

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR KING COUNTY

DAVID JAHN, on his own behalf and on the
behalf of all others similarly situated,

Plaintiff,

v.

KASA DELIVERY, LLC,

Defendant.

NO.

CLASS ACTION COMPLAINT

Plaintiff David Jahn (“Plaintiff”), individually and on behalf of all others similarly
situated, by and through his attorneys of record, for his Complaint against Defendant Kasa
Delivery, LLC (“Defendant”) hereby states and alleges as follows:

I. INTRODUCTION

1.1 Defendant operates delivery services for restaurants in and around King County,
Washington, including in Seattle, Washington.

1.2 Defendant engaged in a common scheme of wage and hour violations against its
delivery employees. Defendant employs delivery drivers who use their own vehicles to deliver
food and other food items to customers. Instead of compensating delivery drivers for the
reasonably-approximate costs of the business use of their vehicles, Defendant uses a flawed
method to determine reimbursement rates that fail to accurately track the number of miles

1 driven by delivery drivers and provides such an unreasonably low rate beneath any reasonable
2 approximation of the expenses they incur that the drivers' unreimbursed expenses cause their
3 wages to fall below the wage rate required by state and city minimum wage laws during some
4 or all workweeks. In addition, Defendant has required drivers to share their tips with other
5 employees who have little to no contact with customers and thus are not "customarily and
6 regularly" tipped, in violation of wage and hour laws.

7 1.3 Plaintiff and Class members are current and former delivery employees of
8 Defendant in the State of Washington who have been victimized by Defendant's unlawful
9 practices. This lawsuit is brought as a class action under Washington wage laws to recover
10 unpaid wages owed to Plaintiff and all other similarly situated employees.

11 II. JURISDICTION AND VENUE

12 2.1 Venue is proper in King County because Plaintiff Jahn has worked for
13 Defendant in King County, where some of the violations alleged herein occurred. In addition,
14 Defendant transacts business in King County and many of the acts, as well as the course of
15 conduct alleged herein, occurred in King County.

16 2.2 Defendant is within the jurisdiction of this Court. Defendant conducts business
17 in the State of Washington and have operations in Washington State, including within the City
18 of Seattle and King County. Defendant had obtained the benefits of the laws of the State of
19 Washington and the Washington labor market.

20 III. PARTIES

21 3.1 Defendant is a Minnesota limited liability company.

22 3.2 Plaintiff Jahn has been employed by Defendant as a delivery driver from
23 December 2015 to the present. Plaintiff Jahn has been a resident of Washington for the duration
24 of his employment. He has worked in Seattle and King County for Defendant on a regular
25 basis.

26 IV. CLASS ACTION ALLEGATIONS

1 4.1 Plaintiff brings this case as a class action pursuant to Civil Rule 23(b)(3) on
2 behalf of a class consisting of:

3 All individuals employed by Defendant as delivery drivers of motor
4 vehicles in the State of Washington at any time from three years prior to
5 the filing of this complaint through the date of final disposition of this
6 action.

7 Excluded from this Class is Defendant, any entity in which Defendant has a controlling
8 interest or which have controlling interest in Defendant, and Defendant's legal representatives,
9 assignees and successors. Also excluded are any judges to whom this case is assigned and any
10 member of an assigned judge's immediate family.

11 4.2 Plaintiff believes there are at least 120 current and former employees in the
12 Class.

13 4.3 Plaintiff's claims are typical of the claims of the members of the Class because
14 Plaintiff is a delivery driver who, like the members of the Class, sustained damages arising out
15 of Defendant's common course of wage and hour violations.

16 4.4 Plaintiff will fairly and adequately protect the interests of the Class members.
17 Plaintiff has retained counsel competent and experienced in complex class action litigation,
18 including employment law.

19 4.5 Common questions of law and fact exist as to Plaintiff and all members of the
20 Class and predominate over any questions solely affecting individual members of the Class.
21 Among the questions of law and fact common to the Plaintiff and the Class are:

22 a. Whether Defendant engaged in a common course of failing to reasonably
23 approximate and pay vehicle expenses to Plaintiff and Class members;

24 b. Whether Defendant engaged in a common course of failing to pay Plaintiff and
25 Class members the minimum wage required by Washington and the City of Seattle minimum
26 wage laws;

1 c. Whether Defendant engaged in a common course of requiring Plaintiff and
2 Class members to kick back a portion of their wages to Defendant;

3 d. Whether Defendant engaged in a common course of requiring Plaintiff and
4 Class members to share their tips with other employees who are not customarily and regularly
5 tipped;

6 e. Whether Defendant's conduct, above, was willful;

7 f. Whether Defendant violated RCW 49.46.020 as to Plaintiff and Class members;

8 g. Whether Defendant violated RCW 49.46.090 as to Plaintiff and Class members;

9 h. Whether Defendant violated RCW 49.48.030 as to Plaintiff and Class members;

10 i. Whether Defendant violated RCW 49.52.050 as to Plaintiff and Class members;

11 j. Whether Defendant violated RCW 49.52.070 as to Plaintiff and Class members;

12 and

13 k. The nature and extent of class-wide injury and the measure of compensation for
14 such injury.

15 4.6 Class action treatment is superior to the alternative for the fair and efficient
16 adjudication of the controversy alleged herein. Such treatment will permit a large number of
17 similarly situated persons to prosecute their modest, purely economic, common claims in a
18 single forum simultaneously, efficiently and without duplication of effort and expense that
19 numerous individual actions would entail. No difficulties are likely to be encountered in the
20 management of this class action that would preclude its maintenance as a class action, and no
21 superior alternative exists for the fair and efficient adjudication of this controversy. The Class
22 is readily identifiable from Defendant's records.

23 4.7 A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy since joinder of all matters is impractical. Furthermore, the
25 amounts at stake for many Class members, while substantial to them, are not great enough to
26 hire an attorney to prosecute individual suits against Defendant.

1 Seattle. (Although in the early first pay period of 2016, Defendant paid less than the minimum
2 wage of the City of Seattle to Plaintiff Jahn.)

3 ***Defendant's Flawed Reimbursement Policy***

4 5.6 Plaintiff and members of the Class have delivered food and other food items to
5 Defendant's customers in motor vehicles that Plaintiffs and Class members own and maintain.
6 Defendant has required Plaintiff and the Class members to maintain these vehicles in a safe,
7 legally-operable, and insured condition to use in delivering the food and food items to
8 Defendant's customers.

9 5.7 Plaintiff and members of the Class have incurred costs for gasoline, vehicle
10 parts and fluids, vehicle repair and maintenance services, vehicle insurance, taxes, licenses,
11 depreciation and finance charges ("vehicle expenses") while delivering food and food items for
12 the primary benefit of Defendant.

13 5.8 Plaintiff and members of the Class have been subject to similar driving
14 conditions, vehicle expenses, delivery distances, and delivery frequencies.

15 5.9 Plaintiff and members of the Class have been subject to the same pay policies
16 and practices of Defendant. Specifically, they have been subject to the same delivery driver
17 reimbursement policy, which has been \$1.00 per delivery from December 2015 to the present,
18 which underestimates vehicle expenses per mile and fails to accurately track miles per delivery.

19 5.10 Despite the relative ease of tracking actual miles driven by its drivers, Defendant
20 does not do so. Instead, Defendant reimburses delivery drivers a set amount per delivery,
21 regardless of length.

22 5.11 Defendant's reimbursement rate does not take into consideration the actual miles
23 driven nor actual expenses incurred by drivers in order to maintain and provide vehicles that
24 are safe, legally operable, and insured, in the course of their delivering items to customers on
25 behalf of and for the primary benefit of Defendant.

1 5.12 Throughout his employment with Defendant, Plaintiff Jahn has experienced an
2 average delivery distance of approximately nine (9) miles.

3 5.13 The net result of Defendant's delivery driver reimbursement policy is
4 reimbursement of approximately \$.11 per mile (\$.00 per delivery / 9 miles), which is well
5 below any reasonable approximation of the vehicle expenses of Defendant's delivery drivers.

6 5.14 During the applicable limitations period, the IRS business mileage
7 reimbursement rate has ranged between \$.54 and \$.575 per mile. Reputable companies that
8 study the cost of owning and operating a motor vehicle and/or reasonable reimbursement rates,
9 including the American Automobile Association ("AAA"), have determined that the average
10 cost of owning and operating a vehicle has ranged between \$.37 and \$.975 per mile during the
11 same period. These figures represent a reasonable approximation of the average cost of owning
12 and operating a vehicle for personal use of the vehicle.

13 5.15 The driving conditions associated with the food delivery business result in more
14 frequent routine maintenance costs, higher repair costs, and more rapid depreciation due to the
15 mileage and manner of driving for food delivery, including frequent starting and stopping of
16 the engine, frequent braking, driving short routes as opposed to highway driving, and driving
17 under time pressures. Defendant's delivery drivers thus experience lower gas mileage and
18 higher repair costs than factored into the IRS' and AAA's average cost of owning and
19 operating a vehicle.

20 5.16 Insurance providers recognize the relative hazards of working as a food delivery
21 driver. Food delivery drivers pay significantly higher vehicle insurance rates than do regular
22 drivers, as personal auto insurance policies generally do not cover drivers while they are on the
23 job and delivery drivers are considered especially high-risk.

24 5.17 Defendant's reimbursement policy does not reimburse its delivery drivers for
25 even their out-of-pocket expenses, much less other costs they incur to own and operate their
26

1 vehicles, and thus Defendant uniformly fails to reimburse its delivery drivers at any reasonable
2 approximation of the cost of owning and operating their vehicles for Defendant's benefit.

3 ***Defendant's Failure to Reimburse Vehicle Expenses Violates Wage Laws***

4 5.18 Before taking into account the effect of Defendant's reimbursement policy,
5 Defendant has paid Plaintiff Jahn at or just under the City of Seattle minimum wage since
6 December 2015: from December 2015 to January 16, 2016, Defendant paid him \$10.00 per
7 hour; from January 17, 2016 to the present, Defendant paid him \$10.50 per hour. Washington
8 State's minimum wage during this period has been \$9.47 per hour.

9 5.19 Plaintiff Jahn drives a 2009 Toyota Prius and drove a 2008 Chevy Trailblazer
10 delivering food for Defendant during times relevant to this action. He also delivered food using
11 Defendant's e-bikes for a portion of his employment.

12 5.20 During Plaintiff's employment with Defendant, Defendant's reimbursement rate
13 has been a straight \$1.00 per delivery amount when drivers use their own motor vehicles to
14 make deliveries on behalf of Defendant, regardless of the amount driven.

15 5.21 During Plaintiff's employment with Defendant, Plaintiff has experienced an
16 average delivery distance of approximately nine (9) miles when driving his motor vehicles.

17 5.22 Thus, since December 2015, Defendant's average reimbursement rate for
18 Plaintiff Jahn has been approximately \$.11 per mile (\$1.00 per delivery / 9 miles per delivery).

19 5.23 During this same time period, the IRS business mileage reimbursement rate has
20 ranged between \$.54 and \$.575 per mile, which was a reasonable approximation of the vehicle
21 expenses incurred in personal use of a vehicle, but is a low estimate of the vehicle expenses
22 incurred in delivering food in King County. Using the IRS rate as a conservative approximation
23 of Plaintiff's vehicle expenses during his employment to date, every mile driven on the job
24 decreased Plaintiff's net wages by approximately \$.43 (\$.54 (IRS rate) - \$.11 (Defendant's
25 rate)) at a minimum, to at least \$.465 (\$.575 - \$.11), or between approximately \$3.87 per
26 delivery (\$.43 x 9 miles) and \$4.185 per delivery (\$.465 x 9 miles).

1 5.24 Defendant did not ask Plaintiff to track his actual vehicle expenses. However, an
2 initial estimate indicates that Plaintiff Jahn’s vehicle expenses, not taking fully into account the
3 additional costs when using his vehicle for food delivery, have been at the very least \$.41 per
4 mile. Using even this extremely conservative measure of Plaintiff Jahn’s actual expenses, as
5 opposed to the IRS rate or other widely-accepted mileage rates, every mile driven on the job
6 decreased his net wages by between about \$.30 (\$.41 - \$.11), and every delivery decreased his
7 net wages by about \$2.70 (\$.30 x 9 miles).

8 5.25 During Plaintiff’s employment with Defendant to date, Plaintiff has worked
9 approximately four hundred and fifty (450) hours making deliveries in his Prius and/or
10 Trailblazer. During Plaintiff’s employment with Defendant to date, Plaintiff has delivered
11 approximately 863 orders using his Trailblazer and/or Prius. Thus, Plaintiff has averaged 1.92
12 deliveries per hour using his Prius and/or Trailblazer. Plaintiff Jahn’s frequency of delivery
13 during this time period is a reasonable estimate of the frequency at which Defendant’s other
14 drivers make deliveries.

15 5.26 Thus, during the time period relevant to this action, depending on whether
16 Defendant's reimbursement rate is compared to the IRS rate or to a very conservative estimate
17 of Plaintiff Jahn’s actual expenses, Plaintiff Jahn “kicked back” to Defendant between
18 approximately \$5.16 per hour (\$2.70 per delivery x 1.92 deliveries per hour) and \$8.04 per
19 hour (\$4.185 per delivery x 1.92 deliveries per hour). Because Defendant has otherwise been
20 paying Plaintiff Jahn at or just under Seattle’s minimum wage, and just above Washington’s
21 minimum wage, these kickbacks have resulted in Defendant compensating Plaintiff Jahn
22 between approximately \$5.16 per hour to \$8.54 per hour less than the City of Seattle’s
23 minimum wage, and \$4.13 per hour to \$7.01 per hour less than Washington state’s minimum
24 wage. This kickback resulted in an effective hourly wage rate between approximately \$1.96
25 and \$4.84 in 2015 to January 16, 2016 and \$2.46 and \$5.34 from January 17, 2016 to the
26 present.

1 5.27 During some workweeks, Plaintiff Jahn has worked in excess of forty (40) hours
2 per week for Defendant making deliveries. Defendant has paid Plaintiff Jahn on an hourly
3 basis, including time and a half for the work he performs in excess of forty (40) hours per
4 workweek.

5 5.28 However, the effect of Defendant’s reimbursement policy, as set forth above,
6 has also caused Plaintiff Jahn to earn less than the statutory minimum wage rate for work he
7 performs in excess of (40) hours per week. For example, in early January 2016, Defendant paid
8 Plaintiff Jahn \$15.00 per hour for the work he performed in excess of (40) forty hours in the
9 workweek (which is actually below Seattle’s minimum wage for overtime work at the time
10 (\$15.75 per hour), regardless of the kickbacks from Defendant’s reimbursement policy). As set
11 forth above, during this time frame, Defendant received kickbacks from Plaintiff that reduced
12 his wages by approximately \$5.16 to \$8.04 per hour. Here, Plaintiff Jahn therefore only
13 received \$6.96 per hour to \$11.06 per hour for his overtime work, when Seattle required a
14 minimum overtime wage rate of \$15.75 per hour and Washington State required \$14.21 per
15 hour.

16 5.29 Under Washington law, employers may not use tips as credit towards minimum
17 wages owed to an employee. In addition, under wage and hour laws, once a tip is earned, it is
18 the property of that employee and it is not to be shared with other employees who are not
19 “regularly and customarily” tipped. Here, customers tip drivers who are generally the only
20 employees of Defendant with whom they interact. Yet, Defendant deducts a portion of drivers’
21 tips to dispatch employees, who do not generally have contact with the customers.
22 Additionally, Defendant has failed to provide a written notice of its proposed tip pool to
23 Plaintiff and the drivers.

24 5.30 Upon information and belief, all of Defendant's other delivery drivers have had
25 similar experiences to those of Plaintiff. They were subject to the same reimbursement and tip
26 pool policies; received similar reimbursements; incurred similar vehicle expenses; completed

1 deliveries of similar distances and at similar frequencies; and, because of this, were paid hourly
2 wages below the applicable state or city minimum wage and were required to kick back a
3 portion of their wages to employees who are not “regularly and customarily” tipped.

4 5.31 Based on the allegations set forth above, Defendant’s systematic under-
5 reimbursement of vehicle expenses over the prior three (3) years has resulted in company-wide
6 minimum wage violations under both state and local laws.

7 5.32 Upon information and belief, Defendant has been on notice that its
8 reimbursement and tip pooling policies are unlawful.

9 5.33 Based on the effect of Defendant’s flawed reimbursement policy, Plaintiff and
10 members of the Class have been paid an hourly wage below the applicable state and Seattle
11 minimum wage; they have thereby been systematically deprived of reasonably-approximate
12 reimbursements, resulting in their wages falling below the state and city minimum wage in
13 some or all workweeks.

14 5.34 Plaintiff and members of the Class have experienced under-reimbursements for
15 vehicle expenses, which have reduced their wages below the minimum wage rate of the State of
16 Washington and the City of Seattle.

17 ***Further Evidence of Defendant’s “Kickback” of Delivery Drivers’ Wages***

18 5.35 Delivery drivers are required to use their personal cell phones to access order
19 information from Defendant’s customers in order to pick up and deliver food orders. They are
20 also frequently required to use their phones to contact customers to complete deliveries. For
21 example, if the driver has to access a secure location that requires the customer to provide the
22 driver access when the driver arrives at a locked gate or door. Although usage of drivers’
23 personal cell phones is required for the benefit of Defendant, Defendant only reimburses
24 drivers approximately \$.04 per hour for the use of their cell phones. Upon information and
25 belief this does not reasonably-approximate reimburse the drivers for the actual cost of using
26 their cell phones during work for the benefit of Defendant.

1 49.46.090, SMC 14.19.110, and SMC 14.20.090, are entitled to recover such amounts,
2 including interest thereon, and attorneys' fees and costs (and further including liquidated
3 damages under SMC 14.19.110 and SMC 14.20.090).

4 **VII. SECOND CLAIM FOR RELIEF**
5 **(Willful Refusal to Pay Wages: RCW 49.52.050)**

6 7.1 Plaintiff realleges and incorporates by reference each and every allegation set
7 forth in the preceding paragraphs.

8 7.2 RCW 49.52.050(2) provides that any employer who "willfully and with intent to
9 deprive the employee of any part of his wages, pays any employee a lower wage than the wage
10 such employer is obligated to pay such employee by any statute, ordinance, or contract" is
11 guilty of a misdemeanor.

12 7.3 RCW 49.52.070 provides that any employer who violates the foregoing statute
13 shall be liable in a civil action for twice the amount of wages withheld, together with costs of
14 suit and reasonable attorneys' fees.

15 7.4 The alleged unlawful actions by Defendant against Plaintiff and Class members,
16 as set forth above, were committed willfully and with intent to deprive Plaintiff and Class
17 members of part of their wages.

18 7.5 As such, based on the above allegations, Defendant violated the provisions of
19 RCW 49.52.050.

20 7.6 As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
21 deprived of compensation in amounts to be determined at trial, and pursuant to RCW 49.52.070
22 are entitled to recovery of twice such amounts, including interest thereon, and attorneys' fees
23 and costs.

24 **VIII. PRAYER FOR RELIEF**

25 Wherefore, Plaintiff, on his own behalf and on behalf of the members of the Class,
26 prays for judgment against Defendant as follows:

- 1 A. Certify the proposed Class;
- 2 B. Appoint Plaintiff as Class representative;
- 3 C. Appoint the undersigned attorneys as Class counsel;
- 4 D. Declare that the actions complained of herein violate Washington's statutes,
5 Seattle's ordinances, and administrative codes;
- 6 E. Award Plaintiff and Class members compensatory, liquidated, and exemplary
7 damages;
- 8 F. Award attorneys' fees and costs to Plaintiff's attorneys, as allowed by law;
- 9 G. Award pre-judgment and post-judgment interest to Plaintiff and Class members,
10 as provided by law;
- 11 H. Grant and injunction against Defendant from engaging in the unlawful and
12 wrongful conduct set forth herein; and,
- 13 I. Grant such other and further relief as this Court deems necessary.

14 DATED this 10th day of June, 2016.

15
16 **REKHI & WOLK, P.S.**

17 By: s/ Gregory A. Wolk
18 Gregory A. Wolk, WSBA #28946
19 Hardeep S. Rekhi, WSBA #34579
20 1411 Fourth Avenue, Suite 1101
21 Seattle, Washington 98101
22 Telephone: (206) 388-5887
23 Facsimile: (206) 577-3924
24 Email: greg@rekhiwolk.com
25 hardeep@rekhiwolk.com

26 *Attorneys for Plaintiff*