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on his own behalf and on behalf of

7 all others similarly situated

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 Case No. 4:20-cv-04062-PJH

11 KENT HASSELL, on his own behalf and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 UBER TECHNOLOGIES, INC., d/b/a UBER  
16 EATS,

17 Defendant.

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802, WAGE ORDER 9-2001)
2. MINIMUM WAGE (CAL. LAB. CODE §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, WAGE ORDER 9-2001)
3. OVERTIME (CAL. LAB. CODE §§ 1194, 1198, 510, AND 554, WAGE ORDER 9-2001)
4. FAILURE TO PROVIDE ACCURATE ITEMIZED PAY STATEMENTS (CAL. LAB. CODE §§ 226(A) AND WAGE ORDER 9-2001)
5. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES CAL. LAB. BUS. & PROF. CODE §§ 17200-17208)

1 **I. INTRODUCTION**

2 1. This case is brought by Kent Hassell, who has worked as an Uber Eats driver in  
3 California. Uber Eats, a division of Uber Technologies, Inc., provides on-demand food delivery  
4 services. Uber Eats is based in San Francisco, California, and it does business across the United  
5 States and extensively throughout California.

6  
7 2. As described further below, Uber Eats has misclassified its delivery drivers as  
8 independent contractors (just as Uber Technologies, Inc. has misclassified its rideshare drivers).  
9 Uber Eats has thereby deprived its drivers, including Plaintiff Kent Hassell, of protections they  
10 are entitled to under the California Labor Code. Based on the delivery drivers' misclassification  
11 as independent contractors, Uber Eats has unlawfully required the drivers, including Plaintiff  
12 Hassell, to pay business expenses (including, but not limited to, the cost of maintaining their  
13 vehicles, gas, insurance, phone and data expenses, and other costs) in violation of Cal. Lab. Code  
14 § 2802. Uber Eats has also failed to guarantee and pay its drivers minimum wage for all hours  
15 worked, and it has failed to pay overtime premiums for hours worked in excess of eight hours per  
16 day or forty hours per week in violation of Cal. Lab. Code §§ 1182.12., 1194.2, 1194, 1197,  
17 1197.1, 1198, 1199, 510, and 554. Uber Eats has also failed to provide proper itemized wage  
18 statements that include all of the requisite information, including hours worked and hourly wages  
19 that are accessible outside the Uber Eats Application in violation of Cal. Lab. Code § 226(a).  
20 Uber Eats has also failed to provide sick leave as required by California law in violation of Cal.  
21 Lab. Code § 246. Uber Eats' continued misclassification of its delivery drivers as independent  
22 contractors is willful misclassification in violation of Cal. Lab. Code § 226.8. Plaintiff Hassell  
23 also brings a claim for unfair business practices under California law. See Bus. & Prof. Code §§  
24 17200, *et seq.*<sup>1</sup>

25  
26 <sup>1</sup> Notably, a UCL claim has a statute of limitations of four years. In contrast, claims  
27 brought under the California Labor Code have a statute of limitations of three years, and a  
28 PAGA claim has only a one year statute of limitations. Thus, absent the ability to maintain a

1           3.       Indeed, in the fall of 2019, the California legislature passed a statute known as  
2 Assembly Bill 5 (or “A.B. 5”), which codified the 2018 California Supreme Court decision,  
3 Dynamex Operations W., Inc. v. Superior Court (2018) 4 Cal.5<sup>th</sup> 903, 416 P.3d1, reh’g denied  
4 (June 20, 2018), under which an alleged employer cannot justify classifying workers as  
5 independent contractors who perform services within its usual course of business. See Cal. Lab.  
6 Code § 2750.3. It has been widely recognized by the California legislature, including the bill’s  
7 author, that the purpose and intent of this statute was to ensure that companies, including  
8 specifically Uber, stop misclassifying their workers as independent contractors. Although Uber  
9 attempted to obtain a “carve-out” from this statute when it was enacted, it did not obtain such an  
10 exemption, and the legislature passed the statute so that it would include Uber Eats drivers.  
11 Nevertheless, Uber Eats has defied this statute and continued to classify its delivery drivers as  
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16 UCL claim, Plaintiff Hassell would lose the ability to recover for at least one year of damages on  
behalf of the putative class.

17       In addition, Plaintiff Hassell notes that absent his UCL claim as it pertains to violations of  
18 Cal. Lab. Code §§ 226.8 and 246, he would have no adequate legal remedy because none of his  
19 other legal claims would afford him damages or restitution to redress Uber Eats’ willful  
20 misclassification of him as an independent contractor or its failure to provide him paid sick time.  
21 The fact that Plaintiff could have chosen to redress these harms through claims under PAGA or  
22 Cal. Lab. Code § 248.5 is not of consequence, because, at this stage, he need only show that he  
23 lacks an adequate remedy under any of the other legal claims that he did choose to bring. See In  
24 re JUUL Labs, Inc., Marketing, Sales Practices, and Products Liability Litig., --- F.Supp.3d ---,  
25 2020 WL 6271173, at \*55 (N.D. Cal. Oct. 23, 2020) (denying defendant’s motion to dismiss  
26 UCL claim based on unfair conduct for restitution and explaining that, at this preliminary stage,  
27 a plaintiff’s obligation to allege that he lacks an adequate remedy at law is low where “the  
allegations regarding unfair conduct are not otherwise coextensive with plaintiffs’ legal claims”).  
28 Even so, a PAGA claim would not provide Plaintiff an adequate remedy at law for to redress  
Uber Eats’ willful misclassification of him because a PAGA claim is brought in the shoes of the  
state, whereas the UCL claim allows Plaintiff Hassell to address Uber’s unfair conduct in his  
own right, and PAGA allows only for the recovery of civil penalties rather than actual money  
damages.

1 independent contractors – in violation of the clear intent of the California legislature. This  
2 ongoing defiance of the law constitutes willful violation of California law.<sup>2</sup>

3 4. Uber Eats has harmed delivery drivers like Kent Hassell by these violations, as  
4 delivery drivers have struggled to support themselves without the employment protections  
5 mandated by the State of California.

6 5. Plaintiff brings these claims on behalf of himself and others similarly situated  
7 pursuant to Fed. R. Civ. P. 23. He seeks recovery of damages for himself and the class.

8  
9 **II. PARTIES**

10 6. Plaintiff Kent Hassell is an adult resident of Cypress, California, where he has  
11 worked as an Uber Eats driver since January 2020. Plaintiff opted out of Uber’s arbitration  
12 clause.

13 7. The above-named plaintiff has brought this action on his own behalf and behalf of  
14 all others similarly situated, namely all other individuals who have worked as Uber Eats delivery  
15 drivers in California.

16 8. Defendant Uber Technologies, Inc. d/b/a Uber Eats (“Uber Eats”) is a corporation  
17 headquartered in San Francisco, California.

18 **III. JURISDICTION**

19 9. This Court has jurisdiction over the state law claims asserted here pursuant to the  
20 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendant is a California citizen and,  
21 upon the filing of this complaint, members of the putative plaintiff class may reside in states  
22 around the country; there are more than 100 putative class members; and the amount in  
23 controversy exceeds \$5 million.

24  
25 <sup>2</sup> On December 17, 2020, Proposition 22 went into effect in California, which exempts  
26 certain app-based companies from A.B. 5. While it is possible that, as of December 17, 2020,  
27 Proposition 22 may relieve Uber Eats of its liability as alleged in this Amended Complaint, it is  
28 yet to be determined whether Uber Eats is in compliance with its requirements, and, thus,  
whether it may claim a defense under Proposition 22.

1 **IV. STATEMENT OF FACTS**

2 10. Uber Eats is a San Francisco-based food delivery service, which engages drivers  
3 across the state of California to deliver food to its customers at their homes and businesses.

4 11. Uber Eats offers customers the ability to order food via a mobile phone  
5 application, which its drivers then deliver.

6 12. Plaintiff Kent Hassell has driven for Uber Eats since January 2020.

7 13. Although Uber Eats has classified Plaintiff (like all of its delivery drivers) as an  
8 “independent contractor,” Plaintiff has actually been Uber Eats’ employee under California law.  
9

10 14. Uber Eats drivers, including Plaintiff, provide a service in the usual course of  
11 Uber Eats’ business because Uber Eats is a food delivery service that provides on-demand meals  
12 to its customers, and delivery drivers such as Plaintiff perform that food delivery service. Uber  
13 Eats holds itself out as a food delivery service, and it generates revenue primarily from  
14 customers paying for the very food delivery services that its delivery drives provide. Without  
15 delivery drivers like Plaintiff Hassell to provide the food delivery, Uber Eats would not exist.

16 15. Uber Eats also requires its drivers, including Plaintiff, to abide by a litany of  
17 policies and rules designed to control the delivery drivers’ work performance. Uber Eats both  
18 retains the right to, and does in fact exercise, control over Plaintiff Hassell and other delivery  
19 drivers’ work.

20 16. Uber Eats delivery drivers, including Plaintiff, are not typically engaged in their  
21 own transportation business. When delivering for Uber Eats, they wear the “hat” of Uber Eats.”  
22 Customers cannot request specific Uber Eats delivery drivers; instead, Uber Eats assigns  
23 particular deliveries to drivers.

24 17. Uber Eats communicates directly with customers and follows up with delivery  
25 drivers, including Plaintiff, if the customer complains that the delivery failed to meet their  
26

1 expectations. Based on any customer feedback, Uber Eats may suspend or terminate delivery  
2 drivers at its sole discretion.

3 18. Uber Eats drivers are engaged in interstate commerce. Indeed, drivers frequently  
4 transport food and beverages that originated across state lines (including food and beverages,  
5 such as sodas and chips, that are not transformed at the restaurants from which drivers deliver the  
6 meals to customers).

7 19. Uber Eats does not require Plaintiff Hassell or other delivery drivers to possess  
8 any skill above and beyond that necessary to obtain a regular drivers' license.

9 20. Plaintiff Hassell and other delivery drivers' tenure with Uber Eats is for an  
10 indefinite amount of time.

11 21. Uber Eats provides the delivery drivers, including Plaintiff, with the primary  
12 instrumentality with which they can perform services for Uber Eats, namely the Uber Eats'  
13 software.

14 22. Uber Eats sets the rate of pay for Plaintiff Hassell and other delivery drivers'  
15 services and changes the rate of pay in its sole discretion.

16 23. Plaintiff and other drivers' vehicles must meet Uber Eats' quality standards,  
17 which it determines and may change at any time at its sole discretion.

18 24. Uber Eats may make promotional offers to customers that reduce delivery drivers'  
19 income without consulting drivers.

20 25. Uber Eats monitors Plaintiff Hassell and other deliver drivers' performance and  
21 may suspend or terminate delivery drivers who do not accept enough deliveries, cancel too many  
22 deliveries, do not maintain high customer satisfaction ratings, or engage in other conduct that  
23 Uber Eats, in its sole discretion, may determine constitutes grounds for suspension or  
24 termination.  
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1           26. Uber Eats has not reimbursed delivery drivers, including Plaintiff Kent Hassell,  
2 for any expenses they incurred while working for Uber Eats, including, but not limited to, the  
3 cost of maintaining their vehicles, gas, insurance, and phone and data expenses for running the  
4 Uber Eats Application. Delivery drivers incurred these costs as a necessary expenditure to work  
5 for Uber Eats, which California law requires employers to reimburse.  
6

7           27. For example, Plaintiff Hassell has purchased approximately \$90 worth of gas per  
8 week in order to fuel the 2000 Toyota Camry CE that he uses to make deliveries for Uber Eats.  
9 He would not have otherwise purchased this fuel absent his work for Uber Eats. The purchase of  
10 fuel is necessary to his work for Uber Eats because many the pick-up and drop-off locations that  
11 are assigned to him are too far away for him to travel without a car.

12           28. Similarly, Plaintiff Hassell has also had to bear the cost of replacing his tires more  
13 frequently than before he started working for Uber Eats. Plaintiff Hassell purchased a new set of  
14 four tires in 2019 at a cost of approximately \$270. Prior to working for Uber Eats Plaintiff  
15 Hassell only had to replace his tires every few years.

16           29. Plaintiff Hassell seeks reimbursement for these and other expenses he has  
17 incurred by using his vehicle to make deliveries for Uber Eats by reference to the IRS mileage  
18 reimbursement rate.<sup>3</sup>

19 <sup>3</sup> Another court in this District has certified a class in a prior case against Uber finding that  
20 the IRS reimbursement rate could be used as “a reasonable basis of computation of vehicle-  
21 related expenses” incurred by Uber drivers. O’Connor v. Uber Techs., Inc., 311 F.R.D. 547, 567  
22 (N.D. Cal. 2015), rev’d and remanded on other grounds, 904 F.3d 1087 (9th Cir. 2018). Thus,  
23 while Plaintiff can point to specific expenses that he incurred, the use of the federal IRS  
24 reimbursement rate may also be used to determine the amount of reimbursement due under Cal.  
25 Lab. Code § 2802. See Gattuso v. Harte-Hanks Shoppers, Inc., 42 Cal.4th 554, 569 (2007).

26 Another court in this District has also made clear that, in the context of an app-based food  
27 delivery service, plaintiffs need not allege specific instances where expenses were incurred. See  
28 Tan v. GrubHub, Inc., 171 F.Supp.3d 998, 1006-07 (N.D. Cal. 2016). Instead, plaintiffs need  
only allege that vehicle and phone related expenses were required to deliver food and run the  
Application. See id.; see also Colopy v. Uber Techs., Inc., 2019 WL 6841218, \*6 (N.D. Cal.  
Dec. 16, 2019).

1           30. Plaintiff Hassell also had to switch his cellular data plan from an approximately  
2 \$29 per month 8 GB plan from Tello Mobile to an approximately \$39 per month unlimited data  
3 plan from the same mobile carrier in order to have enough data to run the Uber Eats App – which  
4 is the only way that Uber Eats sends him delivery assignments. He would not have purchased an  
5 unlimited data plan if he did not work for Uber Eats.

6           31. Uber Eats has not reimbursed Plaintiff Hassell (or any Uber Eats drivers) for the  
7 cost of fuel, tires, his cellular data plan, or any other expense that he has incurred in order to  
8 carry out his work as a food delivery driver.

9           32. Plaintiff Hassell, like other drivers, is subject to Uber Eats’ control during all  
10 hours worked: the time spent driving to a restaurant to pick up food, the time spent driving to a  
11 customer to deliver food, and the time spent online on the App between deliveries, while waiting  
12 for the next delivery.

13           33. Plaintiff Hassell remains logged into the App between deliveries because it is the  
14 only way for him to be able to receive a new delivery assignment from Uber Eats. He does this  
15 for Uber Eats’ primary benefit because, unless Plaintiff and other drivers remain logged into the  
16 App between deliveries, Uber Eats would not have anyone to send delivery assignments to and,  
17 thus, there would be no one to bring Uber Eats’ customers their food. Drivers, including  
18 Plaintiff, are not able to freely engage in personal errands or activities while logged into the App  
19 between deliveries because Uber Eats requires that drivers either accept or reject delivery  
20 assignments that Uber Eats populates on their App within several seconds. If drivers, including  
21 Plaintiff, do not respond to these delivery assignment requests, their “acceptance rate” will  
22 decline, which may ultimately lead to disciplinary measures like suspension or termination. See  
23 Frlekin v. Apple, Inc., 8 Cal.5th 1038, 1056 (2020) (in considering whether an employee is  
24 subject to the employer’s control so as to render time compensable “courts may and should  
25 consider additional relevant factors – including, but not limited to, the location of the activity, the  
26  
27



1 degree of the employer’s control, whether the activity primarily benefits the employer or  
2 employee, and whether the activity is enforced through disciplinary measures”).

3 34. Plaintiff Hassell does not perform personal errands or activities while he is  
4 waiting between orders so that he is available to respond to Uber Eats’ delivery assignments and  
5 avoid a low acceptance rate.

6 35. Uber Eats has violated Cal. Lab. Code §§ 1194 and 1197 by failing to assure that  
7 delivery drivers, including Plaintiff, make the applicable minimum wage for all hours worked,  
8 particularly after accounting for their expenses and other deductions taken from their pay. The  
9 hours they work are hours driving to a restaurant to pick up food, driving to the customer to  
10 deliver food, and driving between deliveries while awaiting their next delivery assignment.

11 36. For example, the week of May 6, 2020 to May 10, 2020, Plaintiff Hassell only  
12 earned \$ 9.90 per hour when accounting for all of his time spent on the Uber Eats Application  
13 (including driving to the restaurant, dropping off the delivery, and wait time between deliveries)  
14 and after deducting expenses for mileage driven picking up and delivering food items and  
15 between deliveries (calculated at the IRS standard reimbursement rate).

16 37. Similarly, for the pay period of July 27, 2020 through August 2, 2020, Plaintiff  
17 Hassell only earned \$10.78 per hour when accounting for all of his time spent on the Uber Eats  
18 App (including driving to the restaurant, dropping off the delivery, and wait time between  
19 deliveries) even before deducting expenses for mileage driven picking up and delivering food  
20 items and between deliveries (calculated at the IRS standard reimbursement rate). After  
21 deducting a total of \$68.12 to account for the 75.4 miles (based on the IRS standard  
22 reimbursement rate of 57.5 cents per mile in 2020) that he drove picking up and delivering food  
23 items from his weekly earnings, his hourly rate for the pay period was \$6.59 per hour. Further, if  
24 only considering the time Plaintiff Hassell spent actively engaged in deliveries (driving to pick  
25 up and deliver food) for the same July 27, 2020 through August 2, 2020 time period, Plaintiff’s  
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1 hourly rate was \$11.02 per hour before deductions for mileage and \$6.74 per hour after  
2 deducting expenses based on the IRS mileage rate. Thus, Plaintiff received less than minimum  
3 wage for that week (and likely other weeks), regardless of whether or not the time spent between  
4 deliveries is taken into account and regardless of whether or not the expenses he incurred are  
5 taken into account.

6  
7 38. Uber Eats has violated Cal. Lab. Code §§ 1194, 1198, 510 and 554 by failing to  
8 pay its delivery drivers like Plaintiff the appropriate overtime premium for all overtime hours  
9 worked beyond forty per or eight per day.

10 39. For example, Plaintiff Hassell has worked more than eight hours per day and  
11 more than forty per week at various times since he began delivering for Uber Eats and was never  
12 paid the appropriate premium for all hours worked beyond eight per day or forty per week. For  
13 example, for the week of February 3, 2020 to February 9, 2020, Plaintiff Hassell worked forty-  
14 four (44) hours and two minutes.<sup>4</sup> However, he did not receive time-and-a-half his regular rate  
15 of pay for the time he spent driving beyond forty hours that week. The hours that Plaintiff  
16 worked were hours spent driving to pick up deliveries at the restaurant, driving to drop off  
17 deliveries to customers at their homes and businesses, and time spent between deliveries while  
18 awaiting the next delivery assignment.

19 40. Similarly, Plaintiff Hassell worked more than eight (8) hours in a day on multiple  
20 occasions, including on the dates listed below, but was never paid the appropriate premium for  
21 all hours worked beyond eight per day.

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23  
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26 <sup>4</sup> The original Complaint (Dkt. 1) in this action mistakenly stated that Plaintiff worked  
27 forty-four (44) hours for the week of February 3, 2020 to February 10, 2020. Plaintiff Hassell  
28 did not perform any deliveries on February 10, 2020.

Date	Total Hours Worked (including time between deliveries)	Hours Spent Driving to Pick Up Deliveries & Driving to Drop off Deliveries Only
March 1, 2020	8 hours and 43 minutes	8 hours and 15 minutes
September 27, 2020	9 hours and 10 minutes	9 hours and 1 minute
November 1, 2020	10 hours and 14 minutes	9 hours and 58 minutes

41. Uber Eats has violated Cal. Lab. Code § 226(a) by failing to provide proper itemized wage statements to delivery drivers, including Plaintiff, that include all of the requisite information required by California law, namely hours worked and hourly wages.

42. Plaintiff Hassell has only been able to access his pay statements by logging into the Uber Eats App. His pay statements include a summary of his earnings, trip balances, any promotional deals that Uber Eats applied, and a list of all deliveries made during the relevant statement period with the date and time the order was accepted, the trip ID, and the earnings for the delivery. Any information about Plaintiff's total hours worked (as defined in ¶ 32) is absent from his pay statements. Plaintiff is not aware of any other place on the App that he can access his total hours worked during a single pay period. Similarly, his pay statement has not included the total amount of time that he spent on a delivery driving to a restaurant to pick up an order and then driving to drop it off at the customer's home or business.<sup>5</sup> Additionally, Plaintiff's pay statement also has not included hourly wages. Instead, the pay statement only lists the earnings for each individual delivery.

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<sup>5</sup> The only way that Plaintiff Hassell could access this information is by clicking on a hyperlink for each individual delivery listed on his pay statement and then be redirected to a separate page with start and end times for that specific delivery, calculate the total time spent on the delivery, and then add all delivery times together to reach a final sum for the statement period. This process by which Plaintiff could theoretically access this information is more burdensome than California law requires; under § 226(a), employers are required to provide this information on a paper pay statement and cannot force employees to undergo this burdensome process to access their wage information.

1           43. Uber Eats has violated Cal. Lab. Code § 246 by not providing paid sick days to its  
2 delivery drivers, including Kent Hassell as required by California law. This provision requires  
3 employers to allow employees to accrue sick days at the rate of not less than one hour for every  
4 thirty hours worked, which they can use after working for the employer for 30 days within a year  
5 from the start of their employment and allows employees to use up to 24 hours of sick leave  
6 annually.

7  
8           44. Plaintiff Hassell performed deliveries for Uber Eats approximately 215 days  
9 between January 2020 and December 17, 2020, when Proposition 22 went into effect. He  
10 worked a total of 1,096.98 hours (which included 995.04 hours spent picking up and delivering  
11 food and 103.94 hours between deliveries waiting for new assignments) during this time period.  
12 Thus, Plaintiff Hassell should have accrued 24 hours of sick leave. Plaintiff Hassell has not  
13 accrued paid sick days since starting to work for Uber Eats in January 2020.

14           45. Despite being sick several days in 2020, Plaintiff Hassell was aware that Uber  
15 classified him as an independent contractor and did not provide paid sick leave pursuant to  
16 California law, so it would have been futile for him to request it from Uber Eats.

17           46. On April 30, 2018, the California Supreme Court issued its decision in Dynamex,  
18 which made clear that Uber Eats delivery drivers should have been classified as employees rather  
19 than independent contractors under California law for purposes of wage-and-hour statutes.  
20 Under the “ABC” test adopted in Dynamex, in order to justify classifying the delivery drivers as  
21 independent contractors, Uber Eats would have had to prove that its delivery drivers perform  
22 services outside its usual course of business, which it could not do. Notwithstanding this  
23 decision, Uber Eats continued to misclassify its drivers as independent contractors.

24           47. Furthermore, the California legislature took steps to clarify and codify the “ABC”  
25 test set forth in the Dynamex decision by passing Assembly Bill 5, which was passed into law by  
26 the California legislature and went into effect on January 1, 2020. The legislature had clearly  
27

1 intended for Uber to be covered by this statute; indeed, the author of the statute,  
2 Assemblywoman Lorena Gonzalez, had made clear that Uber (and similar “gig economy”  
3 companies) would not be exempted from the law. Although Uber specifically lobbied to obtain a  
4 “carve-out” exemption from the law at the time it was enacted, it did not receive a carve-out  
5 from the legislature. Instead, after its enactment, in 2020, Uber was one of several “gig  
6 economy” companies that invested nearly \$200 million to fund a ballot initiative, Proposition 22  
7 (which ultimately passed), seeking a carve-out for app-based “gig economy” companies from  
8 A.B. 5. Uber’s actions in opposing the law – and its expressed concern that the law would have  
9 a major impact on its business – were acknowledgments that A.B. 5 required it to classify its  
10 drivers as employees and provide employees with the protection of the California Labor Code.  
11

12 48. Uber Eats violated Cal. Lab. Code § 226.8 by willfully misclassifying drivers,  
13 including Plaintiff Hassell, as independent contractors, even after the issuance of the Dynamex  
14 decision by the California Supreme Court and the passage of A.B. 5, despite the fact that it held  
15 itself out to the public as a food delivery service and Plaintiff Hassell performed food delivery  
16 services within Uber Eats’ usual course of business. It was widely discussed throughout  
17 California, after the issuance of Dynamex and the passage of A.B. 5, that gig economy  
18 companies such as Uber were violating the law by continuing to classify their drivers as  
19 independent contractors. See, e.g., Rogers v. Lyft, Inc., Case No. 20-cv-01938-VC (Transcript  
20 re Hearing on Emergency Motion for Preliminary Injunction) at 28-29 (explaining that AB5  
21 clearly applies, and was intended to apply to, gig economy companies like Lyft); John Myers,  
22 *Uber, Lyft, DoorDash launch a \$90-million fight against California Labor Law*, L.A. Times,  
23 Oct. 29, 2019, accessible at: [https://www.latimes.com/california/story/2019-10-29/uber-lyft-](https://www.latimes.com/california/story/2019-10-29/uber-lyft-doordash-fight-california-labor-law-ab5)  
24 [doordash-fight-california-labor-law-ab5](https://www.latimes.com/california/story/2019-10-29/uber-lyft-doordash-fight-california-labor-law-ab5); Alexia Fernandez Campbell, *Gig Workers’ Win in*  
25 *California Is a Victory for Workers Everywhere*, Vox (Sept. 11, 2019), accessible at:  
26 <https://www.vox.com/2019/9/11/20851034/california-ab-5-workers-labor-unions>.  
27

1 **V. CLASS ALLEGATIONS**

2 49. Plaintiff Kent Hassell brings this case as a class action pursuant to Rule 23 of the  
3 Federal Rules of Civil Procedure on behalf of all Uber Eats drivers who have worked in  
4 California.

5 50. The class representative and other class members have uniformly been  
6 misclassified as independent contractors.

7 51. The members of the class are so numerous that joinder of all class members is  
8 impracticable.

9 52. Common questions of law and fact regarding Uber Eats' conduct exist as to all  
10 members of the class and predominate over any questions affecting solely any individual  
11 members of the class. Among the questions of law and fact common to the class are:

- 12
- 13 a. Whether the work performed by class members – providing food delivery service  
14 to customers – is within Uber Eats' usual course of business, and whether such  
15 service is fully integrated into Uber Eats' business;
  - 16 b. Whether class members have been required to work under Uber Eats' direction  
17 and control;
  - 18 c. Whether class members have been engaged in an independently established  
19 business or occupation while they are delivering food to Uber Eats' customers;
  - 20 d. Whether class members have been required to bear the expenses of their  
21 employment, such as expenses for their vehicle, gas, and other expenses;
  - 22 e. Whether class members have suffered other violations of the California Labor  
23 Code and Wage Orders, as described herein.

24 53. The class representative is a member of the class who suffered damages as a result  
25 of Defendant's conduct and actions alleged herein.

1           54.     The named plaintiff's claims are typical of the claims of the class, and the named  
2 plaintiff has the same interests as other members of the class.

3           55.     The named plaintiff will fairly and adequately represent and protect the interests  
4 of the class. The named plaintiff has retained able counsel experienced in class action litigation.  
5 The interests of the name plaintiff is coincident with, and not antagonistic to, the interests of the  
6 other class members.

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

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

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18  
19                                 **COUNT I**  
20                                 **Expense Reimbursement**  
21                                 **Violation of Cal. Lab. Code § 2802; Wage Order 9-2001**

22           58.     Plaintiff realleges and incorporates by reference the allegations in the preceding  
23 paragraphs as if fully alleged herein. Uber Eats' conduct, as set forth above, in misclassifying its  
24 delivery drivers as independent contractors, and failing to reimburse them for expenses they paid  
25 that should have been borne by their employer, including but not limited to, gas, insurance, car  
26 maintenance, and phone and data charges, constitutes a violation of California Labor Code  
27 Sections 2802, 2750.3(a) and Wage Order 9-2001.





1  
2 **COUNT IV**  
3 **Failure to Provide Accurate Itemized Pay Statements**  
4 **Violation of Cal. Lab. Code § 226(a), Wage Order 9-2001**

5 64. Plaintiff realleges and incorporates by reference the allegations in the preceding  
6 paragraphs as if fully alleged herein. Uber Eats’ conduct, as set forth above, in failing to provide  
7 itemized wage statements, as required by California state law, violates Cal. Lab. Code §§ 226(a),  
8 2750.3 and Wage Order 9-2001.

9 65. This claim is brought on behalf of a class of similarly situated individuals who  
10 have worked as delivery drivers for Uber Eats in the State of California.

11 **COUNT V**  
12 **Unfair Business Practices**  
13 **Violation of Cal. Bus. & Prof. Code § 17200, et seq.**

14 66. Plaintiff realleges and incorporates by reference the allegations in the preceding  
15 paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in continuing to  
16 classify delivery drivers as independent contractors even after the California Supreme Court’s  
17 decision in Dynamex Operations W., Inc. v. Superior Court (2018) 4 Cal.5th, 903, 416 P.3d 1,  
18 reh’g denied (June 20, 2018), the California Legislature’s passage of A.B. 5, and the amended  
19 Cal. Lab. Code § 2750.3, which set forth the “ABC” test to define “employee” for purposes of  
20 the California Labor Code, all of which made clear that Uber Eats drivers were employees under  
21 California law, has violated Cal. Lab. Code § 226.8.

22 67. Uber Eats’ willful misclassification and other conduct, as set forth above, has  
23 violated the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*  
24 (“UCL”). Uber Eats’ conduct constitutes unlawful business acts or practices, in that Uber Eats  
25 has violated California Labor Code §§ 2802, 1194, 1198, 510, 554, 1197, 1194, 1182.12, 1194.2,  
26 1197.1, 226.8, 226(a), and 246.

1           68. As a result of Uber Eats’ unlawful conduct, Plaintiff and class members have  
2 suffered injury in fact and lost money and property, including, but not limited to, business  
3 expenses that drivers were required to pay and wages that drivers were due. Pursuant to  
4 California Business and Professions Code § 17203, Plaintiff and class members seek to recover  
5 restitution for Uber Eats’ unlawful conduct. Pursuant to California Code of Civil Procedure §  
6 1021.5, Plaintiff and class members who worked for Uber Eats are entitled to recover reasonable  
7 attorneys’ fees, costs, and expenses incurred in bringing this action.  
8

9           69. This claim is brought on behalf of a class of similarly situated individuals who  
10 have worked as delivery drivers for Uber Eats in the State of California.  
11

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

- 13           a. Certify a class action under Count I through V and appoint Plaintiff Kent Hassell, and  
14 his counsel, to represent a class of Uber Eats drivers who have worked in the State of  
15 California;
- 16           b. Award compensatory damages including all expenses and wages owed, in an amount  
17 according to proof;
- 18           c. Award pre- and post-judgment interest;
- 19           d. Award reasonable attorneys’ fees, costs, and expenses;
- 20           e. Any other relief to which Plaintiff and the class may be entitled.  
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1 Respectfully submitted,

2 KENT HASSELL, on behalf of himself and all  
3 others similarly situated,

4 By his attorneys,

5  
6 /s/ Shannon Liss-Riordan

7 Shannon Liss-Riordan, SBN 310719

8 Anne Kramer, SBN 315131

9 LICHTEN & LISS-RIORDAN, P.C.

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10 Dated: January 4, 2021

11  
12  
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14  
15  
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that a copy of the foregoing document was served by electronic filing on  
18 January 4, 2021, on all counsel of record.

19  
20  
21 By: /s/ Shannon Liss-Riordan

22 Shannon Liss-Riordan

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6 *Attorneys for Plaintiff Kent Hassell,*  
on his own behalf and on behalf of  
7 all others similarly situated

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 KENT HASSELL, on his own behalf and on  
11 behalf of all others similarly situated,

12  
13 Plaintiff,


14 v.

15 UBER TECHNOLOGIES, INC., d/b/a UBER  
16 EATS,

17 Defendant.  
18  
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20  
21  
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23  
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25

Case No. [4:20-cv-04062-PJH](#)

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802, WAGE ORDER 9-2001)
2. MINIMUM WAGE (CAL. LAB. CODE §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, WAGE ORDER 9-2001)
3. OVERTIME (CAL. LAB. CODE §§ 1194, 1198, 510, AND 554, WAGE ORDER 9-2001)
4. FAILURE TO PROVIDE ACCURATE ITEMIZED PAY STATEMENTS (CAL. LAB. CODE §§ 226(A) AND WAGE ORDER 9-2001)
5. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES CAL. LAB. BUS. & PROF. CODE §§ 17200-17208)
6. 

**Deleted:** DECLARATORY JUDGMENT (28 U.S.C. §§ 2201-02)

1 **I. INTRODUCTION**

2 1. This case is brought by Kent Hassell, who has worked as an Uber Eats driver in  
3 California. Uber Eats, a division of Uber Technologies, Inc., provides on-demand food delivery  
4 services. Uber Eats is based in San Francisco, California, and it does business across the United  
5 States and extensively throughout California.

6 2. As described further below, Uber Eats has misclassified its delivery drivers as  
7 independent contractors (just as Uber Technologies, Inc. has misclassified its rideshare drivers).  
8 Uber Eats has thereby deprived its drivers, including Plaintiff Kent Hassell, of protections they  
9 are entitled to under the California Labor Code. Based on the delivery drivers' misclassification  
10 as independent contractors, Uber Eats has unlawfully required the drivers, including Plaintiff  
11 Hassell, to pay business expenses (including, but not limited to, the cost of maintaining their  
12 vehicles, gas, insurance, phone and data expenses, and other costs) in violation of Cal. Lab. Code  
13 § 2802. Uber Eats has also failed to guarantee and pay its drivers minimum wage for all hours  
14 worked, and it has failed to pay overtime premiums for hours worked in excess of eight hours per  
15 day or forty hours per week in violation of Cal. Lab. Code §§ 1182.12., 1194.2, 1194, 1197,  
16 1197.1, 1198, 1199, 510, and 554. Uber Eats has also failed to provide proper itemized wage  
17 statements that include all of the requisite information, including hours worked and hourly wages  
18 that are accessible outside the Uber Eats Application in violation of Cal. Lab. Code § 226(a).  
19 Uber Eats has also failed to provide sick leave as required by California law in violation of Cal.  
20 Lab. Code § 246. Uber Eats' continued misclassification of its delivery drivers as independent  
21 contractors is willful misclassification in violation of Cal. Lab. Code § 226.8. Plaintiff Hassell  
22 also brings a claim for unfair business practices under California law. See Bus. & Prof. Code §§  
23 17200, et seq.<sup>1</sup>

24  
25  
26 <sup>1</sup> Notably, a UCL claim has a statute of limitations of four years. In contrast, claims  
27 brought under the California Labor Code have a statute of limitations of three years, and a  
28 PAGA claim has only a one year statute of limitations. Thus, absent the ability to maintain a

1           3.       Indeed, in the fall of 2019, the California legislature passed a statute known as  
 2 Assembly Bill 5 (or “A.B. 5”), which codified the 2018 California Supreme Court decision,  
 3 Dynamex Operations W., Inc. v. Superior Court (2018) 4 Cal.5<sup>th</sup> 903, 416 P.3d1, reh’g denied  
 4 (June 20, 2018), under which an alleged employer cannot justify classifying workers as  
 5 independent contractors who perform services within its usual course of business. See Cal. Lab.  
 6 Code § 2750.3. It has been widely recognized by the California legislature, including the bill’s  
 7 author, that the purpose and intent of this statute was to ensure that companies, including  
 8 specifically Uber, stop misclassifying their workers as independent contractors. Although Uber  
 9 attempted to obtain a “carve-out” from this statute when it was enacted, it did not obtain such an  
 10 exemption, and the legislature passed the statute so that it would include Uber Eats drivers.  
 11 Nevertheless, Uber Eats has defied this statute and continued to classify its delivery drivers as

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 16 UCL claim, Plaintiff Hassell would lose the ability to recover for at least one year of damages on behalf of the putative class.

17 In addition, Plaintiff Hassell notes that absent his UCL claim as it pertains to violations of  
 18 Cal. Lab. Code §§ 226.8 and 246, he would have no adequate legal remedy because none of his  
 19 other legal claims would afford him damages or restitution to redress Uber Eats’ willful  
 20 misclassification of him as an independent contractor or its failure to provide him paid sick time.  
 21 The fact that Plaintiff could have chosen to redress these harms through claims under PAGA or  
 22 Cal. Lab. Code § 248.5 is not of consequence, because, at this stage, he need only show that he  
 23 lacks an adequate remedy under any of the other legal claims that he did choose to bring. See In  
 24 re JUUL Labs, Inc., Marketing, Sales Practices, and Products Liability Litig., --- F.Supp.3d ---,  
 25 2020 WL 6271173, at \*55 (N.D. Cal. Oct. 23, 2020) (denying defendant’s motion to dismiss  
 26 UCL claim based on unfair conduct for restitution and explaining that, at this preliminary stage,  
 27 a plaintiff’s obligation to allege that he lacks an adequate remedy at law is low where “the  
 28 allegations regarding unfair conduct are not otherwise coextensive with plaintiffs’ legal claims”).  
Even so, a PAGA claim would not provide Plaintiff an adequate remedy at law for to redress  
Uber Eats’ willful misclassification of him because a PAGA claim is brought in the shoes of the  
state, whereas the UCL claim allows Plaintiff Hassell to address Uber’s unfair conduct in his  
own right, and PAGA allows only for the recovery of civil penalties rather than actual money  
damages.

1 independent contractors – in violation of the clear intent of the California legislature. This  
2 ongoing defiance of the law constitutes willful violation of California law.<sup>2</sup>

3  
4 4. Uber Eats has harmed delivery drivers like Kent Hassell by these violations, as  
5 delivery drivers have struggled to support themselves without the employment protections  
6 mandated by the State of California.

7 5. Plaintiff brings these claims on behalf of himself and others similarly situated  
8 pursuant to Fed. R. Civ. P. 23. He seeks recovery of damages for himself and the class.

9 **II. PARTIES**

10 6. Plaintiff Kent Hassell is an adult resident of Cypress, California, where he has  
11 worked as an Uber Eats driver since January 2020. Plaintiff opted out of Uber’s arbitration  
12 clause.

13 7. The above-named plaintiff has brought this action on his own behalf and behalf of  
14 all others similarly situated, namely all other individuals who have worked as Uber Eats delivery  
15 drivers in California.

16 8. Defendant Uber Technologies, Inc. d/b/a Uber Eats (“Uber Eats”) is a corporation  
17 headquartered in San Francisco, California.

18 **III. JURISDICTION**

19 9. This Court has jurisdiction over the state law claims asserted here pursuant to the  
20 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendant is a California citizen and,  
21 upon the filing of this complaint, members of the putative plaintiff class may reside in states  
22 around the country; there are more than 100 putative class members; and the amount in  
23 controversy exceeds \$5 million.

24  
25 <sup>2</sup> On December 17, 2020, Proposition 22 went into effect in California, which exempts  
26 certain app-based companies from A.B. 5. While it is possible that, as of December 17, 2020,  
27 Proposition 22 may relieve Uber Eats of its liability as alleged in this Amended Complaint, it is  
yet to be determined whether Uber Eats is in compliance with its requirements, and, thus,  
whether it may claim a defense under Proposition 22.

**Deleted:** , as well as declaratory and injunctive relief, requiring Uber Eats to reclassify its drivers as employees in California...

1 **IV. STATEMENT OF FACTS**

2 10. Uber Eats is a San Francisco-based food delivery service, which engages drivers  
3 across the state of California to deliver food to its customers at their homes and businesses.

4 11. Uber Eats offers customers the ability to order food via a mobile phone  
5 application, which its drivers then deliver.

6 12. Plaintiff Kent Hassell has driven for Uber Eats since January 2020.

7 13. Although Uber Eats has classified Plaintiff (like all of its delivery drivers) as an  
8 “independent contractor,” Plaintiff has actually been Uber Eats’ employee under California law.

9 14. Uber Eats drivers, including Plaintiff, provide a service in the usual course of  
10 Uber Eats’ business because Uber Eats is a food delivery service that provides on-demand meals  
11 to its customers, and delivery drivers such as Plaintiff perform that food delivery service. Uber  
12 Eats holds itself out as a food delivery service, and it generates revenue primarily from  
13 customers paying for the very food delivery services that its delivery drives provide. Without  
14 delivery drivers like Plaintiff Hassell to provide the food delivery, Uber Eats would not exist.

15 15. Uber Eats also requires its drivers, including Plaintiff, to abide by a litany of  
16 policies and rules designed to control the delivery drivers’ work performance. Uber Eats both  
17 retains the right to, and does in fact exercise, control over Plaintiff Hassell and other delivery  
18 drivers’ work.

19 16. Uber Eats delivery drivers, including Plaintiff, are not typically engaged in their  
20 own transportation business. When delivering for Uber Eats, they wear the “hat” of Uber Eats.”  
21 Customers cannot request specific Uber Eats delivery drivers; instead, Uber Eats assigns  
22 particular deliveries to drivers.

23 17. Uber Eats communicates directly with customers and follows up with delivery  
24 drivers, including Plaintiff, if the customer complains that the delivery failed to meet their  
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1 expectations. Based on any customer feedback, Uber Eats may suspend or terminate delivery  
2 drivers at its sole discretion.

3 18. Uber Eats drivers are engaged in interstate commerce. Indeed, drivers frequently  
4 transport food and beverages that originated across state lines (including food and beverages,  
5 such as sodas and chips, that are not transformed at the restaurants from which drivers deliver the  
6 meals to customers).

7 19. Uber Eats does not require Plaintiff Hassell or other delivery drivers to possess  
8 any skill above and beyond that necessary to obtain a regular drivers' license.

9 20. Plaintiff Hassell and other delivery drivers' tenure with Uber Eats is for an  
10 indefinite amount of time.

11 21. Uber Eats provides the delivery drivers, including Plaintiff, with the primary  
12 instrumentality with which they can perform services for Uber Eats, namely the Uber Eats'  
13 software.

14 22. Uber Eats sets the rate of pay for Plaintiff Hassell and other delivery drivers'  
15 services and changes the rate of pay in its sole discretion.

16 23. Plaintiff and other drivers' vehicles must meet Uber Eats' quality standards,  
17 which it determines and may change at any time at its sole discretion.

18 24. Uber Eats may make promotional offers to customers that reduce delivery drivers'  
19 income without consulting drivers.

20 25. Uber Eats monitors Plaintiff Hassell and other delivery drivers' performance and  
21 may suspend or terminate delivery drivers who do not accept enough deliveries, cancel too many  
22 deliveries, do not maintain high customer satisfaction ratings, or engage in other conduct that  
23 Uber Eats, in its sole discretion, may determine constitutes grounds for suspension or  
24 termination.  
25  
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1           26. Uber Eats has not reimbursed delivery drivers, including Plaintiff Kent Hassell,  
 2 for any expenses they incurred while working for Uber Eats, including, but not limited to, the  
 3 cost of maintaining their vehicles, gas, insurance, and phone and data expenses for running the  
 4 Uber Eats Application. Delivery drivers incurred these costs as a necessary expenditure to work  
 5 for Uber Eats, which California law requires employers to reimburse.

6           27. For example, Plaintiff Hassell has purchased approximately \$90 worth of gas per  
 7 week in order to fuel the 2000 Toyota Camry CE that he uses to make deliveries for Uber Eats.  
 8 He would not have otherwise purchased this fuel absent his work for Uber Eats. The purchase of  
 9 fuel is necessary to his work for Uber Eats because many the pick-up and drop-off locations that  
 10 are assigned to him are too far away for him to travel without a car.

11           28. Similarly, Plaintiff Hassell has also had to bear the cost of replacing his tires more  
 12 frequently than before he started working for Uber Eats. Plaintiff Hassell purchased a new set of  
 13 four tires in 2019 at a cost of approximately \$270. Prior to working for Uber Eats Plaintiff  
 14 Hassell only had to replace his tires every few years.

15           29. Plaintiff Hassell seeks reimbursement for these and other expenses he has  
 16 incurred by using his vehicle to make deliveries for Uber Eats by reference to the IRS mileage  
 17 reimbursement rate.<sup>3</sup>

18           <sup>3</sup> Another court in this District has certified a class in a prior case against Uber finding that  
 19 the IRS reimbursement rate could be used as “a reasonable basis of computation of vehicle-  
 20 related expenses” incurred by Uber drivers. O’Connor v. Uber Techs., Inc., 311 F.R.D. 547, 567  
 21 (N.D. Cal. 2015), rev’d and remanded on other grounds, 904 F.3d 1087 (9th Cir. 2018). Thus,  
 22 while Plaintiff can point to specific expenses that he incurred, the use of the federal IRS  
 23 reimbursement rate may also be used to determine the amount of reimbursement due under Cal.  
 24 Lab. Code § 2802. See Gattuso v. Harte-Hanks Shoppers, Inc., 42 Cal.4th 554, 569 (2007).

25           Another court in this District has also made clear that, in the context of an app-based food  
 26 delivery service, plaintiffs need not allege specific instances where expenses were incurred. See  
 27 Tan v. GrubHub, Inc., 171 F.Supp.3d 998, 1006-07 (N.D. Cal. 2016). Instead, plaintiffs need  
 28 only allege that vehicle and phone related expenses were required to deliver food and run the  
Application. See id.; see also Colopy v. Uber Techs., Inc., 2019 WL 6841218, \*6 (N.D. Cal.  
Dec. 16, 2019).

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1           30. Plaintiff Hassell also had to switch his cellular data plan from an approximately  
2 \$29 per month 8 GB plan from Tello Mobile to an approximately \$39 per month unlimited data  
3 plan from the same mobile carrier in order to have enough data to run the Uber Eats App – which  
4 is the only way that Uber Eats sends him delivery assignments. He would not have purchased an  
5 unlimited data plan if he did not work for Uber Eats.

6           31. Uber Eats has not reimbursed Plaintiff Hassell (or any Uber Eats drivers) for the  
7 cost of fuel, tires, his cellular data plan, or any other expense that he has incurred in order to  
8 carry out his work as a food delivery driver.

9           32. Plaintiff Hassell, like other drivers, is subject to Uber Eats’ control during all  
10 hours worked: the time spent driving to a restaurant to pick up food, the time spent driving to a  
11 customer to deliver food, and the time spent online on the App between deliveries, while waiting  
12 for the next delivery.

13           33. Plaintiff Hassell remains logged into the App between deliveries because it is the  
14 only way for him to be able to receive a new delivery assignment from Uber Eats. He does this  
15 for Uber Eats’ primary benefit because, unless Plaintiff and other drivers remain logged into the  
16 App between deliveries, Uber Eats would not have anyone to send delivery assignments to and,  
17 thus, there would be no one to bring Uber Eats’ customers their food. Drivers, including  
18 Plaintiff, are not able to freely engage in personal errands or activities while logged into the App  
19 between deliveries because Uber Eats requires that drivers either accept or reject delivery  
20 assignments that Uber Eats populates on their App within several seconds. If drivers, including  
21 Plaintiff, do not respond to these delivery assignment requests, their “acceptance rate” will  
22 decline, which may ultimately lead to disciplinary measures like suspension or termination. See  
23 Frlekin v. Apple, Inc., 8 Cal.5th 1038, 1056 (2020) (in considering whether an employee is  
24 subject to the employer’s control so as to render time compensable “courts may and should  
25 consider additional relevant factors – including, but not limited to, the location of the activity, the  
26

1 degree of the employer's control, whether the activity primarily benefits the employer or  
2 employee, and whether the activity is enforced through disciplinary measures").

3 34. Plaintiff Hassell does not perform personal errands or activities while he is  
4 waiting between orders so that he is available to respond to Uber Eats' delivery assignments and  
5 avoid a low acceptance rate.

6 35. Uber Eats has violated Cal. Lab. Code §§ 1194 and 1197 by failing to assure that  
7 delivery drivers, including Plaintiff, make the applicable minimum wage for all hours worked,  
8 particularly after accounting for their expenses and other deductions taken from their pay. The  
9 hours they work are hours driving to a restaurant to pick up food, driving to the customer to  
10 deliver food, and driving between deliveries while awaiting their next delivery assignment.

11 36. For example, the week of May 6, 2020 to May 10, 2020, Plaintiff Hassell only  
12 earned \$ 9.90 per hour when accounting for all of his time spent on the Uber Eats Application  
13 (including driving to the restaurant, dropping off the delivery, and wait time between deliveries)  
14 and after deducting expenses for mileage driven picking up and delivering food items and  
15 between deliveries (calculated at the IRS standard reimbursement rate).

16 37. Similarly, for the pay period of July 27, 2020 through August 2, 2020, Plaintiff  
17 Hassell only earned \$10.78 per hour when accounting for all of his time spent on the Uber Eats  
18 App (including driving to the restaurant, dropping off the delivery, and wait time between  
19 deliveries) even before deducting expenses for mileage driven picking up and delivering food  
20 items and between deliveries (calculated at the IRS standard reimbursement rate). After  
21 deducting a total of \$68.12 to account for the 75.4 miles (based on the IRS standard  
22 reimbursement rate of 57.5 cents per mile in 2020) that he drove picking up and delivering food  
23 items from his weekly earnings, his hourly rate for the pay period was \$6.59 per hour. Further, if  
24 only considering the time Plaintiff Hassell spent actively engaged in deliveries (driving to pick  
25 up and deliver food) for the same July 27, 2020 through August 2, 2020 time period, Plaintiff's  
26

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1 hourly rate was \$11.02 per hour before deductions for mileage and \$6.74 per hour after  
2 deducting expenses based on the IRS mileage rate. Thus, Plaintiff received less than minimum  
3 wage for that week (and likely other weeks), regardless of whether or not the time spent between  
4 deliveries is taken into account and regardless of whether or not the expenses he incurred are  
5 taken into account.

6  
7 38. Uber Eats has violated Cal. Lab. Code §§ 1194, 1198, 510 and 554 by failing to  
8 pay its delivery drivers like Plaintiff the appropriate overtime premium for all overtime hours  
9 worked beyond forty per or eight per day.

10 39. For example, Plaintiff Hassell has worked more than eight hours per day and  
11 more than forty per week at various times since he began delivering for Uber Eats and was never  
12 paid the appropriate premium for all hours worked beyond eight per day or forty per week. For  
13 example, for the week of February 3, 2020 to February 9, 2020, Plaintiff Hassell worked forty-  
14 four (44) hours and two minutes.<sup>4</sup> However, he did not receive time-and-a-half his regular rate  
15 of pay for the time he spent driving beyond forty hours that week. The hours that Plaintiff  
16 worked were hours spent driving to pick up deliveries at the restaurant, driving to drop off  
17 deliveries to customers at their homes and businesses, and time spent between deliveries while  
18 awaiting the next delivery assignment.

19 40. Similarly, Plaintiff Hassell worked more than eight (8) hours in a day on multiple  
20 occasions, including on the dates listed below, but was never paid the appropriate premium for  
21 all hours worked beyond eight per day.  
22  
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26 <sup>4</sup> The original Complaint (Dkt. 1) in this action mistakenly stated that Plaintiff worked  
27 forty-four (44) hours for the week of February 3, 2020 to February 10, 2020. Plaintiff Hassell  
28 did not perform any deliveries on February 10, 2020.

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<u>Date</u>	<u>Total Hours Worked (including time between deliveries)</u>	<u>Hours Spent Driving to Pick Up Deliveries &amp; Driving to Drop off Deliveries Only</u>
<u>March 1, 2020</u>	<u>8 hours and 43 minutes</u>	<u>8 hours and 15 minutes</u>
<u>September 27, 2020</u>	<u>9 hours and 10 minutes</u>	<u>9 hours and 1 minute</u>
<u>November 1, 2020</u>	<u>10 hours and 14 minutes</u>	<u>9 hours and 58 minutes</u>

41. Uber Eats has violated Cal. Lab. Code § 226(a) by failing to provide proper itemized wage statements to delivery drivers, including Plaintiff, that include all of the requisite information required by California law, namely hours worked and hourly wages.

42. Plaintiff Hassell has only been able to access his pay statements by logging into the Uber Eats App. His pay statements include a summary of his earnings, trip balances, any promotional deals that Uber Eats applied, and a list of all deliveries made during the relevant statement period with the date and time the order was accepted, the trip ID, and the earnings for the delivery. Any information about Plaintiff's total hours worked (as defined in ¶ 32) is absent from his pay statements. Plaintiff is not aware of any other place on the App that he can access his total hours worked during a single pay period. Similarly, his pay statement has not included the total amount of time that he spent on a delivery driving to a restaurant to pick up an order and then driving to drop it off at the customer's home or business.<sup>5</sup> Additionally, Plaintiff's pay statement also has not included hourly wages. Instead, the pay statement only lists the earnings for each individual delivery.

<sup>5</sup> The only way that Plaintiff Hassell could access this information is by clicking on a hyperlink for each individual delivery listed on his pay statement and then be redirected to a separate page with start and end times for that specific delivery, calculate the total time spent on the delivery, and then add all delivery times together to reach a final sum for the statement period. This process by which Plaintiff could theoretically access this information is more burdensome than California law requires; under § 226(a), employers are required to provide this information on a paper pay statement and cannot force employees to undergo this burdensome process to access their wage information.

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1 43. Uber Eats has violated Cal. Lab. Code § 246 by not providing paid sick days to its  
2 delivery drivers, including Kent Hassell as required by California law. This provision requires  
3 employers to allow employees to accrue sick days at the rate of not less than one hour for every  
4 thirty hours worked, which they can use after working for the employer for 30 days within a year  
5 from the start of their employment and allows employees to use up to 24 hours of sick leave  
6 annually.

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7 44. Plaintiff Hassell performed deliveries for Uber Eats approximately 215 days  
8 between January 2020 and December 17, 2020, when Proposition 22 went into effect. He  
9 worked a total of 1,096.98 hours (which included 995.04 hours spent picking up and delivering  
10 food and 103.94 hours between deliveries waiting for new assignments) during this time period.  
11 Thus, Plaintiff Hassell should have accrued 24 hours of sick leave. Plaintiff Hassell has not  
12 accrued paid sick days since starting to work for Uber Eats in January 2020.

Deleted: Plaintiff Hassell has not been accruing paid sick days since starting to work for Uber Eats in January 2020. ...

13 45. Despite being sick several days in 2020, Plaintiff Hassell was aware that Uber  
14 classified him as an independent contractor and did not provide paid sick leave pursuant to  
15 California law, so it would have been futile for him to request it from Uber Eats.

16 46. On April 30, 2018, the California Supreme Court issued its decision in Dynamex,  
17 which made clear that Uber Eats delivery drivers should have been classified as employees rather  
18 than independent contractors under California law for purposes of wage-and-hour statutes.  
19 Under the “ABC” test adopted in Dynamex, in order to justify classifying the delivery drivers as  
20 independent contractors, Uber Eats would have had to prove that its delivery drivers perform  
21 services outside its usual course of business, which it could not do. Notwithstanding this  
22 decision, Uber Eats continued to misclassify its drivers as independent contractors.

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23 47. Furthermore, the California legislature took steps to clarify and codify the “ABC”  
24 test set forth in the Dynamex decision by passing Assembly Bill 5, which was passed into law by  
25 the California legislature and went into effect on January 1, 2020. The legislature had clearly  
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1 intended for Uber to be covered by this statute; indeed, the author of the statute,  
 2 Assemblywoman Lorena Gonzalez, had made clear that Uber (and similar “gig economy”  
 3 companies) would not be exempted from the law. Although Uber specifically lobbied to obtain a  
 4 “carve-out” exemption from the law at the time it was enacted, it did not receive a carve-out  
 5 from the legislature. Instead, after its enactment, in 2020, Uber was one of several “gig  
 6 economy” companies that invested nearly \$200 million to fund a ballot initiative, Proposition 22  
 7 (which ultimately passed), seeking a carve-out for app-based “gig economy” companies from  
 8 A.B. 5. Uber’s actions in opposing the law – and its expressed concern that the law would have  
 9 a major impact on its business – were acknowledgments that A.B. 5 required it to classify its  
 10 drivers as employees and provide employees with the protection of the California Labor Code.

12 48. Uber Eats violated Cal. Lab. Code § 226.8 by willfully misclassifying drivers,  
 13 including Plaintiff Hassell, as independent contractors, even after the issuance of the Dynamex  
 14 decision by the California Supreme Court and the passage of A.B. 5, despite the fact that it held  
 15 itself out to the public as a food delivery service and Plaintiff Hassell performed food delivery  
 16 services within Uber Eats’ usual course of business. It was widely discussed throughout  
 17 California, after the issuance of Dynamex and the passage of A.B. 5, that gig economy  
 18 companies such as Uber were violating the law by continuing to classify their drivers as  
 19 independent contractors. See, e.g., Rogers v. Lyft, Inc., Case No. 20-cv-01938-VC (Transcript  
 20 re Hearing on Emergency Motion for Preliminary Injunction) at 28-29 (explaining that AB5  
 21 clearly applies, and was intended to apply to, gig economy companies like Lyft); John Myers,  
 22 Uber, Lyft, DoorDash launch a \$90-million fight against California Labor Law, L.A. Times,  
 23 Oct. 29, 2019, accessible at:

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1 **V. CLASS ALLEGATIONS**

2 49. Plaintiff Kent Hassell brings this case as a class action pursuant to Rule 23 of the  
3 Federal Rules of Civil Procedure on behalf of all Uber Eats drivers who have worked in  
4 California.

5 50. The class representative and other class members have uniformly been  
6 misclassified as independent contractors.

7 51. The members of the class are so numerous that joinder of all class members is  
8 impracticable.

9 52. Common questions of law and fact regarding Uber Eats' conduct exist as to all  
10 members of the class and predominate over any questions affecting solely any individual  
11 members of the class. Among the questions of law and fact common to the class are:

- 12
- 13 a. Whether the work performed by class members – providing food delivery service  
14 to customers – is within Uber Eats' usual course of business, and whether such  
15 service is fully integrated into Uber Eats' business;
  - 16 b. Whether class members have been required to work under Uber Eats' direction  
17 and control;
  - 18 c. Whether class members have been engaged in an independently established  
19 business or occupation while they are delivering food to Uber Eats' customers;
  - 20 d. Whether class members have been required to bear the expenses of their  
21 employment, such as expenses for their vehicle, gas, and other expenses;
  - 22 e. Whether class members have suffered other violations of the California Labor  
23 Code and Wage Orders, as described herein.

24 53. The class representative is a member of the class who suffered damages as a result  
25 of Defendant's conduct and actions alleged herein.

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1 54. The named plaintiff's claims are typical of the claims of the class, and the named  
2 plaintiff has the same interests as other members of the class.

3 55. The named plaintiff will fairly and adequately represent and protect the interests  
4 of the class. The named plaintiff has retained able counsel experienced in class action litigation.  
5 The interests of the name plaintiff is coincident with, and not antagonistic to, the interests of the  
6 other class members.

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

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

17  
18  
19 **COUNT I**

20 **Expense Reimbursement**

21 **Violation of Cal. Lab. Code § 2802; Wage Order 9-2001**

22 58. Plaintiff realleges and incorporates by reference the allegations in the preceding  
23 paragraphs as if fully alleged herein. Uber Eats' conduct, as set forth above, in misclassifying its  
24 delivery drivers as independent contractors, and failing to reimburse them for expenses they paid  
25 that should have been borne by their employer, including but not limited to, gas, insurance, car  
26 maintenance, and phone and data charges, constitutes a violation of California Labor Code  
27 Sections 2802, 2750.3(a) and Wage Order 9-2001.

**Deleted:** Moreover, the relief sought here – that Uber Eats should be ordered to classify its delivery drivers as employees and provide them with expense reimbursement in compliance with California law – is relief that would affect a class of delivery drivers....

**Deleted: COUNT I¶  
Declaratory Judgment¶  
Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202¶**  
<#>An actual controversy of sufficient immediacy exists between the Parties as to whether Uber Eats has failed to comply with its obligations under the California Labor Code, as described above.¶  
<#>Uber Eats' conduct in misclassifying its drivers, including Plaintiff Hassell, as independent contractors, failing to ensure that they are reimbursed for their necessary business expenditures, failing to ensure that they receive minimum wage for all hours worked, overtime pay, and other protections of California's Labor Code and Wage Orders, contravenes California state law, including newly enacted A.B. 5 and Cal. Lab. Code § 2750.3.¶  
<#>As a result of the factual allegations above, Plaintiff Hassell and all Uber Eats drivers in California have suffered actionable harm, as they are not properly compensated for their work for Uber Eats.¶  
<#>Plaintiff seeks an order of this Court pursuant to 28 U.S.C. §§ 2201-02 and Fed. R. Civ. P. 57 declaring that, as a result of its misclassification of its delivery drivers, Uber Eats has violated the California Labor Code and Wage Orders and declaring that Uber Eats must comply with the Labor Code and Wage Orders.¶

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1 59. This claim is brought on behalf of a class of similarly situated individuals who  
2 have worked as delivery drivers for Uber Eats in the State of California.  
3

4 **COUNT II**  
5 **Minimum Wage**  
6 **Violation of Cal. Lab. Code §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199;**  
7 **Wage Order 9-2001**

8 60. Plaintiff realleges and incorporates by reference the allegations in the preceding  
9 paragraphs as if fully alleged herein. Uber Eats' conduct, as set forth above, in failing to ensure  
10 its delivery drivers receive minimum wage for all hours worked as required by California law,  
11 has violated Cal. Lab. Code §§ 1197, 1194, 1182.12, 1197.1, 1199, 2750.3, and Wage Order 9-  
12 2001.

13 61. This claim is brought on behalf of a class of similarly situated individuals who  
14 have worked as delivery drivers for Uber Eats in the State of California.

15 **COUNT III**  
16 **Overtime**  
17 **Violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554; Wage Order 9-2001**

18 62. Plaintiff Hassell realleges and incorporates by reference the allegations in the  
19 preceding paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in  
20 failing to pay its employees the appropriate overtime premium for overtime hours worked as  
21 required by California law, has violated Cal. Lab. Code §§ 1194, 1198, 510, 554, 2750.3, and  
22 Wage Order 9-2001.

23 63. This claim is brought on behalf of a class of similarly situated individuals who  
24 have worked as delivery drivers for Uber Eats in the State of California.  
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**COUNT IV**  
**Failure to Provide Accurate Itemized Pay Statements**  
**Violation of Cal. Lab. Code § 226(a), Wage Order 9-2001**

64. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber Eats’ conduct, as set forth above, in failing to provide itemized wage statements, as required by California state law, violates Cal. Lab. Code §§ 226(a), 2750.3 and Wage Order 9-2001.

65. This claim is brought on behalf of a class of similarly situated individuals who have worked as delivery drivers for Uber Eats in the State of California.

**COUNT V**  
**Unfair Business Practices**  
**Violation of Cal. Bus. & Prof. Code § 17200, et seq.**

66. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant’s conduct, as set forth above, in continuing to classify delivery drivers as independent contractors even after the California Supreme Court’s decision in Dynamex Operations W., Inc. v. Superior Court (2018) 4 Cal.5th, 903, 416 P.3d 1, reh’g denied (June 20, 2018), the California Legislature’s passage of A.B. 5, and the amended Cal. Lab. Code § 2750.3, which set forth the “ABC” test to define “employee” for purposes of the California Labor Code, all of which made clear that Uber Eats drivers were employees under California law, has violated Cal. Lab. Code § 226.8.

67. Uber Eats’ willful misclassification and other conduct, as set forth above, has violated the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”). Uber Eats’ conduct constitutes unlawful business acts or practices, in that Uber Eats has violated California Labor Code §§ 2802, 1194, 1198, 510, 554, 1197, 1194, 1182.12, 1194.2, 1197.1, 226.8, 226(a), and 246.

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68. As a result of Uber Eats' unlawful conduct, Plaintiff and class members have suffered injury in fact and lost money and property, including, but not limited to, business expenses that drivers were required to pay and wages that drivers were due. Pursuant to California Business and Professions Code § 17203, Plaintiff and class members seek to recover restitution for Uber Eats' unlawful conduct. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and class members who worked for Uber Eats are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

69. This claim is brought on behalf of a class of similarly situated individuals who have worked as delivery drivers for Uber Eats in the State of California.

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

- a. Certify a class action under Count I through V and appoint Plaintiff Kent Hassell, and his counsel, to represent a class of Uber Eats drivers who have worked in the State of California;
- b. Award compensatory damages including all expenses and wages owed, in an amount according to proof;
- c. Award pre- and post-judgment interest;
- d. Award reasonable attorneys' fees, costs, and expenses;
- e. Any other relief to which Plaintiff and the class may be entitled.

**Deleted:** declaratory and injunctive relief for Uber Eats' unlawful conduct and to r

**Deleted:** <#>Declare that Uber Eats' actions described in this Complaint violate the rights of Plaintiff and Uber Eats delivery drivers throughout California;¶  
<#>Declare and find that Uber Eats has violated Wage Order 9-2001, and the UCL, and Cal. Lab. Code §§ 226(a), 226.3, 226.7, 246, 510, 554, 1197, 1194, 1182.12, 1194.2, 1197.1, 2802, 2750.3.¶

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**Deleted:** <#>Issue a declaratory judgment that Uber Eats has violated the California Labor Code and Wage Orders, and local ordinances set forth herein, in connection with its misclassification of drivers as independent contractors;¶  
<#>Issue public injunctive relief in the form of an order requiring Uber Eats to comply with the California Labor Code and Wage Orders and other provisions cited herein; and¶

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Respectfully submitted,  
KENT HASSELL, on behalf of himself and all  
others similarly situated,  
By his attorneys,

\_\_\_\_\_  
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Dated: January 4, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served by electronic filing on  
January 4, 2021, on all counsel of record.

By: /s/ Shannon Liss-Riordan  
Shannon Liss-Riordan