

1 SHANNON LISS-RIORDAN (SBN 310719)
 (sliss@llrlaw.com)
 2 ANNE KRAMER (SBN 315131)
 3 LICHTEN & LISS-RIORDAN, P.C.
 729 Boylston Street, Suite 2000
 4 Boston, MA 02116
 Telephone: (617) 994-5800
 5 Facsimile: (617) 994-5801
 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
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

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)

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.*¹

25
26 ¹ 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.5th 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
12

13
14
15
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.²

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 ² 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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.