Subclass: All California Class Members
2 who were employed at any time during the relevant time period
alleged herein.

3 Waiting Time Penalties Subclass: All California Class Members
4 who are former employees and who were employed at any time
during the relevant time period alleged herein.

5 48. Plaintiff reserves the right to revise these definitions or propose any further
6 appropriate sub-class(es) as needed in response to any facts learned through discovery, legal
7 arguments advanced by Defendant, or otherwise.

8 49. Class treatment is appropriate in this action because:

9 a. The Class is Sufficiently Numerous: Defendants have employed hundreds
10 of people as Zum school bus drivers in California during the relevant time period. Because
11 Defendants must keep accurate payroll records for all of these employees, these records
12 will permit identification of the Class members and demonstrate their numerosity.
13 Moreover, the common disposition of all Class members' claims by way of a class action
14 will provide substantial benefits, economies, and savings to the Parties and the Court.

15 b. Common Questions of Law and Fact Exist: Common questions of law and
16 and fact exist and predominate as to Plaintiff and the Class Members, including: whether
17 Defendants maintain common policies and practices of not offering and/or providing
18 required rest periods to their drivers; whether Defendants maintain common policies and
19 practices that do not allow their drivers to accurately record all of their pre- and post-shift
20 work time; whether Defendants have knowingly failed to pay their drivers all wages owed
21 for the work they have actually performed; and whether Defendants have violated their
22 drivers' privacy rights by making video recordings of their activities during split-shift
23 breaks after representing that the cameras in their busses would only record when the
24 vehicle engine was running. The legality of Defendants' policies and practices will be
25 determined by applying generally applicable legal principles to common evidence.
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1 c. Plaintiff's Claims are Typical of Those Belonging to the Class members:

2 Plaintiff worked for the same employer as the other Class members, held the same job as
3 the other Class members, performed the same work as the other Class members, worked
4 the same schedule as the other Class members, was governed by the same policies and
5 practices as the other Class members, received the same representations concerning the
6 operation of Defendants' video cameras as the other Class members and had her privacy
7 intruded upon during her split-shift breaks just like the other Class members. As such,
8 Plaintiff does not have any interests that conflict with the interests of the other Class
9 members.
10

11 d. Plaintiff is an Adequate Class Representative: Plaintiff will fairly and

12 adequately protect and represent the interests of the Class because she is a member of the
13 Class, has issues of law and fact in common with the Class members, has interests that are
14 not antagonistic to the Class members, is committed to the vigorous prosecution of this
15 lawsuit and has retained counsel who are competent and experienced in the litigation of
16 complex class action matters.
17

18 e. Predominance and Superiority: Class claims predominate, and a class

19 action is superior to other available means for the fair and efficient adjudication of the
20 controversies presented in this action because Plaintiff and the Class Members have been
21 harmed and are entitled to pursue recovery of their damages, by reason of Defendants'
22 common, illegal course of conduct. The relatively low value of the claims presented here
23 will not result in the prosecution of individual claims by the majority of Class members
24 and even if this occurred, the prosecution of individual claims would tend to establish
25 inconsistent standards of conduct for Defendants and result in the impairment of Class
26 members' rights and the disposition of their interests through separate actions.
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FIRST CAUSE OF ACTION

Rest Period Violations under the California Labor Code

(For Plaintiff and All Class Members Against Defendants)

50. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

51. Under California law, rest periods are considered hours worked for which compensation must issue.

52. California Labor Code § 226.7(b) provides: “An employer shall not require an employee to work during a... rest or recovery period mandated pursuant to an applicable statute, or... order of the [IWC].”

53. California Labor Code § 226.7(c) provides: “If an employer fails to provide an employee a... rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the... rest or recovery period is not provided.”

54. Wage Order No. 9 provides: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on *the total hours worked daily* at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” IWC Wage Order 9-2001, § 12 (emphasis added); Cal. Code Regs., 8 § 11090(12)(A).

55. Wage Order No. 9 further requires an employer who fails to provide an employee a rest period in accordance with the wage order’s provisions to pay the employee one hour of pay at the employee’s regular rate of compensation for each work day the employer did not provide the employee with the rest period. Cal. Code Regs., 8 § 11090(12)(B).

1 56. The number of required rest breaks depends upon the total daily hours worked, as
2 set forth below:

Hours Worked	Number of 10 Minute Rest Breaks
0 to 3:29 hours	0
3:30 to 6 hours	1
6:01 to 10 hours	2

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8 57. Defendants scheduled Plaintiff and the Class members to work a split-shift schedule
9 consisting of a morning route lasting approximately 3-4 hours and an afternoon route lasting
10 approximately 3-4 hours. Therefore, Plaintiffs and members of the Class regularly worked in excess
11 of six (6) hours per workday and, thus, were legally required to receive two (2) 10-minute paid rest
12 breaks.
13

14 58. Defendants did not offer or provide Plaintiff or the Class members with a rest break
15 of any length during either their morning route or their afternoon route and, in fact, required
16 Plaintiff and the Class members to work continually through these routes with no rest breaks.
17

18 59. For Defendants' violation of California Labor Code § 226.7(b)-(c) and Wage Order
19 No. 9, and for failing to offer and/or provide Plaintiff and members of the Class any rest breaks
20 during their employment, Plaintiff and the Class members seek to recover 20 minutes of unpaid
21 rest break work per day (paid at their regular rate) plus a penalty of one hour's pay for each workday
22 they were denied a rest period, together with plus attorney's fees, costs and interest.
23

24 **SECOND CAUSE OF ACTION**

25 **Failure to Pay Minimum Wages in Violation of the California Labor Code**

26 **(For Plaintiff and All Class Members Against Defendants)**

27 60. Plaintiff re-alleges and incorporates by reference the allegations contained in the
28 preceding paragraphs as though fully set forth herein.

61. California Labor Code § 1194 provides that “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to 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.”

62. California Labor Code § 1197 empowers the Industrial Welfare Commission to fix the minimum wage and states that “the payment of a less wage than the minimum so fixed is unlawful.”

63. Section 4 of Wage Order No. 9 requires Defendant to pay its employees minimum wages for all hours worked.

64. Because Defendants failed to pay Plaintiffs and Class Members any wages for the approximately 1.7 to 2.5 hours of “off-the-clock” pre-shift work they performed each week and the approximately 1.25 to 1.7 hours of “off-the-clock” post-shift work they performed each week, Defendants failed to provide Plaintiffs and Class Members with the required minimum wage for these hours.

65. For Defendants' violation of California Labor Code §§ 1194 and 1197, Plaintiff and the Class members seek their full minimum unpaid wages and civil penalties under Labor Code § 1197.1 and § 2699 including \$100 for the first minimum wage violation and \$250 for each subsequent minimum wage violation plus civil penalties under Labor Code § 558 including \$50 for the first minimum wage violation and \$100 for each subsequent minimum wage violation and liquidated damages under Labor Code § 1194.2(a) in an amount equal to their withheld wages plus interest.

THIRD CAUSE OF ACTION

Failure to Provide Accurate Wage Statements in Violation of the California Labor Code(On

(For Plaintiff and All Members of the Itemized Wage Statement Sub-class Against Defendants)

1 66. California Labor Code § 226(a) requires employers to provide every employee with
2 an accurate, itemized, written statement showing, among other things, the total hours each
3 employee has worked in each pay period and the number of hours worked at each hourly rate.

4 67. Defendants did not provide Plaintiff or the Class members with a wage statement
5 meeting the requirements of California Labor Code § 226(a) because they knowingly and
6 intentionally maintained common policies and practices that prevented Plaintiffs and the Class
7 members from tracking or recording any of the time they worked before their morning shift or after
8 their afternoon shift for payroll purposes and failed to provide them with legally required rest breaks.

9 68. Defendants did not provide Plaintiff or the Class members with a wage statement
10 meeting the requirements of California Labor Code § 226(a), because they knowingly and
11 intentionally provided Plaintiffs and the Class members with common training that led them not to
12 track or record any of the time they worked before their morning shift or after their afternoon shift
13 for payroll purposes and failed to provide them with legally required rest breaks.

14 69. Defendants' knowing and intentional failure to comply with California Labor Code
15 § 226(a) resulted in the production of wage statements that did not include all of the hours Plaintiff
16 and the Class members actually worked, the rates of pay owed for those hours, or the rest breaks
17 missed. These omissions prevented Plaintiff and the Class members from knowing the total number
18 of hours they actually worked each week, calculating the value of their correct wage payments, or
19 pursuing recovery of the total wages and premium payments they should have earned.

20 70. For Defendants' violation of California Labor Code § 226(a), Plaintiff and the Class
21 members seek injunctive relief requiring Defendants to provide legally compliant wage statements,
22 statutory damages of \$50 per employee for the initial violation, and \$100 per employee for each
23 subsequent violation under Labor Code § 226E and civil penalties of \$250 per employee per
24 violation under Labor Code § 226.3.

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FOURTH CAUSE OF ACTION

Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code

**(For Plaintiff and All Members of the Waiting Time Penalties Sub-class Against
Defendants)**

71. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

72. California Labor Code § 201(a) provides that, upon discharging an employee, the employer must immediately pay that (former) employee all wages earned and unpaid at the time of discharge.

73. California Labor Code § 202(a) provides that, when an employee quits their position, all wages earned and unpaid must be paid within 72 hours.

74. Defendants did not provide any of the Class members who are their former employees with separation wages as required by California Labor Code § 201(a) or § 202(a), because they knowingly and intentionally maintained common policies and practices that prevented Plaintiffs and the Class members from tracking or recording any of the time they worked before their morning shift or after their afternoon shift for payroll purposes, so did not pay – and still have not paid – any wages to any employee for this work.

75. Defendants did not provide any of the Class members who are their former employees with separation wages as required by California Labor Code § 201(a) or § 202(a), because they knowingly and intentionally provided Plaintiffs and the Class members with common training that led them not to track or record any of the time they worked before their morning shift or after their afternoon shift for payroll purposes, so did not pay – and still have not paid – any wages to any employee for this work

76. Defendants did not provide any of the Class members who are their former employees with separation wages as required by California Labor Code § 201(a) or § 202(a),

1 because they knowingly and intentionally failed to provide Plaintiff and the Class members with
2 required rest periods, or pay any wages for the work performed during their missed rest periods

3 77. Defendants' knowing and intentional failure to comply with California Labor Code
4 § 201(a) and § 202(a) has caused the Class members who are their former employees not to be
5 timely paid the separation wages owed to them.

6 78. For Defendants' violation of California Labor Code § 201(a) and § 202(a), the Class
7 members who no longer work for Defendants each seek statutory damages measured by 30 days'-
8 worth of wages under Labor Code § 203(a).
9

10 **FIFTH CAUSE OF ACTION**

11 **Unfair Business Practices**

12 **(For Plaintiff and All Class Members Against Defendants)**

13 79. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 preceding paragraphs as though fully set forth herein.

15 80. The Unfair Competition Law generally prohibits: "any unlawful, unfair or
16 fraudulent business act or practice." Bus. & Prof. Code § 17200. "Any business act or practice that
17 violates the Labor Code through failure to pay wages is, by definition, an unfair business practice."
18 *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000).
19

20 81. Earned wages and rest period premiums that are due and payable under the Labor
21 Code are recoverable as restitution under the UCL not only because those wages are property
22 belonging to the employee that have been unwillingly surrendered as the result of an unfair business
23 practice but also because Defendants' failure to pay those wages unfairly decreased its labor costs
24 and provided it with an unfair advantage in competing with other companies that pay their
25 employees all earned wages in accordance with the Labor Code.
26

27 82. Defendants violated the Labor Code, and thereby the UCL, by knowingly and
28 intentionally maintaining common policies and practices that prevented Plaintiffs and the Class

1 members from tracking or recording any of the time they worked before their morning shift or after
2 their afternoon shift for payroll purposes so did not pay any wages for this work.

3 83. Defendants also violated the Labor Code, and thereby the UCL, by knowingly and
4 intentionally maintaining common policies and practices that failed to offer or provide Plaintiffs
5 and the Class members with legally compliant rest breaks.

6 84. As a result, Plaintiffs and Class members seek injunctive relief requiring Defendants
7 to cease the business practices described in this Complaint and restitution of all wages owed for the
8 unpaid pre-shift and post-shift work, all their rest break wages, and rest break premium payments,
9 that are owed to Plaintiffs and the Class members. *Clark v. Superior Court*, 50 Cal. 4th 605, 610
10 (2010).

11 SIXTH CAUSE OF ACTION

12 Private Attorneys General Act Violation

13 **(For Plaintiff, Aggrieved Employees, and the State of California Against Defendants)**

14 85. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 preceding paragraphs as though fully set forth herein.

16 86. Labor Code § 2699(a) states:

17
18 Notwithstanding any other provision of law, any provision of this
19 code that provides for a civil penalty to be assessed and collected by
20 the Labor and Workforce Development Agency or any of its
21 departments, divisions, commissions, boards, agencies, or
22 employees, for a violation of this code, may, as an alternative, be
23 recovered through a civil action brought by an aggrieved employee
24 on behalf of himself or herself and other current or former employees
25 pursuant to the procedures specified in Section 2699.3.

26 87. Plaintiff and all Class members who were employed by Defendants at any time
27 within one (1) year of the filing of the PAGA letter are “aggrieved employees” as that term is
28 defined in the California Labor Code Private Attorney General Act of 2004, because they are
current or former employees of the alleged violator and against whom one or more of the alleged
violations was committed.

88. Plaintiff filed the requisite letter to California’s Labor Workforce Development Agency (“LWDA”) on March 15, 2022, pursuant to California Labor Code § 2699, *et seq.*

89. Plaintiff brings this action for herself and all aggrieved employees who were subject to Defendants' failure to pay Plaintiff and aggrieved employees for all hours they worked at the applicable minimum, regular, and overtime wage rate; its failure to comply with California's meal and rest break laws; its failure to provide accurate wage statements; and its failure to pay Plaintiff and aggrieved employees who are former employees all their wages due and owing upon termination.

90. Plaintiff, for herself and in a representative capacity for all aggrieved employees, demand the maximum civil penalty specified in Labor Code § 2699 in the amount of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per period for the initial violation and two hundred dollars (\$200) per pay period for each subsequent violation for violations of Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, and 1198.

91. These penalties are recoverable in addition to any other civil penalty separately recoverable by law.

SEVENTH CAUSE OF ACTION

California Invasion Of Privacy Act Violation

(For Plaintiff and All Class Members Against Defendants)

92. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

93. The California Invasion of Privacy Act (“CIPA”) is California’s anti-wiretapping and anti-eavesdropping statute and is designed to protect the right of privacy.

94. Defendants knowingly and intentionally violated the privacy protections afforded under CIPA by installing video cameras in their vehicles that made continuous electronic audio and video recordings of Plaintiff's and the Class members' private communications and activities without their consent.

1 95. Plaintiff's and the Class members' recorded communications and activities were
2 private and confidential, because they occurred in circumstances reasonably indicating they were
3 intended to be private. These circumstances include that Defendants had affirmatively represented
4 that the video cameras installed on their vehicles would operate only when the vehicle engines were
5 turned on. Since Plaintiff and the Class members routinely engaged in private communications with
6 family members, healthcare providers, union representatives, co-workers and lawyers during their
7 split-shift breaks – while they were off-duty, off-the-clock and had their vehicle engine turned off
8 – they had an objectively reasonable expectation that their communications and activities were not
9 being recorded.
10

11 96. For knowingly and intentionally recording confidential communications protected
12 by CIPA § 632 without their consent, Plaintiffs and the Class members seek injunctive relief
13 requiring Defendants to cease recording their communications and actions during split-shift breaks
14 and statutory damages of \$5,000 for each of Defendants' violations under Cal. Penal Code § 637.2.
15

16 **EIGHTH CAUSE OF ACTION**

17 **Invasion Of Privacy In Violation Of The Common Law Tort Of Intrusion**

18 **(For Plaintiff and All Class Members Against Defendants)**

19 97. Plaintiff re-alleges and incorporates by reference the allegations contained in the
20 preceding paragraphs as though fully set forth herein.

21 98. California's common law tort of intrusion protects others from intentionally
22 intruding into a place, conversation, or matter as to which another has a reasonable expectation of
23 privacy.
24

25 99. Defendants intentionally intruded into a place, conversation, or matter as to which
26 Plaintiff and the Class members has a reasonable expectation of privacy because Defendants
27 represented that the video cameras in their vehicles would only record while the vehicle engine was
28 running and would stop recording when the engine was turned off, but actually caused these

1 cameras to record drivers' private activities during their split-shift breaks even though their riders
2 were all in school, their vehicles were not on the road, and the drivers were off-duty, off-the-clock
3 and supposedly free to use their time as they chose.

4 100. Defendants' intrusion into Plaintiff's and the Class members' privacy occurred in a
5 manner that is highly offensive to a reasonable person because Defendants intentionally deceived
6 their drivers into believing that time spent in their vehicles during split-shift breaks would be private
7 and not only intentionally recorded their private and personal activities during that time, but also
8 continued to do so even after it became clear that they were routinely capturing drivers engaging in
9 private activities like engaging in private communications with family members, healthcare
10 providers, union representatives, co-workers and lawyers and changing their clothes before and
11 after visiting the gym.
12

13 101. Plaintiff and the Class members did not consent to Defendants recording their
14 private conversations or activities that took place during their split-shift breaks, when their riders
15 were all in school, their vehicles were not on the road and they were off-duty, off-the-clock and
16 supposedly free to use their time as they chose.
17

18 102. For intentionally violating California's common law tort of intrusion, Plaintiffs and
19 the Class members seek injunctive relief requiring Defendants to cease recording their
20 communications and actions during split-shift breaks and nominal damages of \$100 per violation.
21

22 NINTH CAUSE OF ACTION

23 **Invasion Of Privacy In Violation Of The California Constitution**

24 **(For Plaintiff and All Class Members Against Defendants)**

25 103. Plaintiff re-alleges and incorporates by reference the allegations contained in the
26 preceding paragraphs as though fully set forth herein.

27 104. Article I, section 1 of the California Constitution declares privacy an inalienable
28 right of the people of California. This right "protects individuals from the invasion of their privacy

1 not only by state actors but also by private parties.” *Leonel v. Am. Airlines, Inc.*, 400 F.3d 702, 711
2 (9th Cir. 2005).

3 105. Defendants violated the privacy rights guaranteed to Plaintiff and the Class members
4 by the California Constitution because Plaintiffs and the Class members have a legally-protected
5 privacy interest in their communications and actions during split-shift breaks when their riders were
6 all in school, their vehicles were not on the road, and they were off-duty, off-the-clock and
7 supposedly free to use their time as they chose.

8
9 106. Defendants violated the privacy rights guaranteed to Plaintiff and the Class members
10 by the California Constitution because Plaintiffs and the Class members have a reasonable
11 expectation of privacy in their communications and actions during split-shift breaks under the
12 circumstances because Defendants represented that their video cameras would only record while
13 the vehicle engine was running and would stop recording when the engine was turned off, and
14 Defendants have no justifiable basis to monitor drivers’ conduct during split-shift breaks when their
15 riders were all in school, their vehicles were not on the road, and they were off-duty, off-the-clock
16 and supposedly free to use their time as they chose.

17
18 107. Defendants violated the privacy rights guaranteed to Plaintiff and the Class members
19 by the California Constitution because their conduct amounts to a serious invasion of the protected
20 privacy interest in that Defendants intentionally deceived their drivers into believing that time spent
21 in their vehicles during split-shift breaks would be private and not only intentionally recorded their
22 activities during that time, but also continued to do so even after it became clear that they were
23 routinely capturing drivers engaging in private activities like engaging in private communications
24 with family members, healthcare providers, union representatives, co-workers and lawyers and
25 changing their clothes before and after visiting the gym.

26
27 108. Plaintiff and the Class members did not consent to Defendants recording their
28 private conversations or activities that took place during their split-shift breaks when their riders

1 were all in school, their vehicles were not on the road, and they were off-duty, off-the-clock, and
2 supposedly free to use their time as they chose.

3 109. For intentionally violating the privacy rights guaranteed to Plaintiff and the Class
4 members by the California Constitution, Plaintiffs and the Class members seek injunctive relief
5 requiring Defendants to cease recording their communications and actions during split-shift breaks.

6 **JURY DEMAND**

7 Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

8 **PRAYER FOR RELIEF**

9 Wherefore Plaintiff, individually, for all Class members and for the general public, hereby
10 prays for relief as follows relating to her class and representative action allegations:

11 a. For an order certifying this action as a class action on behalf of the
12 proposed Class and Sub-classes;

13 b. For an order appointing Plaintiff as the Representative of the Class
14 and Sub-classes and for an order appointing her counsel as Class Counsel;

15 c. For damages according to proof for her regular rate and/or minimum
16 rate, whichever is applicable, for all hours worked under state law;

17 d. For damages according to proof for all rest break wages at the
18 regular rate of pay;

19 e. For damages according to proof for all rest break premiums;

20 f. For liquidated damages;

21 g. For statutory penalties;

22 h. For civil penalties;

23 i. For waiting time penalties;

24 j. For penalties pursuant to PAGA;

25 k. For interest as provided by law at the maximum legal rate;

- 1 l. For reasonable attorneys' fees authorized by statute;
2 m. For costs of suit incurred herein;
3 n. For pre- and post-judgment interest, as provided by law, and
4 o. For such further relief as the Court may deem just and proper.

5
6 Dated: March 29, 2022

/s/ Joshua D. Buck

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