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Individually and on Behalf of All Similarly Situated Individuals

Sherri R. Carter, Executive Officer/Clerk  
By: Kandace Bowen, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

FRANCISCO GONZALES, Individually  
and on Behalf of All Similarly Situated  
Individuals,

Plaintiff,

vs.

SAN GABRIEL TRANSIT, INC., a  
California corporation; SOUTHLAND  
TRANSIT, INC., a California corporation;  
ARCADIA TRANSIT, INC. dba  
BLACKCAR LA, a California corporation;  
and DOES 1 through 25, Inclusive,

Defendants.

CASE NO.

[CLASS ACTION]

**FIRST AMENDED COMPLAINT FOR:**

- 1. UNPAID WAGES (LABOR CODE § 1194)**
- 2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194)**
- 3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);**
- 4. FAILURE TO PROVIDE MEAL AND REST PERIODS (LABOR CODE §§ 512 and 226.7);**
- 5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);**
- 6. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);**
- 8. COMMON LAW CONVERSION;**

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2 9. UNFAIR COMPETITION (BUSINESS AND  
3 PROFESSIONS CODE §§ 17200 et seq.);

4 10. MISCLASSIFICATION AS  
5 INDEPENDENT CONTRACTOR (LABOR  
6 CODE § 226.8);

7 11. RECOVERY OF DEDUCTIONS FROM  
8 WAGES (LABOR CODE §§ 221 and 223);

9 12. COERCION (LABOR CODE § 450); and

10 13. ACCOUNTING.

JURY TRIAL DEMANDED

11 Plaintiff FRANCISCO GONZALES ("Plaintiff"), individually and on behalf of all  
12 similarly situated individuals, alleges as follows:

13 **GENERAL ALLEGATIONS**

14 1. This is a proposed wage-and-hour mis-classification class action brought against  
15 Defendants SAN GABRIEL TRANSIT, INC., a California corporation; SOUTHLAND  
16 TRANSIT, INC., a California corporation; ARCADIA TRANSIT, INC. dba BLACKCAR LA, a  
17 California corporation; and DOES 1 through 25, inclusive (collectively, "Defendants"). This  
18 action is brought on behalf of Plaintiff and all other employees and former employees  
19 (collectively, the "Class Members") who drove for Defendants in California at any time during the  
20 four years preceding the filing of this action, and continuing while this action is pending ("Class  
21 Period"), who were denied the benefits and protections required under the California Labor Code  
22 and other statutes and regulations applicable to California employees because they were mis-  
23 classified as independent contractors. During the entire Class Period, Defendants retained  
24 pervasive control over the operation as a whole, Plaintiff and the Class Members' duties were  
25 (and are) an integral part of that operation, and the nature of the work (driving) makes detailed  
26 control unnecessary. *Yellow Cab Coop. v. Workers Comp. Appeals Bd.* (1991) 226 Cal.App.3d  
27 1288.

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1           2.     During the Class Period, Plaintiff and the Class Members were engaged by  
2 Defendants to drive passengers for hire, and were classified by Defendants as independent  
3 contractors. However, Plaintiff and the Class Members

4               a.     were not engaged in an occupation or business distinct from that of  
5 Defendants;

6               b.     performed work that is a part of the regular business of Defendants;

7               c.     were supplied the instrumentalities, tools, and the place for work by  
8 Defendants;

9               d.     were required to make an investment in the equipment and/or materials  
10 required to perform work for Defendants;

11              e.     were not performing the kind of service that requires any special skill;

12              f.     were performing the kind of occupation usually done under the direction of  
13 an employer;

14              g.     had no opportunity for profit or loss which depended upon their own  
15 managerial skill; and

16              h.     worked for Defendants for extended periods of time, often many years,  
17 suggesting a degree of permanence in the working relationship beyond that of an independent  
18 contractor.

19           3.     During the Class Period, Defendants

20              a.     failed to pay wages for all hours worked by Plaintiff and Class Members;

21              b.     failed to pay Plaintiff and Class Members the legal minimum wage;

22              c.     failed to pay overtime wages due to Plaintiff and Class Members;

23              d.     failed to provide meal and rest periods due to Plaintiff and Class Members;

24              e.     failed to provide Plaintiff and Class Members with timely and accurate  
25 wage and hour statements;

26              f.     failed to pay Plaintiff and Class Members compensation in a timely manner  
27 upon their termination or resignation;

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**THE PARTIES**

7. Plaintiff FRANCISCO GONZALES is, and at all relevant times was, a competent adult residing in California. Mr. Gonzales brings suit on behalf of himself and all similarly situated individuals pursuant to California Code of Civil Procedure section 382, and California Business & Professions Code sections 17200 et seq. Mr. Gonzales worked for Defendants for many years for as a driver, but was always mis-classified as an independent contractor.

8. Defendant SAN GABRIEL TRANSIT, INC. is, and at all relevant times was, a California corporation registered with the State of California's Secretary of State. SAN GABRIEL TRANSIT, INC. conducts business in Los Angeles County, California. SAN GABRIEL TRANSIT, INC. has engaged in unlawful employment practices addressed in this Complaint in Los Angeles County.

9. Defendant SOUTHLAND TRANSIT, INC. is, and at all relevant times was, a California corporation registered with the State of California's Secretary of State. SOUTHLAND TRANSIT, INC. conducts business in Los Angeles County, California. SOUTHLAND TRANSIT, INC. has engaged in unlawful employment practices addressed in this Complaint in Los Angeles County.

10. Defendant ARCADIA TRANSIT, INC. dba BLACKCAR LA is, and at all relevant times was, a California corporation registered with the State of California's Secretary of State. ARCADIA TRANSIT, INC. dba BLACKCAR LA conducts business in Los Angeles County, California. ARCADIA TRANSIT, INC. dba BLACKCAR LA has engaged in unlawful employment practices addressed in this Complaint in Los Angeles County.

11. Plaintiff is informed and believes and based thereon alleges that Defendants uniformly apply the same practice of mis-classifying driver employees as independent contractors, and that they are all centrally managed by and under the control of Defendants.

12. Plaintiff is currently unaware of the true names and capacities of the defendants sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sues those defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when they are ascertained.

13. Plaintiff is informed and believes and based thereon alleges that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is responsible in some manner for the occurrences, controversies and damages alleged.

14. Plaintiff is informed and believes and based thereon allege that DOES 1 through 25, inclusive were the agents, servants, and/or employees of Defendants and, in doing the things hereinafter alleged and at all times, were acting within the scope of their authority as such agents, servants and employees, and with the permission and consent of Defendants.

15. Plaintiff is informed and believes and based thereon alleges that Defendants ratified, authorized, and consented to each of the acts and conduct of each other as alleged herein.

## FACTS

16. During part of the four years preceding the filing of this action, FRANCISCO GONZALES was employed by Defendants as a driver. Mr. Gonzales drove taxis and passenger vans for Defendants. He was classified as an independent contractor. He is no longer employed by Defendants.

17. Defendants paid Plaintiff and the Class Members based upon the passenger miles driven, regardless of how many hours were actually worked or how many miles were actually driven. In addition, Defendants required Plaintiff and the Class Members to pay for the lease of the cars used as taxicabs. Plaintiff and the Class Members also had to pay Defendants for insurance and for maintenance of the taxicab. Plaintiff and the Class Members also had to pay Defendants a fee in order to be assigned passengers for hire. This fee, or “handling” charge, was 10% of the total fares Plaintiff received in any given week. Upon information and belief, all Class Members were subject to this “handling” charge. As a result, Defendants failed to pay Plaintiffs and the Class Members for all hours worked, failed to pay overtime pay, failed to pay minimum wage, failed to provide accurate wage and hour statements, failed to reimburse business expenses, and unlawfully imposed charges on employees misclassified as independent contractors, all in violation of the Employment Laws and Regulations.

18. During the time Plaintiff was employed, Defendants failed to provide Plaintiff and the Class Members with rest periods during work shifts over four hours. Defendants also

1 routinely failed to provide Plaintiff and the Class Members a 30-minute meal period in which they  
2 were relieved of all duties when they worked over five hours and routinely failed to provide  
3 Plaintiff and the Class Members a second such meal period when they worked more than ten  
4 hours. These practices are in violation of the Employment Laws and Regulations.

5 19. During Plaintiff's employment with Defendants, Plaintiff and the Class Members  
6 were regularly required to work more than eight hours per day and more than forty hours per  
7 workweek. Defendants did not compensate Plaintiff and the Class Members for the overtime  
8 hours they worked, in violation of the Employment Laws and Regulations.

9 20. During Plaintiff's employment with Defendants, Defendants failed to provide  
10 Plaintiff with timely and accurate wage and hour statements showing, among other things, gross  
11 hours earned, total hours worked, all deductions made, net wages earned, accrued vacation, and all  
12 applicable hourly rates in effect during each pay period, as well as the corresponding number of  
13 hours worked at each hourly rate.

14 21. During Plaintiff's employment with Defendants, Defendants wrongfully withheld  
15 from Plaintiff and failed to pay wages and other compensation which was due for all hours  
16 worked, for overtime work, for missed meal and rest periods, and as otherwise required pursuant  
17 to the Employment Laws and Regulations.

18 22. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by  
19 Defendants through unfair business practices in violation of California's Business & Professions  
20 Code sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of  
21 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair  
22 Businesses Act are equitable in nature and are not to be considered damages. Plaintiff is also  
23 entitled to costs, attorney's fees, interest and penalties as provided for by statute.

24 23. To the extent that any Class Member, including Plaintiff, entered into any  
25 arbitration agreement with any defendant and such agreement purports to require arbitration, such  
26 agreement is void and unenforceable. Any such agreement was one of adhesion, executed under  
27 duress, lacked consideration and mutuality, and was otherwise void under both California Labor  
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Code section 229 and the California Supreme Court case of *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

### **CLASS ACTION ALLEGATIONS**

24. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure § 382 and Business and Professions Code §§ 17200 *et. seq.* Plaintiff brings this action on his own behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

All drivers employed by, or formerly employed by, Defendants in the State of California at any time from four years prior to the date of the filing of this complaint, and continuing while this action is pending, who were or are classified as independent contractors.

25. During the Class Period, Defendants failed to pay Plaintiff and the Class Members for all hours worked, in violation of the Employment Laws and Regulations.

26. During the Class Period, Defendants have failed to provide the Class Members with accurate wage and hour statements showing the gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

27. During the Class Period, Plaintiff and the Class Members have been required to work more than eight hours per day and more than forty hours per workweek. Defendants have failed to compensate The Class Members all of the wages they are due, including overtime premium pay.

28. During the Class Period, Defendants have failed to provide Plaintiff and the Class Members with meal and rest periods, and have failed to provide meal and rest period premium wages to compensate for missed meal and rest periods.

29. During the Class Period, Defendants have failed to pay wages and other compensation due immediately to Class Members who were terminated, and Defendants have failed to pay wages and other compensation due within seventy-two hours to Class Members who voluntarily ended their employment.

30. The proposed class is ascertainable in that its members can be identified using information contained in Defendants' payroll and personnel records.

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1           31.    Numerosity. The Class Members are so numerous, conservatively estimated to  
2 include over 50 Class Members, that joinder of each individual Class Member would be  
3 impracticable, and the disposition of their claims in a class action, rather than numerous  
4 individual actions, will benefit the parties, the Court and the interests of justice.

5           32.    Commonality. There is a well-defined community of interest in the questions of  
6 law and fact involved in this action, because Defendants' misclassification of Class Members as  
7 independent contractors, and Defendants' failure to pay Class Members their wages or afford  
8 them the protections required under the Employment Laws and Regulations, affects all Class  
9 Members. Common questions of law and fact predominate over questions that affect only  
10 individual Class Members, because all Class Members were subject to uniform, unlawful pay  
11 practices and policies. The predominate questions of law and fact include, but are not limited to:

12               a.       Did Defendants devise a scheme and plan to circumvent California wage  
13 and hour laws?;

14               b.       Was/is Defendants' conduct fraudulent and deceitful?;

15               c.       Did/does Defendants' conduct violate the Employment Laws and  
16 Regulations by, among other things,

17                       (i)     failing to compensate Plaintiff and the Class Members for all  
18                               hours worked;

19                       (ii)    failing to compensate Plaintiff and the Class Members at the  
20                               applicable and legally-mandated minimum hourly rate;

21                       (iii)   failing to provide Plaintiff and the Class Members with timely and  
22                               accurate wage and hour statements;

23                       (iv)    failing to maintain complete and accurate payroll records for  
24                               Plaintiffs and the Class Members; and

25                       (v)     failing to provide meal and rest periods to Plaintiffs and the Class  
26                               Members, or premium pay in lieu thereof?

27               d.       Do/did Defendants' systematic acts and practices violate, *inter alia*,  
28 California Business & Professions Code section 17200, *et seq.*?

1           33.    Typicality. Plaintiff's claims are typical of those of the other Class Members  
2 because all Class Members share the same or similar employment duties and activities, all are  
3 misclassified as independent contractors, and all have been denied the benefits and protections of  
4 the Employment Laws and Regulations in the same manner. Since Defendants have uniformly  
5 applied the same pay practices and policies to each Class Member, Plaintiff's claims are typical of  
6 the claims of all Class Members. Plaintiff's claims are also typical because he suffered the same  
7 type of damages as those suffered by all Class Members.

8           34.    Adequacy of Representation. Plaintiff can fairly and adequately represent and  
9 protect the interests of all The Class Members in that Plaintiff has no disabling conflicts of  
10 interest which are antagonistic to those of all other Class Members. Plaintiff seeks no relief which  
11 is antagonistic or adverse to the other Class Members, and the infringement of his rights and the  
12 damages he has suffered are typical of all other Class Members. Plaintiff's counsel are competent  
13 and experienced in litigating class actions in California based on large employers' violations of  
14 the Employment Laws and Regulations.

15           35.    To the extent that any Class Member entered into any arbitration agreement with  
16 any Defendant and such agreement purports to require arbitration, such agreement is void and  
17 unenforceable. Even if such agreement is deemed enforceable, however, classwide arbitration is  
18 appropriate and should be utilized to obtain classwide relief.

19           36.    Superiority of Class Action. The nature of this action and the nature of laws  
20 available to Plaintiff and the other Class Members in the putative Class make use of the class  
21 action a particularly efficient and effective procedure because:

22               a.    For many of the Class Members, individual actions or other individual  
23 remedies would be impracticable and litigating individual actions would be too costly;

24               b.    The action involves a corporate employer (Defendants) and a large number  
25 of individual employees (Plaintiffs and the other Class Members), many with relatively small  
26 claims and all with common issues of law and fact;

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1 c. If employees are forced to bring individual lawsuits, the corporate  
2 defendant would necessarily gain an unfair advantage by the ability to exploit and overwhelm the  
3 limited resources of individual plaintiffs through superior financial and legal resources;

4 d. The costs of individual suits would likely consume the amounts recovered;

5 e. Requiring each employee to pursue an individual remedy would also  
6 discourage the assertion of lawful claims by current employees of Defendants, who would be  
7 disinclined to pursue an action against their present and/or former employer due to an appreciable  
8 and justified fear of retaliation and permanent damage to their immediate and/or future  
9 employment; and

10 f. The common business practices Plaintiff experienced are representative of  
11 those experienced by all Class Members and can establish the right of all Class Members to  
12 recover on the alleged claims.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **(Failure to Pay Compensation For All Hours Worked - Labor Code § 1194**

#### 15 **By Plaintiff Individually and on Behalf of All The Class Members)**

16 37. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
17 the allegations contained in this complaint, and incorporates them by reference into this cause of  
18 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
19 cause of action.

20 38. Plaintiff brings this action to recover unpaid compensation for all hours worked as  
21 defined by the applicable Industrial Welfare Commission wage order as the time during which an  
22 employee is subject to the control of an employer, and includes all the time the employee is  
23 engaged, suffered or permitted to work, whether or not required to do so.

24 39. Plaintiff and Class Members are entitled to recover the unpaid balance of  
25 compensation Defendants owe Plaintiff and Class Members, plus interest, associated statutory  
26 penalties, and reasonable attorney fees and costs pursuant to Labor Code section 1194.

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1           45.     During the Class Period, Defendants have routinely required Class Members,  
2 including Plaintiff, to work over eight hours in a day and over forty hours in a workweek.  
3 However, Defendants have failed and refused to pay Class Members, including Plaintiff, the  
4 overtime compensation required by the Employment Laws and Regulations.

5           46.     The Class Members, including Plaintiff, have been deprived of their rightfully  
6 earned overtime compensation as a direct and proximate result of Defendants' policies and  
7 practices and Defendants' failure and refusal to pay that compensation. The Class Members,  
8 including Plaintiffs, are entitled to recover such amounts, plus interest, attorney's fees, and costs.

9                               **FOURTH CAUSE OF ACTION**

10           **(Failure to Provide Meal and Rest Periods - California Labor Code §§ 226.7 and 512**

11                               **By Plaintiff Individually and on Behalf of All The Class Members)**

12           47.     As a separate and distinct cause of action, Plaintiff complains and realleges all of  
13 the allegations contained in this complaint, and incorporates them by reference into this cause of  
14 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
15 cause of action.

16           48.     During the Class Period, Defendants have routinely failed to provide Class  
17 Members, including Plaintiff, with meal and rest periods during their work shifts, and have failed  
18 to compensate Class Members, including Plaintiff, for those meal and rest periods, as required by  
19 California Labor Code section 226.7 and the other applicable sections of the Employment Laws  
20 and Regulations.

21           49.     The Class Members, including Plaintiff, have been deprived of their rightfully  
22 earned compensation for meal and rest periods as a direct and proximate result of Defendants'  
23 policies and practices and Defendants' failure and refusal to pay that compensation. The Class  
24 Members, including Plaintiff, are entitled to recover such amounts pursuant to California Labor  
25 Code section 226.7(b), plus interest, attorney's fees, and costs.

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**FIFTH CAUSE OF ACTION**

**(Failure to Accurate Furnish Wage and Hour Statements - California Labor Code § 226**

**By Plaintiff Individually and on Behalf of All The Class Members)**

50. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

51. Under California Labor Code § 226, Defendants were required to provide wage statements that accurately reflect all the information required under § 226. During the Class Period, Defendants have routinely failed to provide Class Members, including Plaintiff, with timely and accurate wage-and-hour statements containing all information required under Labor Code section 226, including but not limited to gross hours earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing the Class Members, and all applicable hours rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

52. Plaintiff and the Class Members were harmed by, among other things, not being alerted to the fact that Defendants were violating California's wage-and-hour laws or that they were being underpaid and thereby suffered repeated violations of their rights; not having accurate documentation to allow them to make precise calculations of their wages owed or to easily prove their wage claims with certainty; being deprived of accurate wages statements despite having the legal right to receive them; all of which contributed to, furthered, and resulted in Defendants underpaying Plaintiff and the Class Members. Plaintiff and the Class Members furthermore suffered injury as defined under Labor Code § 226(e)(2)(b).

53. Defendants' conduct was a substantial factor in causing harm to the Class Members, including Plaintiff.

54. Defendants are liable for actual damages caused subject to proof at trial, or statutory damages under section 226(e), whichever is greater, plus interest thereon and attorney's

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1 fees and costs under California Labor Code section 226(e), plus costs, and reasonable attorney's  
2 fees, as well as all other available remedies.

3 **SIXTH CAUSE OF ACTION**

4 **(For Waiting Time Penalties - California Labor Code §§ 201-203**

5 **By Plaintiff Individually and on Behalf of All The Class Members)**

6 55. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
7 the allegations contained in this complaint, and incorporates them by reference into this cause of  
8 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
9 cause of action.

10 56. During the Class Period, Defendants failed to pay all accrued wages and other  
11 compensation due immediately to each Class Member who was terminated and failed to pay  
12 accrued wages, including meal and rest period wages and other compensation due within seventy-  
13 two hours to each Class Member who ended his or her employment.

14 57. As a consequence of Defendants' actions, the Class Members are entitled to all  
15 available statutory penalties, including those provided in California Labor Code section 203, as  
16 well as all other available remedies.

17 **SEVENTH CAUSE OF ACTION**

18 **(Failure to Reimburse Business Expenses - Labor Code § 2802**

19 **By Plaintiff Individually and on Behalf of All The Class Members)**

20 58. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
21 the allegations contained in this complaint, and incorporates them by reference into this cause of  
22 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
23 cause of action.

24 59. During the Class Period, Defendants willfully misclassified the Class Members,  
25 including Plaintiff, as independent contractors.

26 60. Labor Code § 226.8 makes it unlawful to charge "an individual who has been  
27 willfully misclassified as an independent contractor a fee, or making any deductions from  
28 compensation, for any purpose, including for goods, materials, space rental, services, government

1 licenses, repairs, equipment maintenance, or fines arising from the individual's employment  
2 where any of the acts described in this paragraph would have violated the law if the individual had  
3 not been misclassified."

4 61. During the Class Period, Defendants routinely charged Class Members, including  
5 Plaintiff, various fees and charges arising out of their employment, and failed to pay expenses  
6 arising out of their employment, including but not limited to:

- 7 a. A fee or "handling charge" of 10% of fares earned by Class Members (that  
8 is, 10% of their income);  
9 b. A fee for insurance;  
10 c. A fee for maintenance and repairs to taxicabs;  
11 d. A fee for the cost of fuel for taxicabs;  
12 e. A fee for the lease of the taxicab; and  
13 f. A failure by Defendants to pay fines arising from the Class Members'  
14 employment, including Plaintiff.

15 62. These various fees and charges (including fines arising from the Class Members'  
16 employment) were all the result of necessary expenditures and/or losses incurred by Class  
17 Members, including Plaintiff, in direct consequence of the discharge of their duties, and in  
18 obedience to the directions of their employer, the Defendants.

19 63. These various fees and charges are in violation of, *inter alia*, Labor Code § 2802  
20 and the IWC Wage Orders, including Wage Order 9-2001, § 9 (B).

21 64. As a consequence of Defendants' actions, the Class Members, including Plaintiff,  
22 are entitled to be indemnified for all such reasonable costs, including, but not limited to,  
23 attorney's fees, as well as being entitled to all available statutory penalties, as well as all other  
24 available remedies.

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**EIGHTH CAUSE OF ACTION**

**(For Common Law Conversion**

**By Plaintiff Individually and on Behalf of All The Class Members)**

65. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

66. During the Class Period, Defendants have wrongfully withheld and failed to pay the Class Members, including Plaintiff, wages and other compensation due them for labor already performed. Such wages and compensation belong to the Class Members, including Plaintiff, at the time the labor and services are provided to Defendants and, accordingly, such wages and compensation are the property ("Property") of the Class Members, including Plaintiff.

67. Defendants have knowingly and intentionally converted the Property of the Class Members, including Plaintiff, by

a. Wrongfully withholding the Property which the Class Members, including Plaintiff, owned or had the right to own and had the legal right to hold, possess and dispose of, and then,

b. Taking the Property of the Class Members, including Plaintiff, and utilizing such Property for Defendants' own use and benefit.

68. Defendants have converted the Property of the Class Members, including Plaintiff, as part of an intentional and deliberate scheme to maximize profits at the expense of the Class Members, including Plaintiff. Defendants' conversion has been done with the advance knowledge, express or implied authorization, and/or ratification of Defendants' respective corporate officers, directors and managing agents.

69. At the time the conversion of the Property took place, the Class Members, including Plaintiff, were entitled to immediate possession of the Property.

70. The Class Members, including Plaintiff, have been injured by Defendants' intentional conversion of their Property. The Class Members, including Plaintiff, are entitled to

1 all monies converted by Defendants, with interest, as well as any and all profits, whether direct or  
2 indirect, which Defendants' acquired by their unlawful conversion, and all other remedies allowed  
3 by law, including as set forth in Civil Code section 3336.

4 71. Furthermore, Defendants' conversion was fraudulent, oppressive, malicious and/or  
5 despicable, and in conscious disregard of the rights of the Class Members, including Plaintiff,  
6 who are thus entitled to punitive damages under all applicable statutory and common law,  
7 including Civil Code section 3294.

8 **NINTH CAUSE OF ACTION**

9 **(For Unfair Competition - California Business & Professions Code § 17200 et seq.**

10 **By Plaintiff Individually and on Behalf of All The Class Members)**

11 72. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
12 the allegations contained in this complaint, and incorporates them by reference into this cause of  
13 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
14 cause of action.

15 73. Defendants' violations of the Employment Laws and Regulations as alleged in this  
16 Complaint, including but not limited to Defendants'

17 a. Failure and refusal to pay Class Members, including Plaintiff, wages for all  
18 hours worked;

19 b. Failure and refusal to pay Class Members, including Plaintiff, the legal  
20 minimum wage;

21 c. Failure and refusal to pay Class Members, including Plaintiff, overtime  
22 wages;

23 d. Failure and refusal to provide Class Members, including Plaintiff, with  
24 meal and rest periods;

25 e. Failure and refusal to provide Class Members, including Plaintiff, with  
26 timely and accurate wage and hour statements;

27 f. Failure to pay Class Members, including Plaintiff, compensation in a timely  
28 manner upon their termination or resignation; and

1 g. Failure to maintain complete and accurate payroll records for Class  
2 Members, including Plaintiff;  
3 all of which constitute unfair business practices in violation of California Business & Professions  
4 Code § 17200 *et seq.*

5 74. Defendants have avoided payment of wages, overtime wages and other benefits as  
6 required by the California Labor Code, the California Code of Regulations, and applicable  
7 Industrial Welfare Commission Wage Orders.

8 75. As a result of Defendants' unfair business practices, Defendants have reaped unfair  
9 benefits and illegal profits at the expense of the Class Members, including Plaintiff, and members  
10 of the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to  
11 the Class Members, including Plaintiff.

12 76. Defendants' unfair business practices entitle Plaintiff to an order that Defendants  
13 account for, disgorge and restore to the Class Members, including Plaintiff, the wages and other  
14 compensation unlawfully withheld from them.

#### 15 **TENTH CAUSE OF ACTION**

##### 16 **(Misclassification as Independent Contractor - Labor Code § 226.8**

##### 17 **By Plaintiff Individually and on Behalf of All The Class Members)**

18 77. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
19 the allegations contained in this complaint, and incorporates them by reference into this cause of  
20 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
21 cause of action.

22 78. During the Class Period, Defendants willfully misclassified the Class Members,  
23 including Plaintiff, as independent contractors.

24 79. During the Class Period, Defendants retained pervasive control over the operation  
25 as a whole, Plaintiff and the Class Members' duties were (and are) an integral part of that  
26 operation, and the nature of the work (driving) makes detailed control unnecessary. Furthermore,  
27 Plaintiff and the Class Members

28 ///

- 1                   a.       were not engaged in an occupation or business distinct from that of  
2 Defendants;  
3                   b.       performed work that is a part of the regular business of Defendants;  
4                   c.       were supplied the instrumentalities, tools, and the place for work by  
5 Defendants;  
6                   d.       were required to make an investment in the equipment and/or materials  
7 required to perform work for Defendants;  
8                   e.       were not performing the kind of service that requires any special skill;  
9                   f.       were performing the kind of occupation usually done under the direction of  
10 an employer;  
11                   g.       had no opportunity for profit or loss which depended upon their own  
12 managerial skill; and  
13                   h.       worked for Defendants for extended periods of time, often many years,  
14 suggesting a degree of permanence in the working relationship beyond that of an independent  
15 contractor.

16       80.     During the Class Period, Defendants, as a matter of established company policy and  
17 procedure, consistently:

- 18                   a.       administered a uniform company policy and practice regarding the duties  
19 and responsibilities of Class Members, including Plaintiff;  
20                   b.       administered a uniform company policy and practice regarding the payment  
21 of wages to Class Members, including Plaintiff;  
22                   c.       treated Class Members, including Plaintiff, as “independent contractors” to  
23 avoid the payment of wages and other benefits in violation of the Labor Code and applicable Wage  
24 Orders;  
25                   d.       acted as if they had the right to, and in fact did control the work performed  
26 by, and/or the manner and/or means in which the work was performed by Class Members,  
27 including Plaintiff; and

28 ///

1 e. disseminated false information throughout Defendants' facilities and among  
2 Defendants' employees that the Class Members, including Plaintiff, were properly classified as  
3 "independent contractors."

4 81. Defendants lowered their cost of doing business by means of, but not limited to, the  
5 following:

6 a. Defendants did not report or pay the employer's share of federal or state  
7 payroll taxes with respect to the Class Members, including Plaintiff, as required by federal and  
8 state law;

9 b. Defendants did not provide or pay for Workers Compensation insurance for  
10 the Class Members, including Plaintiff;

11 c. Defendants did not provide or pay for State Disability insurance for the  
12 Class Members, including Plaintiff; and,

13 d. Defendants did not provide or pay for benefits to the Class Members,  
14 including Plaintiff, comparable to that received by other employees of Defendants.

15 82. As a direct and proximate result of the aforementioned violations of California law  
16 committed by Defendants, the Class Members, including Plaintiff, suffered, and continue to suffer,  
17 substantial losses related to the loss of the employer's share of payroll taxes, the use and enjoyment  
18 of such employee benefits, and expenses and attorneys' fees in seeking to compel Defendants to  
19 fully perform their obligations under state law.

20 83. Plaintiff is informed and believes that his misclassification was willful. Plaintiff is  
21 further informed and believes that Defendants have engaged in, or are engaging in, a pattern and/or  
22 practice of such violations.

23 84. During the Class Period, Defendants' pattern, practice and uniform administration  
24 of corporate policy regarding this classification as "independent contractors" as described herein  
25 was and is unlawful and creates an entitlement to recovery by the Class Members, including  
26 Plaintiff, in a civil action, for reimbursement of all damages proximately resulting from such  
27 mis-classification and/or unlawful reductions in compensation and expense reimbursement, and the  
28 Class Members' share of FICA, Medicare, and state and local employment taxes that was

1 improperly not paid by Defendant as a result of this unlawful "independent contractor"  
2 misclassification.

3 85. Pursuant to Labor Code § 226.8, Defendants' willful misclassification makes  
4 Defendants subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more  
5 than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or  
6 fines permitted by law.

7 86. Pursuant to Labor Code § 226.8(e)(1), Defendants should also be ordered to  
8 prominently display a notice on their company website as called for in that section.

9 87. Furthermore, as a consequence of Defendants' actions, the Class Members,  
10 including Plaintiff, are entitled to be indemnified for all such reasonable costs, including, but not  
11 limited to, attorney's fees, as well as being entitled to all available statutory penalties, as well as all  
12 other available remedies.

### 13 **ELEVENTH CAUSE OF ACTION**

#### 14 **(Recovery of Illegal Deductions From Wages - Labor Code §§ 221 and 223**

#### 15 **By Plaintiff Individually and on Behalf of All The Class Members)**

16 88. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
17 the allegations contained in this complaint, and incorporates them by reference into this cause of  
18 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
19 cause of action.

20 89. During the Class Period, Defendants have unlawfully withheld monies from the  
21 compensation earned by the Class Members, including Plaintiff, for business expenses, including  
22 but not limited to insurance and leasing expenses, in violation of Labor Code §§ 221 and 223.

23 90. As a direct and proximate result of Defendants' conduct, the Class Members,  
24 including Plaintiff, have suffered substantial losses and been deprived of compensation to which  
25 they were entitled, including monetary damage, and pre-judgment interest.

26 91. Defendants' unlawful conduct entitles the Class Members, including Plaintiff, to  
27 damages in an amount to be ascertained at trial according to proof.

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1 **TWELFTH CAUSE OF ACTION**

2 **(Coercion - Labor Code § 450**

3 **By Plaintiff Individually and on Behalf of All The Class Members)**

4 92. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
5 the allegations contained in this complaint, and incorporates them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
7 cause of action.

8 93. During the Class Period, Defendants have compelled and/or coerced the Class  
9 Members, including Plaintiff, to pay a "handling" fee and to purchase maintenance and repair  
10 services and equipment directly from Defendants in violation of Labor Code § 450.

11 94. During the Class Period, Defendants have also compelled and/or coerced the Class  
12 Members, including Plaintiff, to patronize other companies in the purchase or lease of vehicles  
13 and/or insurance in violation of Labor Code § 450.

14 95. As a direct and proximate result of Defendants' coercion, the Class Members,  
15 including Plaintiff, have suffered substantial monetary damage.

16 96. Defendants' unlawful conduct entitles the Class Members, including Plaintiff, to  
17 damages in an amount to be ascertained at trial according to proof.

18 **THIRTEENTH CAUSE OF ACTION**

19 **(For An Accounting**

20 **By Plaintiff Individually and on Behalf of All The Class Members)**

21 97. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
22 the allegations contained in this complaint, and incorporates them by reference into this cause of  
23 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
24 cause of action.

25 98. During the Class Period, Defendants had a fiduciary duty with respect to the  
26 payments owed to and unlawful deductions taken from the Class Members, including Plaintiff.

27 99. During the Class Period, the Class Members, including Plaintiff, were often  
28 provided a "Taxi Lease Closing Record" that listed unlawful deductions made by Defendants,

1 including, but not limited to, business expenses described as "Lease," "Insurance," "Handling,"  
2 "Maintenance Cost" and "Excess Handling."

3 100. As a result of Defendants' unlawful conduct, some balance is due to the Class  
4 Members, including Plaintiff, that can only be ascertained by an accounting.

5 101. As a result of Defendants' unlawful conduct, Plaintiff requests an accounting to the  
6 Class Members, including Plaintiff.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff, individually and on behalf of all Class Members, prays that the  
9 Court enter judgment in his favor and against Defendants as follows:

- 10 1. For an Order requiring and certifying this action as a class action;
- 11 2. For an Order appointing Plaintiffs' counsel as Class Counsel;
- 12 3. For compensatory damages in an amount to be ascertained at trial;
- 13 4. For restitution in an amount to be ascertained at trial;
- 14 5. For punitive damages in an amount to be ascertained at trial;
- 15 6. For penalties as required by the applicable Wage Order and/or law;
- 16 7. For prejudgment interest at the legal rate pursuant to statute;
- 17 8. For reasonable attorney's fees pursuant to statute;
- 18 9. For cost of suit incurred herein;
- 19 10. For an Accounting;
- 20 11. For disgorgement of profits garnered as a result of Defendants' unlawful acts; and
- 21 12. For such further relief as the Court may deem appropriate.

22  
23 DATED: February 18, 2014

LAW OFFICES OF THOMAS W. FALVEY

24  
25 By:   
26 J.D. Henderson

27 Attorneys for Plaintiff FRANCISCO GONZALES,  
28 Individually and on Behalf of All Similarly Situated  
Individuals



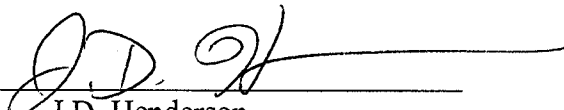
**DEMAND FOR JURY TRIAL**

Plaintiff FRANCISCO GONZALES, individually and on behalf of all similarly situated individuals, demands jury trial of this matter.

DATED: February 18, 2014

LAW OFFICES OF THOMAS W. FALVEY

By:

  
J.D. Henderson

Attorneys for Plaintiff FRANCISCO GONZALES,  
Individually and on Behalf of All Similarly Situated  
Individuals