

1 LAW OFFICES OF THOMAS W. FALVEY
THOMAS W. FALVEY (SBN 65744)
2 J.D. HENDERSON (SBN 235767)
MICHAEL H. BOYAMIAN (SBN 256107)
3 301 North Lake Avenue, Suite 800
Pasadena, California 91101
4 Telephone: (626) 795-0205
Facsimile: (626) 795-3096

ORIGINAL FILED

FEB 18 2014

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

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

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

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

13 Plaintiff,

14 vs.

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

18 Defendants.
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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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- 1 g. failed to maintain complete and accurate payroll records for Plaintiff and
2 Class Members;
- 3 h. failed to reimburse Plaintiff and Class Members for business expenses;
- 4 i. wrongfully withheld wages and compensation due to Plaintiff and Class
5 Members; and
- 6 j. committed unfair business practices in an effort to increase profits and to
7 gain an unfair business advantage at the expense of Plaintiff, Class Members and the public.

8 4. The foregoing acts and other acts by Defendants - committed throughout California
9 and Los Angeles County - violated provisions of the California Labor Code, including but not
10 limited to sections 201, 202, 203, 226, 226.7, 226.8, 510, 512, 515, 551, 552, 1194, 1198 and
11 2802 (collectively, "Employment Laws"), violated the applicable Wage Orders issued by
12 California's Industrial Welfare Commission, including Wage Orders 9-2001 during the Class
13 Period ("Regulations"), violated California Business & Professions Code sections 17200 et seq.,
14 and violated Plaintiff's rights.

15 **JURISDICTION AND VENUE**

16 5. Venue is proper in this Judicial District and the County of Los Angeles because
17 work was performed by Plaintiff and other members of the Class for Defendants in the County of
18 Los Angeles, California, and Defendants' obligations under the Employment Laws and
19 Regulations to pay minimum wage, to pay all wages including overtime wages, to provide meal
20 and rest periods and accurate wage statements, and to reimburse business expenses to Plaintiff and
21 other members of the Class arose and were breached in the County of Los Angeles.

22 6. The California Superior Court has jurisdiction in this matter because Plaintiff
23 FRANCISCO GONZALES is a resident of California, Defendant SAN GABRIEL TRANSIT,
24 INC. is a California corporation, Defendant SOUTHLAND TRANSIT, INC. is a California
25 corporation, and Defendant ARCADIA TRANSIT, INC. dba BLACKCAR LA, is a California
26 corporation. All of these defendants are qualified to do business in and regularly conduct business
27 in California. No federal question is at issue as the claims are based solely on California law.

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THE PARTIES

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

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

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

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

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

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

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

4 14. Plaintiff is informed and believes and based thereon allege that DOES 1 through
5 25, inclusive were the agents, servants, and/or employees of Defendants and, in doing the things
6 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
7 servants and employees, and with the permission and consent of Defendants.

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

10 **FACTS**

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

15 17. Defendants paid Plaintiff and the Class Members based upon the passenger miles
16 driven, regardless of how many hours were actually worked or how many miles were actually
17 driven. In addition, Defendants required Plaintiff and the Class Members to pay for the lease of
18 the cars used as taxicabs. Plaintiff and the Class Members also had to pay Defendants for
19 insurance and for maintenance of the taxicab. Plaintiff and the Class Members also had to pay
20 Defendants a fee in order to be assigned passengers for hire. This fee, or "handling" charge, was
21 10% of the total fares Plaintiff received in any given week. Upon information and belief, all Class
22 Members were subject to this "handling" charge. As a result, Defendants failed to pay Plaintiffs
23 and the Class Members for all hours worked, failed to pay overtime pay, failed to pay minimum
24 wage, failed to provide accurate wage and hour statements, failed to reimburse business expenses,
25 and unlawfully imposed charges on employees misclassified as independent contractors, all in
26 violation of the Employment Laws and Regulations.

27 18. During the time Plaintiff was employed, Defendants failed to provide Plaintiff and
28 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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1 Code section 229 and the California Supreme Court case of *Armendariz v. Foundation Health*
2 *Psychare Services, Inc.* (2000) 24 Cal.4th 83.

3 **CLASS ACTION ALLEGATIONS**

4 24. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure
5 § 382 and Business and Professions Code §§ 17200 *et. seq.* Plaintiff brings this action on his own
6 behalf and on behalf of the following class of individuals (the “Class” or “Class Members”):

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

10 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.

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

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

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

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

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

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