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Assigned for all Purposes

Judge Glenda Sanders

CX-101

Attorneys for Plaintiff Thomas Gonzales, on his own behalf and in his representative capacity on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

THOMAS GONZALES, an individual,
on his own behalf and on behalf of all
others similarly situated

Plaintiff,

vs.

U-HAUL CO. OF CALIFORNIA, a
California corporation; and DOES 1
through 25, inclusive,

Defendant.

Case No. 30-2021-01229571-CU-OE-CXC

COMPLAINT FOR

- 1) Failure to Pay All Wages Due in Violation of Lab. Cod. § 204
- 2) Failure to Provide Rest Periods in violation of Labor Code § 226 and applicable IWC No. 9
- 3) Failure to Provide Meal Periods in violation of Lab. Cod. §§ 226.7, 512 and IWC No. 9
- 4) Failure to Pay Overtime Earned in violation of Lab. Cod. §§ 510, 1198 and IWC No. 9
- 5) Failure to Maintain Records of Hours Worked/Wages Earned in Violation of Lab. Cod. § 1174(d)
- 6) Failure to Provide Accurate Wage Statements in Violation of Lab. Cod. § 226(a)
- 7) Failure to Timely Pay All Wages Earned Twice Monthly in Violation of Lab. Cod. § 200, 204, and 210
- 8) Failure to Pay All Wages Due Upon Termination in Violation of Lab. Cod. § 201
- 9) Failure to Reimburse Expenses in violation of Lab. Cod. § 2802
- 10) Unfair Competition and Unlawful Business Practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*
- 11) Violation of the Private Attorney Generals Act of 2004, Labor Code §2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, Thomas Gonzales (“Plaintiff”), an individual on his own behalf and on
2 behalf of all others similarly situated, files this Complaint against Defendant, U-HAUL CO.
3 OF CALIFORNIA, a California corporation (“Defendant”) and DOES 1 to 25 (collectively
4 “Defendants”).

5 **I. INTRODUCTION**

6 1. This is a Class Action pursuant to California Code of Civil Procedure section 382,
7 and a representative action under the Private Attorneys General Act (“PAGA”) against
8 Defendant, for (a) failure to pay all wages due; (b) non-provision of legally mandated rest breaks;
9 (c) non-provision of legally mandated meal breaks; (d) failure to pay overtime wages; (e) failure
10 to maintain records of all hours worked; (f) failure to provide accurate wage statements; ; (g)
11 failure to timely pay all wages earned twice monthly in violation (h) failure to pay all wages due
12 upon termination of employment; (i) failure to reimburse for work related expenses and (j) for
13 unlawful business practices. Plaintiff brings these claims on behalf of himself, and all similarly
14 situated, non-exempt employees currently or formerly employed by Defendant within the State of
15 California (the “Class Members”) at any time between November 2, 2017, through the date of
16 judgment (the “Class Period”). Defendant employs and have employed Plaintiff and the Class
17 Members at various U-Haul locations throughout the State of California. Any differences in job
18 duties or title as between Class Members are legally insignificant as to the issues present in this
19 action and are no bar to class certification. Plaintiff is informed and believes, and based thereon,
20 alleges that Defendant currently and formerly employed hundreds of employees as maintenance
21 helpers, maintenance technicians, maintenance supervisors and other similar, non-exempt
22 positions, (“Covered Positions”) at U-Haul facilities, in the same or similar non-exempt positions
23 throughout the State of California.

25 2. During the relevant liability period, as a uniform, companywide pattern and
26 practice, Defendant systematically has violated Cal. Lab. Code §§ 204 and 1194 for failing to pay
27 Plaintiff and Class Members an hourly wage for all hours worked and failing to timely pay all
28 wages due; violated Cal. Lab. Code § 510 for failing to overtime wages; violated Cal. Lab. Code

§ 226.7 for failing to provide legally mandated rest breaks; violated Cal. Lab. Code § 226.7 for failing to provide code compliant, timely and duty free, meal breaks; violated Cal. Lab. Code § 226(a) for failing to provide accurate wage statements; violated Cal. Lab. Code § 1174(d) for failing to maintain accurate records of all hours worked and wages earned; and violated Cal. Lab. Code §§ 201- 203 for failing to pay all wages due upon termination to such Class Member who separated from Defendant’s employment during the Class Period; and violated Cal. Lab. Code §2802 for failing to reimburse for work related expenses incurred in the discharge of work related duties. Plaintiff also alleges the violations of these Labor Codes and Wage Order 9 constitutes predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (the “UCL”).

3. These unlawful acts complained of herein occurred and will occur at least in part within the Class Period.

4. Through this action, Plaintiff seeks on behalf of himself, and all others similarly situated, damages, restitution, penalties, and attorneys’ fees and costs to redress Defendant’s unlawful policies and practices.

II. JURISDICTION AND VENUE

5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Plaintiff is a resident of California and worked for Defendant in California, and around Orange and other counties in California. Defendant conducts business in Orange County and the unlawful acts alleged herein occurred within and have a direct effect on Plaintiff and those similarly situated within the State of California and within the County of Orange.

6. This Court has jurisdiction over the violations of the Labor Code and the PAGA.

7. The Court also has jurisdiction over Plaintiff and Class Members’ claims pursuant to Business and Professions Code sections 17200-17208, who also seek injunctive relief and restitution of ill-gotten benefits arising from Defendant’s unlawful business acts and practices under California Business and Professions Code sections 17200-17208.

8. The civil penalties sought in this action exceed the minimum jurisdiction limits of

1 this Court and will be established according to proof at trial.

2 **III. THE PARTIES**

3 9. Plaintiff, Thomas Gonzales, is a current employee of Defendant. He is a resident
4 of Anaheim, California and has worked for Defendant in Fullerton, California, in the County of
5 Orange, during the Class Period as a maintenance supervisor. He has worked for Defendant from
6 approximately July 29, 2003, to the present date. He will serve as an adequate, typical, and active
7 participant and class representative for the proposed Class.

8 10. Defendant U-Haul Co. of California, (“U-Haul”) is a corporation organized
9 under the laws of California, and qualified to conduct business in the State of California with its
10 principal California office located at 44511 Grimmer Boulevard, Fremont CA. U-Haul provides a
11 portfolio of services, including transportation and moving services across the nation.

12 11. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to
14 Plaintiff, who therefore sues these defendants by such fictitious names.

15 12. Plaintiff is informed and believes, and based thereon alleges, that each defendant
16 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
17 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
18 capacities of the defendants designated hereinafter as DOES when such identities become known.

19 13. Plaintiff is informed and believes, and based thereon alleges, that each defendant,
20 including the DOE defendants, acted in all respects pertinent to this action as the agent of the
21 other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
22 hereto. In doing the things alleged herein, each defendant was acting within the course and scope
23 of this agency and was acting with the consent, permission and authorization of each of the
24 remaining Defendants. All actions of each defendant alleged in the causes of action (into which
25 this paragraph is incorporated by reference) were ratified and approved by the officers or
26 managing agents of each of the other Defendants.
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1 14. Plaintiff is informed and believes that, at all times herein mentioned, Defendants,
2 including the fictitious DOE Defendants, were the representatives, agents and/or employees of
3 each of the remaining Defendants and in doing the things mentioned herein were acting with the
4 consent, permission, and authorization of each of the other Defendants. All actions of each
5 alleged in the causes of action (into which this paragraph is incorporated by reference) were
6 ratified and approved by the officers or managing agents of each of the other Defendants.

7 **ALTER EGO, AGENCY AND JOINT EMPLOYERS**

8 15. Plaintiff is informed and believes, and based thereon alleges, that there exists
9 such a unity of interest and ownership between Defendants that the individuality and
10 separateness of Defendants has never existed or has ceased to exist.

11 16. Plaintiff is informed and believes, and based thereon alleges, that despite the
12 formation of purported corporate existence, Defendants are in reality one and the same
13 including, but not limited to, because:

- 14 a. Defendant and DOES 1-25, are completely dominated and controlled by the
15 same company, which committed the violations of laws as set forth in this
16 complaint, and which have hidden and currently hide behind separate
17 company formations to perpetrate frauds, circumvent statutes, or
18 accomplish some other wrongful or inequitable purpose;
- 19 b. DOES 1–25, inclusive, have acted on behalf of the other Defendants, who
20 violate, or cause to be violated, the provisions regulating minimum wages
21 or hours and days of work in any order of the Industrial Welfare
22 Commission, or violates, or causes to be violated, the California Labor
23 Code;
- 24 c. DOES 1–25, inclusive, are owners, managers, officers, or managing agents
25 of the other Defendants, and the term “managing agent” has the same
26 meaning as in subdivision (b) of Section 3294 of the California Civil Code;
- 27 d. DOES 1–25, inclusive, derive actual and significant monetary benefits by
28 and through the other Defendants, and their unlawful conduct, and by using

the other Defendants as the funding source for their own personal expenditures;

- e. Plaintiff is informed and believes that Defendants, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose;
- f. Plaintiff is informed and believes that Defendants do not comply with all requisite corporate formalities to maintain a legal and separate corporate existence; and
- g. Plaintiff is informed and believes, and based thereon alleges, that the business affairs of Defendants are and at all times relevant were so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendants' purported separateness is and at all times relevant was used as a mere shell and conduit for the conduct of certain of Defendants' affairs and are and were the alter ego of one another. The recognition of the separate existence of Defendants would not promote justice in that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of the Labor Code and other statutory violations. The corporate existence of Defendants should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

17. Accordingly, each of Defendants is the alter ego of one another, and the fiction of their separate corporate existence must be disregarded.

18. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges, that Defendants and each of them, were Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff and the putative Class and PAGA Members were employees of Defendants. Plaintiff and the Class and PAGA Members performed services for each and every one of Defendants, and to the mutual

benefit of all Defendants, and all Defendants shared control of Plaintiff and the Class and PAGA Members as employees, either directly or indirectly, and the manner in which Defendant's business was and is conducted.

V. SUMMARY OF CLAIMS

19. Plaintiff brings this action on behalf of himself, and all similarly situated Class Members who were subject to the same or similar illegal policies and practices as set forth herein during the Class Period.

20. Plaintiffs allege that they and the Class/Subclass Members are individuals who currently work or formerly worked for Defendant throughout the State of California as nonexempt employees at any given time during the four years prior to the filing of this complaint (the "Class Period") who are/were entitled to an hourly wage for all hours worked, overtime compensation, labor code compliant rest and meal breaks, accurate wage statements, timely payment of wages when due, and reimbursement of work related expenses incurred in the discharge of their job duties, hereinafter referred to as "Class Members" and collectively as the "Class" or "Subclass Members." Plaintiffs and such Class/Subclass Members work/worked in non-exempt Maintenance Technicians.

21. Plaintiff and Class Members were not paid all wages owed for regular and overtime hours worked in violation of Labor Code Sections 204, 510 and 1194.

22. Plaintiff and the Class Members are/were not being properly paid all of the wages they were due twice monthly on the pay dates set by Defendant, for each and every pay period, during the Class Period, as none of their pay stubs ever reflected all the wages they earned, including time worked during their rest and meal breaks and overtime hours worked as a result.

23. In addition to the failure to accurately itemize such earnings, Defendant failed to include premium pay penalties, in an amount equal to one hour's wages at their

1 regular hourly rate of pay to which Plaintiff and the Class Members were entitled for each
2 rest and meal break violation during the Class Period.

3 24. Plaintiff and Class Members were prevented or impeded in their ability to
4 take lawful, timely and/or duty-free rest and meal breaks due to calls and text from the
5 supervisors.

6 25. Missed breaks, or on duty breaks also meant Plaintiff and the Class Members
7 were oftentimes still working- even if technically “off-the-clock.”

8 26. Off the clock hours worked during breaks or on Plaintiff and Class Members’
9 own personal time while at home were never tracked or recorded as hours worked and thus
10 overtime hours worked and overtime wages earned were never compensated as labor
11 performed during each pay period.

12 27. Plaintiff and Class Members routinely received correspondence from supervisors
13 and co-workers off the clock and were expected to respond even after scheduled work hours.

14 28. The time spent communicating off the clock was not tracked by Defendant, nor
15 were Plaintiff and the Class Members compensated for the hours worked.

16 29. Furthermore, Plaintiff and Class Members worked off the clock responding to
17 correspondence from supervisors and co-workers without proper overtime compensation.

18 30. Plaintiff and the Class Members even instructed management to not send work
19 related calls or texts after work hours, but management continued to contact Plaintiff and Class
20 Members off the clock.

21 31. Plaintiff and Class Members were working more than eight hours in a day and
22 more than forty hours in a week throughout the relevant statutory period in violation of Labor
23 Code § 510 (a) and Plaintiff and Class Members are entitled to recover unpaid overtime for all
24 hours worked.

25 32. Plaintiff and Class Members were not compensated for hours worked and any
26 overtime due to Defendant’s failure to track or record all hours worked in violation of Labor
27 Code § 1174(d).
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1 33. Defendant did not properly track or record hours worked, hours were not
2 recorded at the proper pay rate, and premium pay was not accurately recorded.

3 34. The failure to pay overtime compensation earned violated the Labor Code §
4 204 by failing to pay all wages earned no less than twice monthly.

5 35. Plaintiff and Class Members were unable to take duty-free rest and meal
6 breaks due to frequent calls and text messages from supervisors in violation of California
7 Labor Code Sections 512(a) and IWC No. 9 which provide that all employees who work in
8 excess of five hours must be provided at least a half-hour uninterrupted meal break in
9 which they are relieved of all duty.

10 36. Plaintiff alleges that any meal or rest breaks that were permitted are/were
11 never uninterrupted or duty free.

12 37. Defendant has not paid premium pay penalties for all non-compliant rest and
13 meal breaks in clear violation of Labor Code § 226.7 and the IWC No. 9, which set forth
14 California employers' affirmative obligation to provide timely, duty-free rest and meal
15 break periods.

16 38. Plaintiff and Class Members have not at any time signed any valid meal
17 break waivers.

18 39. Defendant has not and does not pay Plaintiff and the Class Members
19 premium pay equal to one hour of pay, at their regular hourly rate of pay for their missed
20 rest breaks in violation of IWC No. 9, Section 12.

21 40. As a result of the foregoing unlawful policies and practices, Plaintiff and
22 Class Members did not receive accurate wage statements showing, among other things, all
23 hours worked, all gross and net wages earned, and the correct hourly rate for each
24 applicable hour.

25 41. As a further and direct result of not receiving their proper pay for all hours
26 worked, including overtime pay and premium pay, a substantial portion of Class Members
27 who ceased their employment with Defendant during the Class Period were not fully and
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1 timely paid all wages due upon termination.

2 42. As a further and direct result of violations of the above Labor Code Sections
3 and Wage Order 9, Defendant has and continues to violate the UCL.

4 43. Plaintiff and the Class Members daily utilized their personal cellphones in
5 the discharge of their routine job duties.

6 44. Plaintiff and Class Members used their cell phones as the primary way for
7 them to communicate with supervisors regarding their work duties. They received multiple
8 phone calls, text messages, and emails per day regarding damage to U-Haul vehicles,
9 requests for assistance for electricity and plumbing issues, and instructions for work related
10 tasks.

11 45. Plaintiff and Class Members were also required to download the Workday
12 app on their personal cell phones for timekeeping purposes and were required to regularly
13 access the U-Haul website utilizing their personal cell phones in order to perform work
14 related job duties.

15 46. Defendant was aware that Plaintiff and the Class Members were daily using
16 their own personal cell phones to perform their job duties, but at no time has Defendant
17 ever provided them with any reimbursement for the expenses they incurred in utilizing their
18 own personal cell phones for work.

19 47. Representative Plaintiff Thomas Gonzales (“Representative Plaintiff”) also
20 brings this case as a representative action seeking recovery of civil penalties in his
21 representative capacity, as provided by the PAGA to the extent permitted by law, and as an
22 aggrieved employee who was subject to Defendant’s violations of the Labor Code. A true
23 and correct copy of Plaintiff’s written notice establishing compliance with Labor Code §
24 2699.3 is attached hereto as **Exhibit A** and demonstrates that Representative Plaintiff is an
25 aggrieved employee and has standing to bring a representative action on behalf of the State
26 of California and Labor and Workforce Development Agency (the “LWDA”) as a private
27 attorneys general. No notice of cure by Defendant has been provided and no notice of
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1 investigation was received from the LWDA within the statutorily proscribed 65-day period
2 since the notice was provided to Defendant and the LWDA. Accordingly, Plaintiff also
3 files this Complaint as a “Representative Action” on behalf of the “Aggrieved Employees”
4 as provided by the Code of Civil Procedure and as specifically permitted and authorized by
5 Labor Code § 2699.3(a)(2)(C).

6 48. Representative Plaintiff has complied with all requirements under Labor
7 Code § 2699.3 for commencing a civil action under the PAGA and seeks all recoverable
8 civil penalties for Labor Code violations as permitted and proscribed by the PAGA,
9 including remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among
10 others. Specifically, Representative Plaintiff, for himself and all current and former
11 Aggrieved Employees, seeks the penalties provided by Labor Code § 2699(f) for violations
12 of, *inter alia*, Labor Code §§ 201-203, 204, 210, 226(a), 226.7, 510, 512, 1174(d), 2802
13 and Industrial Welfare Commission Wage Order 9-2001.

14 **CLASS ACTION ALLEGATIONS**

15 49. Plaintiff brings this action on behalf of himself, and all others similarly
16 situated for violation of California’s wage and hour laws. Plaintiff seeks to represent and
17 certify a Class composed of and defined as follows:

18
19 **“All persons who are currently employed or were formerly**
20 **employed a nonexempt employee by Defendant, U-Haul Co.**
21 **of California within the four (4) years prior to the filing of**
22 **this Complaint within the State of California, and who**
23 **suffered any of the following actions or inactions: were not**
24 **paid all of their lawful wages for all hours worked including**
25 **time worked while off-the-clock, during each and every pay**
26 **period; who were not provided or were actively impeded**
27 **from taking timely, duty free, rest and meal breaks, and who**
28 **did not receive premium pay for such missed or non**
compliant rest and meal breaks, who worked and were not
compensated for overtime; who failed to receive accurately
itemized wage statements reflecting all hours worked and
proper corresponding rates of pay, as to such individuals

1 who separated from Defendant's employment during the
2 Class Period, did not timely receive all wages due upon their
3 discharge or termination of employment, and who failed to
4 receive reimbursement for business expense incurred in the
5 discharge of their job duties.

6 50. In the alternative, and for the convenience of the Court and the parties, Plaintiffs
7 may seek to certify the following Subclasses at the time the motion for class certification is
8 filed:

9 **UNPAID WAGE SUBCLASS:**

10 All members of the Class who Defendant failed to pay all wages earned as
11 defined by Cal. Lab. Code §200, including an hourly wage for each hour worked during
12 the Class Period as fixed by California statutes.

13 **UNTIMELY PAYMENT OF WAGES SUBCLASS**

14 All members of the Class who Defendant failed to timely pay all wages earned
15 when due, as defined by Labor Code §204 for all hours worked during the Class Period.

16 **OVERTIME SUBCLASS:**

17 All members of the Class who (a) worked in excess of 8 hours per day and/or
18 40 hours per week; and (2) who Defendant failed to pay wages at the requisite overtime
19 rates of pay for overtime hours worked during the Class Period.

20 **MEAL PERIOD SUBCLASS:**

21 All members of the Class that Defendant did not provide 30-minute,
22 uninterrupted and duty-free meal periods for shifts over 5 and 10 hours of work, and
23 who were not paid an additional hour of pay in lieu thereof during the Class Period.

24 **REST PERIOD SUBCLASS:**

25 All members of the Class that Defendant did not authorize or permit
26 uninterrupted and duty-free 10-minute paid rest periods for every four hours worked,
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1 or major fraction thereof, and who were not paid an additional hour of pay in lieu
2 thereof during the Class Period.

3 **WAGE STATEMENT SUBCLASS:**

4 All members of the Class that Defendant did not provide accurate, itemized
5 wage statements showing all hours actually worked, all wages earned, and the
6 applicable rates of pay for each hour worked during the Class Period.
7

8 **WAITING TIME SUBCLASS:**

9 All members of the Class who (a) from three years prior to the filing of this
10 complaint separated from Defendant's employment, and (2) who Defendant knowingly
11 and willfully failed to pay all wages due within 72 hours of the time such employees
12 voluntarily or involuntarily ended their employment with Defendant during the Class
13 Period.
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15 **REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS**

16 All members of the Class that Defendant did not reimburse expenses
17 necessarily incurred in the discharge of performing their work related duties during
18 the Class Period.

19 **UCL SUBCLASS:**

20 All members of the Class who, during the Class Period, are owed restitution of
21 unpaid wages resulting from Defendant's systematic violations of California's Labor
22 Code and Wage Order No. 9.
23

24 51. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
25 necessary to amend the definition of the Subclasses. In any event, Plaintiffs will formally
26 define and designate a class definition at such time when Plaintiffs seek to certify the Class or
27 Subclasses defined herein.
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COMMON CLASS ACTION ALLEGATIONS FOR THE PROPOSED CLASS AND SUBCLASSES

52. Numerosity: The potential quantity of members of the Class and Subclasses as defined are so numerous that joinder of all members would be unfeasible and impractical. Plaintiff is informed and believes that the total number of current and formerly employed members of the Class exceeds 1,000. The quantity and identity of such membership is readily ascertainable via inspection of Defendant's records.

53. Superiority: The nature of this action and the nature of the laws available to Plaintiff make the use of the class action format particularly efficient and appropriate procedure to afford relief to Plaintiff and the members of the Class and Subclasses for the wrongs alleged herein, for the following reasons:

- a) The State of California, for which there is a named representative, has a public policy which encourages the use of the class action device.
- b) By establishing a technique whereby, the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.
- c) This case involves large corporate Defendant and a large number of individual class members with many relatively small claims and common issues of law and fact.
- d) If each individual member of the Class was required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because Defendant would be able to exploit and

1 overwhelm the limited resources of each individual member of the Class with
2 Defendant's vastly superior financial and legal resources.

3 e) Requiring each individual member of the Class to pursue an individual remedy
4 would also discourage the assertion of lawful claims by the members of the
5 Class who would be disinclined to pursue action against Defendant because of
6 an appreciable and justifiable fear of retaliation and permanent damage to their
7 lives, careers and well-being.

8
9 f) Proof of a common policy and practice or factual pattern, of which the members
10 of the Class experienced, is representative of the Class herein and will establish
11 the right of each of the members of the Class to recover on the causes of action
12 alleged herein.

13 g) Absent class treatment, the prosecution of separate actions by the individual
14 members of the Class, even if possible, would likely create:

15
16 i) a substantial risk of each individual plaintiff presenting in separate,
17 duplicative proceedings the same or essentially similar arguments and
18 evidence, including expert testimony;

19 ii) a multiplicity of trials conducted at enormous expense to both the
20 judicial system and the litigants;

21 iii) inconsistent or varying verdicts or adjudications with respect to the
22 individual members of the Class against Defendant;

23 iv) potentially incompatible standards of conduct for Defendant; and

24 v) potentially incompatible legal determinations with respect to individual
25 members of the Class which would, as a practical matter, be dispositive
26 of the interests of the other members of the Class who are not parties to
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1 the adjudications or which would substantially impair or impede the
2 ability of the members of the Class to protect their interests.

- 3 h) The claims of the individual members of the Class are not sufficiently large to
4 warrant vigorous individual prosecution, considering all of the concomitant
5 costs and expenses attendant thereto.
- 6 i) Courts seeking to preserve efficiency and other benefits of class actions
7 routinely fashion methods to manage any individual questions.
- 8 j) Judicial precedent urges trial courts, which have an obligation to consider the
9 use of innovative procedural tools to certify a manageable class, to be
10 procedurally innovative in managing class actions.

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13 54. **Well Defined Community of Interest:** Plaintiff also meets the established
14 standards for class certification as follows:

- 15 a) **Typicality:** The claims of Plaintiff are typical of the claims of all members of
16 the Class and Subclasses they seek to represent because all members of the
17 Class sustained injuries and damages arising out of Defendant's common
18 course of conduct in violation of California law, and the injuries and damages
19 of all members of the Class were caused by Defendant's wrongful conduct in
20 violation of California law, as alleged herein.
- 21 b) **Adequacy:** Plaintiff is an adequate representative of the Class and/or
22 Subclasses he seeks to represent, will fairly protect the interests of the members
23 of the Class, has no interests antagonistic to the members of the Class, and will
24 vigorously pursue this suit via attorneys who are competent, skilled and
25 experienced in litigating matters of this type.
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27 c) **Predominant Common Questions of Law or Fact:** There are common
28 questions of law and/or fact as to the members of the Class which predominate

1 over questions affecting only individual members of the Class, including,
2 without limitation:

- 3 i) Whether Defendant unlawfully failed to pay Plaintiff and the members
4 of the Class all of the wages they earned and are owed in violation of
5 Labor Code §§ 200, 218, 218.5, and 1194;
- 6 ii) Whether Defendant unlawfully failed to pay Plaintiff and the members
7 of the Class overtime compensation in violation of Labor Code §§ 218,
8 510, 1194, and Wage Order 4;
- 9 iii) Whether Defendant failed and continues to fail to have a policy to
10 provide members of the Class timely, duty-free, uninterrupted meal
11 periods of at least 30-minutes for shifts over 5 and 10 hours of work;
- 12 iv) Whether Defendant failed and continues to fail to have a policy to
13 provide members of the Class timely, duty-free, uninterrupted rest
14 periods of at least 10-minutes for every four hours worked or major
15 fraction thereof;
- 16 v) Whether Defendant unlawfully failed to furnish accurate itemized
17 statements to members of the Class;
- 18 vi) Whether Defendant's policies and practices of failing to pay their
19 employees all wages due within the time required by California law after
20 their employment ended with Defendant violate Labor Code §§ 201-203;
- 21 vii) Whether Defendant's policies and practices of failing to reimburse
22 employees for expenses incurred in the discharge of work related duties
23 violated and continues to violate Labor Code Section 2802;
- 24 viii) Whether Defendant's conduct constitutes unfair competition, an unfair
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business practice and/or a deceptive business practice within the meaning of Business & Professions Code §§ 17200, *et seq.*;

- ix) Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- x) Whether the members of the Class are entitled to injunctive relief;
- xi) Whether the members of the Class are entitled to restitution; and
- xii) Whether Defendant is liable for attorneys' fees and costs to the extent permitted by California law.

- d) **Manageability of Class and Common Proof:** The nature of this action and the nature of laws available to Plaintiff make use of the class action format and procedure a particularly efficient and appropriate procedure to afford relief to Plaintiff and members of the Class for the wrongs alleged herein. Specifically, liability will turn on Defendant's own uniform, systematic practices of failing to pay their employees for all wages they earned in violation of California law during the Class Period. Therefore, the wage violations are predominant questions of fact that are easily capable of being determined through manageable devices of common proof, such as statistical random sampling, survey evidence based on scientific principles, representative testimony, documentary evidence and common practices/procedures of Defendant in treating each of the members of the Class as a homogeneous group. Once the predominant issues of wage compliance are determined, then each of the derivative subclass claims and damages suffered by each member of the Class will be capable of being shown by several means of common proof, and limited by individual showings of

entitlement to recovery that can be professionally administered and tailored to the facts and circumstances of the case.

55. Class certification of the First through the Eleventh causes of action is appropriate under *Cal. Code Civ. Proc.* § 382 because questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses of this litigation. Defendant's policies and practices unlawfully treated members of the Class and Subclasses in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

56. Class certification of the First through Eleventh causes of action is also appropriate pursuant to *Cal. Code Civ. Proc.* § 382 because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

57. Plaintiff intends to send notice to all members of the Class and Subclasses to the extent required by law and each will be given an opportunity to opt out of the proceedings

FIRST CAUSE OF ACTION

Failure to Pay All Wages When Due

In Violation of Lab. Cod. § 204

(As to Defendant and Does 1-25, Inclusive)

58. The Plaintiff on his own behalf, and on behalf of Class Members he seeks to represent, realleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

59. The California Labor Code requires employers to pay all wages due within the time specified by law. California Labor Code § 204 was in full force and effect at all

1 relevant times herein.

2 60. Pursuant to Labor Code § 204, for employees entitled to pay twice per
3 month, two periods of pay are required. Labor performed between the 1st and 15th of the
4 month must be paid between the 16th and 26th of the same month and labor performed on
5 the 16th and the end of the month must be paid on pay days between the 1st and 10th of the
6 following month.

7 61. Plaintiff and the Class Members were entitled to be paid twice monthly all
8 wages due for labor performed. Although Plaintiff and the class members are and/or were
9 paid twice monthly, Defendant failed and intentionally refused to pay Plaintiff and the
10 Class Members all wages to which they were entitled, twice monthly, including pay for
11 time worked off the clock and overtime pay during each and every pay period of their
12 employment throughout the Class Period.

13 62. As alleged, Plaintiff and the Class Members were not paid for all of their wages,
14 due, every single pay period during the term(s) of their employment.

15 63. Accordingly, as a result of the unlawful acts of Defendant, Plaintiff and the Class
16 Members have been deprived of wages in amounts to be determined at trial, and are entitled to
17 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit,
18 pursuant to Labor Code sections 218 and 1194.

19
20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REST BREAKS**

22 **In Violation of Labor Code Section 226.7, and IWC No. 9**

23 **(As to Defendant and Does 1-25, inclusive)**

24 64. Plaintiff individually, on his own behalf and on behalf of the Class Members
25 he seeks to represent, realleges and incorporates by reference all of the foregoing
26 paragraphs, as though fully set forth herein.

27 65. As alleged, Defendant through its policies and practices, do not and did not
28 permit or otherwise actively impeded the Plaintiff's and Class Members' ability to take rest

1 periods.

2 66. By Defendant's failure to provide rest periods for every four hours or major
3 fraction thereof worked per day and by failing to pay premium pay penalties for such
4 unprovided rest periods, as alleged above, Defendant willfully violated the provisions of
5 Labor Code Section 226.7 and IWC Wage Order 9, Section 12.

6 67. Plaintiff and Class Members did not voluntarily or willfully waive their rest
7 periods

8 68. By their failure to keep adequate records as required by sections 226 and
9 1174(d) of the Labor Code, Defendant has injured Plaintiff and Class Members by
10 depriving them of wages due and made it difficult for them to calculate the unpaid
11 premium pay penalties due to Plaintiff and Class Members.

12 69. As a result of the unlawful acts of Defendant, Plaintiff and Class Members
13 have been deprived of their lawfully entitled premium pay compensation in amounts to be
14 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
15 thereon, attorneys' fees, and costs, under Labor Code §§ 203, 226, 226.7, and 1194, and the
16 applicable IWC Wage Order No. 9, Section 12 (B).

17 70. WHEREFORE, Plaintiff on his own behalf and on behalf of the Class
18 Members he seeks to represent, requests relief as described herein and below.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL BREAKS**

21 **In Violation of Labor Code Section 226.7, 512, and IWC No. 9**

22 **(As to Defendant and Does 1- 25, Inclusive**

23 71. Plaintiff on his own behalf and on behalf of the Class Members he seeks to
24 represent, realleges and incorporates by reference all of the foregoing paragraphs, as
25 though fully set forth herein.

26 72. During the liability period, as alleged, Defendant through its policies and
27 practices, do not and did not permit or impeded the Plaintiff and Class Members' ability to
28

1 take rest periods.

2 73. California Labor Code Sections 226.7 and 512(a) and IWC No. 9 provide
3 that all employees who work in excess of five hours must be provided at least a half-hour
4 uninterrupted meal break in which they are relieved of all duty.

5 74. Plaintiff and the Class Members work(ed) shifts in excess of five hours and
6 are not or were not provided with a half-hour uninterrupted to which they were entitled.

7 75. As a result of Defendant's failure to provide Plaintiff and the Class Members
8 proper meal breaks, they are liable to Plaintiff and the Class Members for unpaid premium
9 pay penalties equal to one hour of pay at their respective regular rates of compensation for
10 each missed meal period that was not provided, pursuant to California Labor Code section
11 226.7 and IWC No. 9 Section

12 76. Defendant has not paid such premiums to Plaintiff and Class Members.

13 77. Plaintiff and the Class Members did not validly waive their meal breaks.

14 78. As a result of Defendant's conduct, Plaintiff and the Class Members he seeks to
15 represent are entitled to damages to compensate them for the unpaid premiums, as well as
16 injunctive relief requiring Defendant to comply with the California Labor Code and Wage Order
17 No. 9 with respect to meal and rest periods.

18 79. As a of Defendant's conduct, Plaintiff and the Class Members are also entitled
19 to attorneys' fees under Labor Code sections 218.5 and 1194, in addition to interest, expenses
20 and costs of suit.

21 80. WHEREFORE, Plaintiff and the Class Members request judgement as is further
22 set forth herein below.

23
24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME EARNED FOR HOURS WORKED**

26 **In Violation of California Labor Code § 510, 1194, 1198 and IWC No. 9**

27 **(As to Defendant and Does 1-25, Inclusive)**

28 81. Plaintiff individually, on his own behalf and on behalf of the Class Members

1 he seeks to represent, re-alleges and incorporates by reference all of the foregoing
2 paragraphs, as though fully set forth herein.

3 82. California Labor Code § 510 provides that work in excess of eight hours in a
4 day, or 40 hours in a week, must be compensated at a rate of not less than one and one-half
5 times the regular rate of pay for an employee; and for the first eight hours worked on the
6 seventh consecutive day of work in a workweek; and double the employee's regular rate of
7 pay for all hours worked in excess of 12 hours in any workday and double the employee's
8 regular rate of pay for all hours worked in excess of eight on the seventh consecutive day
9 of work in a workweek.

10 83. Pursuant to Labor Code Section 1194, "... any employee receiving less than
11 the legal minimum wage or the legal overtime compensation applicable to the employee is
12 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
13 wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
14 costs of suit.

15 84. In addition, IWC No. 9 and Cal. Code Reg., Title 8, Section 11100 also
16 provide that work in excess of eight hours in a day, or 40 hours in a week, must be
17 compensated at not less than one and one-half times the regular rate of pay for an
18 employee.

19 85. Labor Code Section 1198 makes unlawful the employment of any employee
20 under conditions of labor prohibited by the applicable Wage Order.

21 86. Plaintiff and the Class Members work, or have worked, more than eight
22 hours in a day and were not paid at the overtime rate for all hours worked.

23 87. Pursuant to Labor Code sections 218 and 1194, Plaintiff and Class Members
24 are entitled to recover in a civil action the unpaid balance of the full amount of overtime
25 compensation for all hours worked in excess of eight hours a day.

26 88. Wage Order No 9 provides for civil penalties for violations of the Wage
27 Order. Consequently, as result of Defendant's violation of IWC No. 9 Section 20, Plaintiff
28

1 and the Class Members are entitled to and hereby seek civil penalties in accordance with
2 Labor Code Section 1199 in the amount of \$50 for each underpaid employee for each pay
3 period in which the employee was underpaid for the first violation and \$100 for each
4 unpaid employee for each pay period during which the employee was underpaid for each
5 subsequent violation In addition to an amount which is sufficient to recover unpaid wages
6 owed.

7 89. Further, Labor Code Section 558 provides that any employer who violates
8 any provision regulating hours and days of work in any order of the IWC shall be subject to
9 civil penalties.

10 90. As a result of Defendant's violation of IWC No. 9, Plaintiff and Class
11 Members are entitled to and hereby seek civil penalties in the amount of \$50 for the first
12 violation and \$100 for each subsequent violation.

13 91. Labor Code Section 218.6 provides for interest on all unpaid wages in any
14 action brought for nonpayment of wages.

15 92. Plaintiff and Class Members seek to recover interest on all unpaid wages due.

16 93. Plaintiff and Class Members also seek liquidated damages pursuant to Labor
17 Code section 1194.2.

18 94. Plaintiff and Class Members seek to recover all unpaid overtime wages,
19 penalties and interest and interest due to them.

20 95. As a result of Defendant's conduct, Plaintiff and the Class Members are also
21 entitled to attorneys' fees under Labor Code section 218.5 and 1194, in addition to interest
22 expenses and costs of suit.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO MAINTAIN ACCURATE RECORDS**

25 **In Violation of Labor Code Section 1174(d)**

26 **(As to Defendant and Does 1-25, Inclusive)**

27 96. Plaintiff individually, on his own behalf and on behalf of the Class Members
28

1 he seeks to represent, re-alleges and incorporates by reference all of the foregoing
2 paragraphs, as though fully set forth herein.

3 97. *California Lab. Cod.* § 1174 (d), which was in force and effect at all relevant
4 times herein, provides in pertinent part, that “Every person employing labor in this state
5 shall keep... “at a central location in the state or at the plants or establishments at which
6 employees are employed, payroll records showing the hours worked daily by and the wages
7 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
8 employees employed at the respective plants or establishments. These records shall be kept
9 in accordance with rules established for this purpose by the commission, but in any case,
10 shall be kept on file for not less than three years. An employer shall not prohibit an
11 employee from maintaining a personal record of hours worked, or, if paid on a piece-rate
12 basis, piece-rate units earned.”

13 98. Defendant failed to maintain records of all hours that the Plaintiff and Class
14 Members worked, including the time they were working through rest and meal breaks and
15 for the time they worked shifts in excess of eight hours or more than forty hours in a week.

16 99. As a result of its failure to maintain accurate records, premium wages due
17 was also never recorded for the missed rest and meal break periods.

18 100. *Lab. Cod.* § 1174.5 provides that an employer who fails to maintain the
19 records pursuant to 1174 (d) shall be subject to a civil penalty of five hundred (\$500)
20 dollars.

21 101. Wherefore, the Plaintiff on his own behalf and on behalf of the Class
22 Members he seeks to represent, requests relief as described herein and below.

23 **SIXTH CAUSE OF ACTION**

24 **Failure to Furnish Accurately Itemized Wage Statements**

25 **In Violation of Labor Code Section 226 (a)**

26 **(As to Defendant and Does 1-25, Inclusive)**

27 102. Plaintiff individually, on his own behalf and on behalf of the Class Members
28

1 he seeks to represent, re-alleges and incorporates by reference all of the foregoing
2 paragraphs, as though fully set forth herein.

3 103. As alleged supra, during a substantial portion of the Class Period, Defendant
4 failed to maintain accurate records, including records of time worked while off the clock
5 and through rest and meal break periods, resulting in failure pay them overtime wages they
6 were owed when they worked shifts in excess of eight hours or in excess of forty hours per
7 week. Because such overtime hours and wages earned were never recorded, they also
8 never appeared on the Plaintiff's and Class Members' Wage Statements.

9 104. Furthermore, because missed rest break periods are/were never recorded,
10 lawfully due premium pay for missed and non-compliant rest and meal breaks has also
11 never been included on the Plaintiff's and Class Members' wage statements.

12 105. As a result, Defendant knowingly and intentionally failed to provide
13 accurate, fully itemized wage statements to the Plaintiff and Class Members in accordance
14 with *Lab. Cod.* § 226(a).

15 106. *Lab. Cod.* § 226(a) states, in pertinent part, that “[e]very employer shall,
16 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
17 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
18 separately when wages are paid by personal check or cash, an accurate itemized statement
19 in writing showing (1) gross wages earned, (2) total hours worked by the employee ..., (5)
20 net wages earned, (6) the inclusive dates of the period for which the employee is paid ...,
21 and (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee ...”

23 107. *Lab. Cod.* § 226 (e)(1) states that “[a]n employee suffering injury as a result
24 of a knowing and intentional failure by an employer to comply with subdivision (a) is
25 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
26 period in which a violation occurs and one hundred dollars (\$100) per employee for each
27 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
28

1 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

2 108. *Lab. Cod.* § 226(e)(2)(B) states “[a]n employee is deemed to suffer injury for
3 purposes of this subdivision if the employer fails to provide accurate and complete
4 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
5 and the employee cannot promptly and easily determine from the wage statement alone one
6 or more of the following: (i) The amount of the gross wages or net wages paid to the
7 employee during the pay period or any of the other information required to be provided on
8 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
9 subdivision (a); and (ii) Which deductions the employer made from gross wages to
10 determine the net wages paid to the employee during the pay period.”

11 109. *Lab. Cod.* § 226(e)(2)(C) defines “promptly and easily determine” to mean
12 “a reasonable person would be able to readily ascertain the information without reference
13 to other documents or information.”

14 110. During the Class Period, Defendant has knowingly and willingly failed to
15 comply with *Lab. Cod.* § 226. As a matter of common policy and practice, Defendant did
16 not include overtime hours worked nor overtime pay, nor, as alleged did wage statements
17 include premium pay equal to one hour of pay at Plaintiff and the Class Members’ regular
18 hourly rate for missed and non-compliant rest and meal break periods. Wage statements
19 distributed to Plaintiff and Class Members were not accurate and did not contain all wages
20 earned, during each and every pay period of their employment. Defendant’s knowing, and
21 intentional omissions caused the Plaintiff and Class Members to suffer “injury” by, among
22 other things, impeding them from knowing the number of wages to which they are/were
23 lawfully entitled.

24 111. Thus, Plaintiff and Class Members seek (i) injunctive relief pursuant to *Lab.*
25 *Code* § 226 (h), requiring Defendant to comply with Labor Code §§ 226(a) (ii) the amounts
26 provided under Labor Code §§ 226(e), including the greater of all actual damages or \$50
27 for the initial pay period in which a violation occurs and \$100 per employee for each
28

violation in a subsequent pay period, (iii) the amounts provided under Labor Code §§ 226.3, including \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required, and (iv) attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES EARNED TWICE MONTHLY

In Violation of Labor Code § 200, 204 and 210

(As to Defendant and Does 1-25, Inclusive)

112. Subdivision (a) of Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Subdivision (b) of Section 200 defines "labor" as all work or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

113. Labor Code § 204 requires employers to pay employees all wages earned no less than twice monthly.

114. As a result of Defendant's failure to pay Plaintiff and the Class Members all overtime compensation they earned, Defendant violated Labor Code section 204 by failing to pay them all wages earned no less than twice monthly.

115. Labor Code § 210 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

116. As a result of Defendant's willful and intentional violations of Labor Code §

204, Defendant is liable to Plaintiff and the Class Members for the penalties described above.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

In Violation of Labor Code § 201(a), 202 and 203

(As to Defendant and Does 1-25, inclusive)

117. Plaintiff individually, on his own behalf and on behalf of the Class Members he seeks to represent, re-alleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

118. Labor Code Section 201(a) requires an employer who discharges an employee to pay all compensation due and owing to the employee immediately upon the employee's discharge from employment.

119. Labor Code Section 202 requires an employer to pay within 72 hours all compensation due and owing to an employee who quits his or her employment.

120. Labor Code Section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

121. As alleged supra, Defendant failed to lawfully compensate Plaintiff and the Class Members as required by law. Therefore, Defendant has willfully failed to make timely payment of the full wages due to Plaintiff and such Class Member employees who have resigned or been discharged during the Class Period.

122. As a result of Defendant's unlawful conduct as alleged herein, Plaintiff and the Class Members have sustained economic damages, including, but not limited to, unpaid wages and lost interest in an amount to be determined at trial.

123. Further, Plaintiff and Class Members are entitled to and will seek to recover

1 waiting time penalties pursuant to the provisions of Lab. Cod. Section 203, according to proof,
2 up to a maximum of thirty (30) calendar days.

3
4 **NINTH CAUSE OF ACTION**

5 **FAILURE TO INDEMNIFY/REIMBURSE EXPENSES**

6 **In Violation of California Labor Code § 2802**

7 **(As to Defendant and Does 1-25, Inclusive)**

8 124. Plaintiff, on his own behalf, and on behalf of the Class Members he seeks to
9 represent, realleges and incorporates by reference all of the foregoing paragraphs, as
10 though fully set forth herein.

11 125. California Labor Code Section 2802 provides that an employer shall indemnify
12 his or her employees for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties.

14 126. Defendant required as a condition of employment that Plaintiff and Class
15 Members incur certain expenses, including, but not limited to use of their personal cell
16 phones in the discharge of their daily job duties delivery duties. As alleged, Plaintiff and
17 the Class Members were not only required to download the Workplace app onto their
18 personal cell phones but daily utilized their personal cell phones for work related duties
19 and for work related communications with co-workers and supervisors. Defendant does not
20 and has not reimbursed Plaintiff or Class Members for the expenses they incurred in the use
21 of their personal cell phones in the performance and discharge of their work-related duties
22 during the Class Period.

23 127. As a result of Defendant's failure to reimburse Plaintiff and the Class Members
24 for the expenses they incurred in the performance and discharge of their work-related duties,
25 Plaintiff and the Class Members have sustained economic damages in an amount to be proven
26 at trial.

27 128. As a result of Defendant's conduct, Plaintiff and the Class Members he seeks
28 to represent are also entitled to recovery their attorneys' fees under Labor Code Section

1 2802(c), in addition to interest, expenses and costs of suit.

2 129. As a result of Defendant's conduct Plaintiff and the Class Members suffered
3 injuries and are also entitled to attorneys' fees, in addition to interest, expenses and costs of
4 suit, under Labor Code sections 218.5 and 1194.

5 130. Wherefore, Plaintiff and the Class Members request judgment as is further
6 set forth herein below.

7 **TENTH CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES**

9 **In Violation of Cal. Bus. & Prof. Code §§ 17200 et seq.**

10 **(As to Defendant and Does 1-25, Inclusive)**

11 131. Plaintiff on his own behalf, and on behalf of the Class Members he seeks to
12 represent, realleges and incorporates by reference all of the foregoing paragraphs, as
13 though fully set forth herein.

14 132. California Business and Professions Code Section 17200, et seq. prohibits
15 unfair competition in the form of any unlawful, unfair, or fraudulent business act or
16 practice.

17 133. California Business and Professions Code Section 17202 provides:
18 "Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be
19 granted to enforce a penalty, forfeiture, or penal law in case of unfair competition."

20 134. California Business and Professions Code Section 17203 also provides that
21 any person who meets the standing requirements of Section 17204 and complies with
22 California Code of Civil Procedure Section 382 may pursue representative claims for relief
23 on behalf of others.

24 135. California Business and Professions Code Section 17204 allows any "person
25 who has suffered injury in fact and has lost money or property as a result of such unfair
26 competition" to prosecute a civil action for violation of the Unfair Business Practices Act.

27 136. Pursuant to Section 17204, Plaintiff and other similarly situated employees
28

1 are entitled to enforce all applicable provisions of the Labor Code. Beginning at an exact
2 date unknown to Plaintiff, but at least since the date four years prior to the filing of this suit,
3 Defendant has committed acts of unfair competition as defined by the Unfair Business
4 Practices Act, by engaging in the unlawful, unfair business practices and acts described in
5 the Complaint, including, but not limited to violations of Labor Code Sections §§ 201-203,
6 204, 226(a), 226.7, 510, 512, 1174 (d), 2802, and IWC Order No. 9-2001.

7 137. The violations of these laws and regulations, as well as of fundamental
8 California public policies protecting workers, serve as unlawful predicate acts and practices
9 for purposes of Business and Professions Code Section 17200 et seq.

10 138. The acts and practices described above constitute unfair, unlawful and
11 fraudulent business practices, and unfair competition, within the meaning of Business and
12 Professions Code Section 17200, et seq. Among other things, Defendant's acts and
13 practices have forced Plaintiff and other similarly situated workers to labor without
14 receiving appropriate compensation.

15 139. The acts and practices described above have allowed Defendant to gain an
16 unfair competitive advantage over law-abiding employers and competitors.

17 140. As a result of the acts and practices described herein, Plaintiff and the Class
18 Members have been denied compensation in an amount to be proven at trial.

19 141. Plaintiff and the Class Members are therefore, entitled to restitution
20 pursuant to Business and Professions Code Section 17203 and 17208 for all wages and
21 other compensation unlawfully withheld from them during the four-year period prior to the
22 filing of the Complaint.

23 142. As a result of the aforementioned acts and practices, Defendant has
24 received and continues to receive ill-gotten gains belonging to Plaintiff and the Class
25 Members.

26 143. Injunctive relief is necessary and appropriate to prevent Defendant from
27 repeating their unlawful, unfair and fraudulent business acts and practices described herein
28

1 and therefore Plaintiff will ask the Court to issue a preliminary and permanent injunction
2 prohibiting Defendant from continuing such unlawful acts, including failure to maintain
3 accurate records of all hours worked, to provide labor code compliant rest and meal break
4 periods, to provide accurate wage statements, to pay wages as specified by law, and to pay
5 all wages due upon cessation or termination of employment.

6 144. Pursuant to Section 17203 and/or any other applicable law, Plaintiff seeks an
7 order preventing Defendant from engaging in unlawful, unfair and fraudulent conduct and
8 preventing Defendant from profiting and benefiting from illegal and wrongful acts.

9 145. Plaintiff's success in this action will enforce important rights affecting the
10 public interest. Therefore, Plaintiff sues on behalf of themselves and all other similarly
11 situated Class Members.

12 146. An award of attorneys' fees is appropriate pursuant to California Civil Code
13 Section 1021.5 because 1) this action will confer a significant benefit upon a large class of
14 persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would
15 be against the interest of justice to force Plaintiff to pay attorneys' fees from any amount
16 recovered in this action.

17 **ELEVENTH CAUSE OF ACTION**
18 **Violation of the Private Attorneys General Act of 2004**
19 **Cal. Lab. Cod. § 2698, et seq.**
20 **(As to Defendant and Does 1-25, Inclusive)**

21 147. Plaintiff Thomas Gonzales (the "Representative Plaintiff"), realleges and
22 incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

23 148. Representative Plaintiff, by his employment with Defendant and
24 Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee with
25 standing to bring an action under the PAGA. Representative Plaintiff by virtue of **Exhibit**
26 **A** attached hereto, has satisfied all prerequisites to serve as a representative of the general
27 public to enforce California's labor laws including, without limitation, the penalty
28 provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the

1 statutory 65-day time period within which to decide to investigate Plaintiff's claims and
2 because Defendant took no corrective action to remedy the allegations set forth above,
3 Representative Plaintiff, in his representative capacity, will and does hereby seek any and
4 all civil penalties otherwise capable of being collected by the LWDA. This includes
5 violation of any of the following provisions of the California Labor Code, as is set forth in
6 Labor Code § 2699.5, which states:

7 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged
8 violation of the following provisions: subdivision (k) of Section 96, Sections
9 98.6, 201,201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b,
10 204.1, 204.2, 205,205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of
11 Section 213, Sections 221,222, 222.5, 223, and 224, subdivision (a) of
12 Section 226, Sections 226.7, 227,227.3, 230, 230.1, 230.2, 230.3, 230.4,
13 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of
14 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of
15 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,512, 513, 551,
16 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922,
17 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and
18 1153,subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1,
19 1197.5, and1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5,
20 1290, 1292, 1293,1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,
21 1308, 1308.1, 1308.7, 1309,1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and
22 1695, subdivision (a) of Section1695.5, Sections 1695.55, 1695.6, 1695.7,
23 1695.8, 1695.9, 1696, 1696.5, 1696.6,1697.1, 1700.25, 1700.26, 1700.31,
24 1700.32, 1700.40, and 1700.47, paragraphs (1),(2), and (3) of subdivision (a)
25 of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5,
26 Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,
27 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
28 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and
Sections 3073.6, 6310, 6311, and 6399.7.”

149. Representative Plaintiff is informed and believes that Defendant has violated
and continues to violate the provisions of the Labor Code as alleged herein and the
applicable Wage Order of the Industrial Wage Commission.

150. Pursuant to Labor Code section 2699, any provision of the Labor Code that
already provides a civil penalty to be assessed and collected by the Labor and Workforce
Development Agency, or any of its departments, divisions, commissions, boards, agencies
or employees for violation of the code or does not provide a civil penalty may be recovered

1 through a civil action brought by an aggrieved employee on behalf of himself or herself,
2 and other current or former employees pursuant to the procedures set forth in Labor Code,
3 Section 2699.3.

4 151. Specifically, the Representative Plaintiff seeks on behalf of himself similarly
5 situated individuals who are/were employed by Defendant at any time between November
6 2, 2020, and the present date (the “PAGA Period”) (the “Aggrieved Employees”), civil
7 penalties provided by Cal. Lab. Cod. § 2699(f) for violations of, *inter alia*, Labor Code §§
8 201-203, 204, 226(a), 226.7, 510, 512, 1174, 2802 and IWC No. 9.

9 152. Representative Plaintiff is informed and believes that Defendant has violated
10 and continues to violate provisions of the California Labor Code. Despite mailing of
11 **Exhibit A**, at least 65-days prior to the filing of the Complaint the LWDA has not notified
12 the Representative Plaintiff that it intends to investigate the alleged Labor Code violations
13 alleged in Exhibit A, such that, by operation of law Representative Plaintiff is entitled to
14 pursue this cause of action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

15 153. Representative Plaintiff, as the personal representative of each of the
16 Aggrieved Employees, will and does seek to recover any and all penalties for each and
17 every violation shown to exist or to have occurred during the PAGA liability period, in an
18 amount according to proof, as to those penalties that are otherwise only available to public
19 agencies. Said penalties recovered will be distributed in accordance with the PAGA, with
20 at least 75% of said PAGA penalty recovery being reimbursed to the State of California
21 and the LWDA.

22 154. Further, pursuant to Labor Code, section 2699(g)(1) Representative Plaintiff,
23 will also seek to recover his attorney’s fees and costs.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff as the PAGA Representative Plaintiff, on his own behalf,
26 and on behalf of the similarly situated Class Members and the putative Aggrieved
27 Employees, prays for relief as follows:
28

Upon the Class Claims:

1. For an order, pursuant to California Code of Civil Procedure Section 382, certifying the causes of action as a class action, on behalf of the Plaintiff and Class Members who performed work in the State of California at any time within the Class Period and that notice of the pendency of the class action be provided to members of the Class.

2. For an order appointing Plaintiff as Class Representative and Plaintiff's attorney as Class Counsel.

3. For a declaratory judgment that Defendant's practices complained of herein, violated California Labor Laws and public policy, as alleged herein.

4. For appropriate equitable relief to remedy Defendant's violations of California law, including, but not necessarily limited to, an order enjoining Defendant from continuing its unlawful practices;

5. For an award of unpaid regular and overtime wages for all labor performed and liquidated damages in an amount equal to the amounts unlawfully unpaid according to proof, pursuant to Labor Code §§ 200, 510, 1194 and 1194.2;

6. For a declaratory judgment that Defendant has violated IWC No. 9, Section 12 (A) by failing to provide compliant rest periods;

7. For a declaratory judgment that Defendant has violated IWC. No. 9, Section 12(B) by failing to pay compliant premium pay for missed rest periods;

8. For a declaratory judgment that Defendant has violated IWC No. 9, Section 11 by failing to provide compliant meal break periods;

9. For a declaratory judgment that Defendant has violated IWC No. 9, Section 11 (D) by failing to pay compliant premium pay for non-compliant meal break periods;

10. For an award of compensation at the rate of one hour of regular pay for each instance in which Plaintiff and a member of the Class was not provided a meal break period;

1 11. Compensation at the rate of one hour of regular pay for each instance in
2 which a member of the Class worked through a rest break or was not provided a proper
3 rest break for every four hours worked or major fraction thereof;

4 12. For an award of all appropriate California statutory penalties, including but
5 not limited to penalties pursuant to Cal. Lab. Cod. §§ 203, 226(a), 226(e), 226.3, 558,
6 1174.5 and 1199, according to proof at time of trial;

7 13. For a declaratory judgment that Defendant has violated California Business
8 and Professions Code sections 17200 et seq. as a result of the aforementioned violations of
9 the Labor Code and of California public policy protecting workers by ensuring that
10 workers are paid for all hours worked.

11 14. For an order that Defendant make restitution to Plaintiff and the Class
12 Members due to its unlawful business practices pursuant to Business & Professions Code
13 §§ 17203 and 17204;

14 15. For a permanent and mandatory injunction prohibiting Defendant, its
15 officers, agents, employees, affiliated companies and all those working in concert with
16 them from committing future violations of the laws and public policies described herein.

17 16. For an award of restitution.

18 17. Pre-judgment and post-judgment interest, as provided by California law;

19 18. For award of reasonable attorneys' fees as provided by California Labor
20 Code sections 218.5, 218.6, 226 (g), 558, 1021.5, 2802(c), and 2698 *et. seq.*

21 19. An award and administrative priority claim against the Defendant in favor of
22 the Plaintiff and the Class Members equal to the sum of their unpaid wages and unpaid
23 expenses, pursuant to California Labor Code Sections 201, 202 and 203.

24 20. For all costs of suit, and

25 21. For such other and further equitable relief as this Court may deem just and
26 proper.

27 Upon the PAGA Cause of Action:
28

22. For civil penalties as set forth in Labor Code §2699(f)(2) for Defendant's violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174, 2802 and applicable Wage Order No. 9.

23. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699(g) and any other applicable statute; and

24. For such other and further relief the Court may deem just and proper.

JURY DEMAND

Plaintiff and the Class Members demand trial by jury of all claims and causes of action so triable.

DATED: November 3, 2021 SWEMPLOYMENT LAW GROUP, APC

By: 
 Jacob Whitehead, Esq.
 Meghan Higday, Esq.
 Attorneys for Plaintiff, Thomas Gonzales
 and on behalf of all others similarly-situated

EXHIBIT A



June 22, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via USPS First Class Mail

Kamalveer Barn, CEO
U-Haul Co. of California
44511 Grimmer Boulevard
Fremont, California 94538

Via Certified Mail

CT Corporation System, Registered Agent
U-Haul Co. of California
330 N. Brand Boulevard
Glendale, California 91203

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that Thomas Gonzales has retained Whitehead Employment Law to represent him and other similarly situated current and former employees (the "Aggrieved Employees") against U-Haul Co. of California, a California corporation, and Does 1 through 20 (hereinafter "U-Haul") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

U-Haul currently or formerly employed Mr. Gonzales and other Aggrieved Employees, who work or have worked as non-exempt, hourly employees including, but not limited to, facility maintenance supervisors, facility maintenance helpers or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify U-Haul of the Aggrieved Employees' intent to file a PAGA complaint against U-Haul and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to, claims for U-Haul's failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to furnish accurately itemized wage statements; failure to timely pay all wages twice monthly; failure to timely pay all wages due to the Aggrieved Employees who ceased employment with U-Haul during the statutory period upon their separation or termination of employment; and failure to reimburse work-related expenses.

Based upon these violations, as further detailed below, U-Haul violated numerous provisions of the California Labor Code including, but not limited to, violations of Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1174 (d), 2802, and Industrial Welfare Commission Wage Order No. 9-2001 (IWC No. 9).

Mr. Gonzales was hired by U-Haul on approximately July 29, 2003, and is currently employed as a full time, hourly compensated, non-exempt facility maintenance supervisor who is responsible for maintaining U-Haul operated facilities in Orange County by responding to requests for repairs and supervising a crew of maintenance helpers.

During the relevant statutory period, the Aggrieved Employees were required to use their personal cell phones to communicate with supervisors and co-workers regarding work-related tasks without reimbursement from U-Haul. The Aggrieved Employees use/used their cell phones daily as the primary way for them to communicate with supervisors regarding their work duties. The Aggrieved Employees received multiple phone calls, text messages, and emails per day regarding damage to U-Haul vehicles, requests for assistance for electricity and plumbing issues, and instructions for work related tasks. The Aggrieved Employees were also required to download Workday on their personal cell phones for timekeeping and were required to regularly access the U-Haul website. Management was aware that Mr. Gonzales and the Aggrieved Employees daily used their cell phones in the discharge of their work-related duties, but U-Haul never provided them with a cell phone reimbursement. U-Haul's failure to reimburse the Aggrieved Employees for the utilization of their personal cell phone for work related purposes is in violation of California Labor Code § 2802.

In addition, the Aggrieved Employees were not compensated for the time that they spent communicating with supervisors and co-workers regarding work related tasks after work hours. Management was aware that the Aggrieved Employees were not on duty and continued to communicate with them regarding work related tasks and instructions for their next shift. In addition, the Aggrieved Employees were called and texted while on their meal and rest breaks regarding work related tasks. Mr. Gonzales even instructed management that he did not want to receive work related calls and text messages while off the clock, but he continues to receive them. The time the Aggrieved Employees spent communicating with supervisors and co-workers while off the clock regarding work related tasks were/are not recorded and compensated by U-Haul. As such, U-Haul has violated Labor Code §§ 204, 226.7, 1174 (d), 510, 512 and 226.

Due to the foregoing-described actions, U-Haul unlawfully failed to pay all wages due upon termination to certain Aggrieved Employees who ceased their employment relationship with U-Haul during the statutory period.

Mr. Gonzales is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. Mr. Gonzales intends to bring an action against U-Haul under the PAGA to recover penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Mr. Gonzales, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5,

Rest/Meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 9, section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, the Aggrieved Employees were often unable to take duty-free rest and meal breaks due to frequent calls and text messages from supervisors. U-Haul has not paid premium pay penalties for all non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 9 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to § 512 of the Labor Code and section 12 (B) of IWC No. 9, the Aggrieved Employees are owed premium pay penalties for each missed or noncompliant rest and meal break for which they were not paid during the statutory period.

Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

As stated above, it was common for the Aggrieved Employees to receive correspondence from co-workers and supervisors on their personal cell phones while off the clock. When such correspondence was received, the Aggrieved Employees were expected to respond, even while off the clock. The Aggrieved Employees were called and texted regarding work related questions and instructions for their next shift. Communication on their personal cell phones was a primary form of communication for U-Haul employees. The time the Aggrieved Employees spent communicating with staff after work hours is/was not tracked by U-Haul. Labor Code § 204 has been violated and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”*

As indicated above, the Aggrieved Employees often worked off the clock responding to correspondence from supervisors and co-workers without proper overtime compensation. When the Aggrieved Employees were texted or called while off the clock, management still expected them to respond.

As the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period, Labor Code § 510 (a) has been violated and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney’s fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

As indicated above, the Aggrieved Employees were often required to work while off the clock when responding to frequent text messages, emails and phone calls from supervisors and co-workers. U-Haul also did not pay for all overtime worked by the Aggrieved Employees. The

time the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the U-Haul in violation of Labor Code § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of U-Haul's unlawful business and compensation practices under the Labor Code and IWC No. 9, the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires employers to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, the Aggrieved Employees often work/worked while off the clock due to U-Haul communicating when them after their scheduled work hours. Hours worked off the clock are/were not recorded, were not recorded at the proper pay rate, and premium pay was not accurately recorded.

In failing to account and compensate with accuracy, all of the hours worked by the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, U-Haul violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hours worked at each applicable hourly rate.

Failure to Timely Pay All Wages Earned Twice Monthly

At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Subdivision (b) of Section 200 defines "labor" as all work or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of § 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of U-Haul's failure to pay the Aggrieved Employees all overtime compensation they earned, U-Haul likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice monthly.

At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

As a result of U-Haul's willful and intentional violations of Labor Code § 204, U-Haul is liable to the Aggrieved Employees for the penalties described above.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when certain of the Aggrieved Employees' employment relationships with U-Haul terminated, U-Haul failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, U-Haul has failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, U-Haul has failed to pay the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, *"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."*

As described above, the Aggrieved Employees were required to daily utilize their personal cell phones to communicate with supervisors and co-workers during and after work hours without being reimbursed by U-Haul. The Aggrieved Employees were contacted for work related purposes on their personal cell phones through text messaging, phone calls and emails. Management corresponded with the Aggrieved Employees on their personal cell phones to communicate work related tasks, ask questions regarding work performed, and provide instructions for their upcoming shifts. U-Haul violated Labor Code § 2802 and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorneys' fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, U-Haul violated among other statutes and regulations §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1174 (d), 2802, and Industrial Welfare Commission Wage Order No. 9-2001 (IWC No. 9). Mr. Gonzales on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code § 2699.

Mr. Gonzales requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Mr. Gonzales requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/eem