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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JORGE ANTONIO HORNA ALCANTARA,
on behalf of himself and others similarly
situated as a Private Attorney General
Representative,

Plaintiff,

vs.

LUGG, INC., a Delaware corporation and
DOES 1-20, inclusive,

Defendants.

CASE NO.: **22CV407317**

[REPRESENTATIVE AND CLASS ACTION]

**COMPLAINT FOR CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS GENERAL ACT
OF 2004, CALIFORNIA LABOR CODE § 2698 et
seq. ("PAGA")**

1. Violation of California Labor Code §§ 510, 1194 (Failure to Pay Overtime)
2. Violation of California Labor Code §§ 1194, 1194.2, 1197, 1197.1 (Failure to Pay Minimum Wages)
3. Violation of California Labor Code § 226.7 (Meal & Rest Breaks)
4. Violation of California Labor Code § 226 (Inaccurate Wage Statements)
5. Violation of California Labor Code § 203 (Waiting Time)
6. Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses)
7. Violation of Local and Municipal Ordinances
8. California Business and Professions Code § 19225 et seq.
9. California Business and Professions Code § 17200 et seq.

[JURY TRIAL DEMANDED]

1 **INTRODUCTION**

2 1. This case is brought by Jorge Antonio Horna Alcantara (“Plaintiff”), individually and on
3 behalf of the state of California and other similarly situated aggrieved individuals who have worked for
4 Defendant Lugg, Inc. (“Defendant”) as Movers in California. Defendant is engaged in the business of
5 providing an on-demand moving and delivery service including, but not limited to, house moving,
6 storage moves, donation pick-ups, junk removal, and furniture delivery. Defendant is based in San
7 Francisco, California. Defendants DOE 1-20 are agents, affiliates, or other persons acting in concert
8 with Defendant Lugg Inc.

9 2. As described below, this is an action for Defendants’ willful failure to pay overtime wages
10 to Plaintiff and all similarly situated aggrieved workers (collectively “Workers” or “Movers”) in violation
11 of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), Cal. Bus. &
12 Prof. Code § 17500, the California Labor Code, as penalized under the Private Attorneys General Act of
13 2004, California Labor Code § 2698 *et seq.* (“PAGA”).

14 3. Defendants willfully failed to pay Workers the required overtime wages for all hours
15 worked in violation of Cal. Lab. Code §§ 510, 1194, 1198, and 1199 and has not paid appropriate overtime
16 premiums for hours worked in excess of eight hours per day or forty hours per week, in violation of Cal.
17 Lab. Code §§ 1194, 1198, 510, and 554.

18 4. Plaintiff brings these claims pursuant to PAGA on behalf of the state of California and all
19 other similarly situated aggrieved workers who have been Defendants’ employees as Movers in California
20 during the applicable time period. Plaintiff brings this action to recover civil penalties, fees and costs,
21 and any other remedies to which he may be entitled under PAGA, Cal. Lab. Code § 2699 *et seq.*

22 **PARTIES**

23 5. Plaintiff Jorge Antonio Horna Alcantara is an adult resident of San Jose, California,
24 where he has worked as a Mover for Defendant in Santa Clara County, California.

25 6. Similarly situated aggrieved workers are current and former Movers that work or worked
26 for Defendants (“Class Members”).

27 7. Plaintiff along with other current and former Movers all worked for Defendant in the
28 State of California.

8. Defendant Lugg, Inc. is a corporation organized in Delaware and headquartered in San Francisco, California.

9. Plaintiff started working for Defendants in November 2019. Plaintiff stopped working for the Defendants in September 2021.

10. Other than the manner in which Defendants are presently identified, Defendants by the name of DOE 1 through 20, are legally responsible for the wrongful conduct alleged herein. Plaintiff is unaware of these Defendants' true names, capacities, relationships, and extent of participation in the conduct alleged herein, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint when their true names and capacities are ascertained.

11. Plaintiff alleges that each Defendant, directly or indirectly, or through agents, affiliates, or other persons, employed Plaintiff and other similarly situated aggrieved workers, and exercised control over their wages, hours, and working conditions. Each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, to willfully operate and participate in a joint scheme, producing a business model allowing for the unlawful conduct alleged; thus, the acts of each Defendant are legally attributable to the other Defendants.

12. At all times relevant, the policies and practices that are complained of in this Complaint have occurred throughout the class period and are currently applied by Defendants throughout California.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Plaintiff's claims for civil penalties under the Private Attorneys General Act ("PAGA"), Cal. Lab. Code § 2699 *et seq.*

14. This Court has personal jurisdiction over Defendants because at all relevant times, Defendants have conducted business in the State of California, have committed the alleged acts and omissions within the State of California, and have a principal place of business in San Francisco, California.

15. Venue is proper under California Code of Civil Procedure § 395 and under California Government Code § 12965(b), in that Plaintiff resides within the County of Santa Clara.

1 **STATEMENT OF FACTS**

2 16. Defendant Lugg, Inc. is an online platform that connects customers with vehicles and
3 Movers for moving and delivery services in several metropolitan areas across the United States.

4 17. Plaintiff was hired by Defendants as a Mover reporting to Defendants' clients' homes
5 all over the Bay Area.

6 18. During the entire period of Plaintiff's employment with Defendants, Plaintiff was a
7 dedicated and exemplary employee, and performed Plaintiff's duties as a Mover for Defendants in a
8 diligent and thorough manner.

9 19. While employed by Defendants, Plaintiff and Class Members were regularly required to
10 work shifts in excess of eight (8) hours a day and forty (40) hours a week.

11 20. While employed by Defendants, Plaintiff was encouraged to take more than one eight-
12 hour shift per day. Plaintiff would use the Defendants' smartphone app to seek and accept available
13 jobs. Plaintiff and Class Members noticed that Defendants would give priority to those accepting more
14 shifts per day. The Class Members observed that those who only accepted one job per day would have
15 less jobs appear on their app, compared to others who accepted more than one job per day. Defendants
16 would threaten to terminate employment if Plaintiff wanted to take only one shift per day, even though
17 after an eight-hour day, his body could not handle any more manual labor.

18 21. Defendants have consistently failed to pay for overtime hours after eight (8) hours of
19 work in a workday, in violation of California law.

20 22. Plaintiff and Class Members would regularly sit in their cars and wait for hours until a
21 new job became available. Sometimes these waiting periods would take up half of their workday. Along
22 with waiting, some jobs were an hour away. Plaintiff and Class Members would not get paid for any of
23 the waiting or driving to or from a moving job.

24 23. Moreover, Defendants provided wage statements that listed the incorrect earnings as a
25 result of their failure to pay overtime after eight (8) hours of work in a workday. Therefore, the total
26 gross and net earnings, as well as regular time and overtime hours listed on the employee's pay stubs
27 are incorrect as they do not pay overtime after eight (8) hours in a workday even though Movers were
28 regularly scheduled and encouraged to work longer shifts.

1 24. Plaintiff and Class Members were required to have a valid mobile smartphone data plan
2 to work for Defendant and were also required to have automobiles with certain specifications along
3 with various tools to help complete the jobs. Plaintiff had to carry a large variety of tools, because they
4 did not know what each job entailed. Not following these rules would be a violation in the Defendants’
5 view. Defendants did not reimburse the Plaintiff and Class Members of any business expenses
6 associated with the job requirements, including, but not limited to, automobile payments/leases, fuel,
7 and tools and equipment.

8 25. Plaintiff and Class Members seek compensation for all sustained damages, including
9 loss of earnings for all hours of overtime worked; all penalties pursuant to Cal. Lab. Code § 510,
10 liquidated damages, or other damages permitted by law; restitution or disgorgement of all benefits
11 obtained by Defendants from their unlawful business practices; injunctive and declaratory relief; all
12 forms of equitable relief permitted by law; prejudgment interest and reasonable attorneys’ fees and
13 costs.

14 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

15 26. Plaintiff reasserts the allegations in the paragraphs above as though fully set forth at
16 length herein.

17 27. Prior to filing this complaint, Plaintiff complied with notice requirements pursuant to
18 California Labor Code § 2699.3. A copy of the letter sent to the Labor & Workforce Development
19 Agency (“LWDA”) is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants had
20 notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five (65) or
21 more days have passed and the LWDA has not indicated intent to investigate claims. Therefore, Plaintiff
22 may proceed with this action in a representative capacity. Plaintiff also sent a copy of this PAGA
23 Representative Action Complaint to the LWDA, providing timely notice to the LWDA for the substance
24 and violations set forth in this Complaint.

25 28. Plaintiff and Class Members are aggrieved employees as defined in California Labor
26 Code § 2699(a). Plaintiff brings this cause of action on behalf of all current and former non-exempt
27 employees of Defendants in the State of California.

28 29. On October 26, 2021, Plaintiff gave written notice of Defendants’ violations of the

1 California Labor Code as alleged in this Complaint in Intervention to the Labor and Workforce
2 Development Agency (“LWDA”) via online filing (LWDA-CM-850024-21) and to Defendants via
3 certified mail. LDWA has not provided notice indicating an intent to investigate the alleged violations
4 and it is Plaintiff’s position that, barring extraordinary circumstances, the lack of notice by the LWDA
5 can be interpreted as a decision not to investigate the alleged violations.

6 30. Plaintiff and similarly situated aggrieved workers allege the following:

7 **Penalties Pursuant to Labor Code Private Attorneys General Act of 2004**

8 **Violations of Cal. Lab. Code § 2698 *et seq.***

9 31. Plaintiff re-alleges and incorporates all previous paragraphs herein.

10 32. Plaintiff is an “aggrieved employee” as defined by California Labor Code § 2699(c) as
11 he was employed by Defendants during the applicable statutory period and suffered injury as a result of
12 Defendants’ various violations of the California Labor Code. Accordingly, Plaintiff seeks to recover, on
13 behalf of the State of California as well as himself and all other current and former aggrieved employees
14 of Defendants who have worked in California, the civil penalties provided by PAGA, plus reasonable
15 attorney’s fees and costs.

16 33. Plaintiff and all similarly situated aggrieved workers are entitled to penalties under
17 PAGA for Defendants’ following violations:

18 **CLASS ACTION ALLEGATIONS**

19 34. Plaintiff brings this action on behalf of himself, and all others similarly situated as a class
20 action pursuant to Section 382 of the California Code of Civil Procedure.

21 35. Plaintiff seeks to represent Classes composed of and defined as follows:

22 **Failure to Pay Overtime Class.** All persons who are employed or have
23 been employed by Defendants in California in a non-exempt position who
are or were not paid overtime for all work after 8 hours in a workday.

24 **Failure to Provide Adequate Meal and Rest Breaks Class.** All persons
25 who are or were employed by Defendants in California in a non-exempt
26 position who did not receive adequate meal breaks for work in excess of
five hours and did not receive rest breaks after working in excess of four
hours.

27 **Waiting Time Penalties Class.** All persons who are employed or were
28 employed by Defendants in California in a non-exempt position who did
not receive all wages owed to them at the time of their termination.

Itemized Wage Statement Class. All persons who are employed or have been employed by Defendants in California in a non-exempt position who did not receive an itemized wage statement that listed the correct straight and overtime hours that the employee worked in the pay period or the correct gross and net wages earned.

36. This action has been brought and may be properly maintained as a class action under the provisions of Section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

A. Numerosity

37. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of class members for the Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant period employed, hundreds of employees in the State of California, in non-exempt positions who are or have been affected by Defendants' unlawful and uniform policies of: (1) failing to pay for all overtime worked after 8 hours in a workday or over 40 hours in a week; (2) failing to provide adequate meal breaks for work in excess of 5 hours and rest breaks for work in excess of 4 hours; (3) failing to pay all wages owed at termination; and (4) failure to provide accurate itemized wage statements.

38. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all members of the Classes. Joinder of all members of the proposed Classes is not practicable.

B. Commonality

39. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants violated California Labor Code §§ 510, 1194, 1198 and 1199 by failing to pay proper overtime wages to the putative Class Members;
- b. Whether Defendants violated California Labor Code § 226.7 in failing to provide adequate meal and rest breaks to the putative Class Members;

1 c. Whether Defendants violated California Labor Code § 226 for failure to furnish
2 its employees with a complete and accurate itemized wage statement; and

3 d. Whether Defendants violated California Labor Code § 203 by failing to pay
4 overtime wages due and owing at the time of termination of employment for the
5 putative Class Members.

6 **C. Typicality**

7 40. The claims of the Plaintiff are typical of the claims of the Class. Plaintiff and all members
8 of the Class sustained injuries and damages arising out of and caused by Defendants' common course
9 of conduct in violation of the law as alleged therein.

10 **D. Adequacy of Representation**

11 41. Plaintiff will fairly and adequately represent and protect the interests of the members of
12 the Class. Counsel who represents the Plaintiff are competent and experienced class action litigators.

13 **E. Superiority of Class Action**

14 42. A class action is superior to other available means for the fair and efficient adjudication
15 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
16 fact common to the Class predominate over any questions affecting only individual members of the
17 Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants'
18 illegal policy and practice of failing to properly compensate Class Members as alleged above.

19 43. Class action treatment will allow those similarly situated persons to litigate their claims
20 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
21 unaware of any difficulties that are likely to be encountered in the management of this action that would
22 preclude its maintenance as a class action.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Pay Overtime**

25 **Violation of Cal. Lab. Code §§ 510, 1194**

26 44. Plaintiff re-alleges and incorporates all previous paragraphs herein.

27 45. During the relevant employment period, Defendants were required to pay all non-exempt
28 employees overtime compensation for all hours worked over eight (8) hours per day, for more than 40

1 hours worked per week, or for hours worked on the seventh consecutive workday. *See, e.g.*, California
2 Labor Code §§ 510, 1194, and 1197, as well as §§ 200, *et seq.*, 1174, and 1174.5. Defendants failed to
3 do so.

4 46. Plaintiff and the Class Members are non-exempt employees.

5 47. Even when working longer than eight (8) hours in a day, forty (40) hours a week, or on
6 the seventh (7th) consecutive workday, Defendants failed to pay overtime wages.

7 48. Defendants' conduct described herein violates IWC Wage Order No. 4-2001 of the
8 California Industrial Welfare Commission and the California Labor Code §§ 510, 1194, and 1197, as
9 well as §§ 200, *et seq.*, 1174, and 1174.5.

10 49. As a result of Defendants' conduct, Plaintiff and the Class have suffered damages and
11 were deprived of overtime wages. Plaintiff and the Class seek these wages, attorneys' fees and costs,
12 and interest under Cal. Lab. Code § 1194.

13 **SECOND CAUSE OF ACTION**

14 **Failure to Pay Minimum Wages**

15 **Violation of Cal. Lab. Code §§ 1194, 1194.2, 1197, 1197.1**

16 50. Plaintiff re-alleges and incorporates all previous paragraphs herein.

17 51. Defendants did not pay Plaintiff and the Class the California minimum wage for all
18 hours worked. During the relevant employment period, Defendants required Plaintiff and the Class to
19 work at rates that fell below the mandated minimum wage. *See, e.g.*, IWC Minimum Wage Order No.
20 M-2014; Labor Code §§ 1182.12, 1194, 1197.

21 52. Plaintiff and the Class were not exempt from the state's Minimum Wage Orders as
22 employees. Defendants were aware of their obligation to pay minimum wages but failed to do so.

23 53. When one accounts for uncompensated time checking for and waiting for moving
24 assignments, for uncompensated time waiting for a job, for time spent driving back after completing a
25 job, and expenses improperly imposed on Movers, the amount of money Defendants provided Movers
26 fell below minimum wage requirements.

27 54. Plaintiff and the Class seek these wages, liquidated damages, penalties, attorneys' fees
28 and costs, and interest under Cal. Lab. Code §§ 1194, 1194.2, 1197, 1197.1.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Adequate Meal Breaks and Rest Breaks**

3 **Violation of Cal. Lab. Code §§ 512, 226.7**

4 55. Plaintiff re-allege and incorporate all previous paragraphs herein.

5 56. During the relevant employment period, Plaintiff and the Class regularly worked in
6 excess of five (5) hours per day without being afforded a meal period of not less than thirty (30) minutes
7 as required by Labor Code § 226.7.

8 57. California Labor Code § 512 provides that an employer may not employ an employee for
9 a work period of more than five (5) hours per day without providing the employee with a meal period
10 of not less than thirty (30) minutes.

11 58. Further, California Labor Code § 226.7 (b)-(c) provides:

12
13 (b) An employer shall not require an employee to work during a meal or rest or recovery
14 period mandated pursuant to an applicable statute, or applicable regulation, standard, or
order of the Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health.

15 (c) If an employer fails to provide an employee a meal or rest or recovery period in
16 accordance with a state law, including, but not limited to, an applicable statute or
17 applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational Safety
18 and Health, the employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal or rest or
recovery period is not provided.

19 59. Despite working more than five hours a day, Movers were not provided with meal and
20 rest breaks as required.

21 60. Defendants would not allow Plaintiff and the Class to take a lunch break until their
22 current jobs were finished, even if it exceeded five hours.

23 61. As a result of Defendants' conduct in not providing for adequate meal periods, Plaintiff
24 and the Class are entitled to one additional hour of pay at their regular rate as a penalty under California
25 Labor Code § 226.7 for each day in which the proper meal period was not provided. In addition, Plaintiff
26 and the Class are entitled to interest, penalties, attorneys' fees and costs pursuant to California Labor
27 Code §§ 218.5 and 218.6.
28

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Itemized Wage Statements**

3 **Violation of Cal. Lab. Code § 226**

4 62. Plaintiff re-alleges and incorporates all previous paragraphs herein.

5 63. California Labor Code § 226 provides:

6
7 “Every employer shall, semimonthly or at the time of each payment of wages, furnish
8 each of his or her employees, either as a detachable part of the check, draft, or voucher
9 paying the employee’s wages, or separately when wages are paid by personal check or
10 cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours
11 worked by the employee, except for any employee whose compensation is solely based
12 on a salary and who is exempt from payment of overtime under subdivision (a) of Section
13 515 or any applicable order of the Industrial Welfare Commission, (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
15 rate basis, (4) all deductions, provided, that all deductions made on written orders of the
16 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
17 inclusive dates of the period for which the employee is paid, (7) the name of the employee
18 and his or her social security number, (8) the name and address of the legal entity that is
19 the employer, and (9) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.”

21 64. In this case, Defendants have failed to provide such wage statements to Plaintiff and the
22 Class in that their wage statements do not include, without limitation, their accurate gross wages earned,
23 all overtime hours worked, net wages earned, itemized compensation for rest periods, all applicable
24 hourly rates in effect during the pay period, or the corresponding number of hours worked at each hourly
25 rate by the employee.

26 65. Defendants have intentionally failed to put the information required by section 226(a) on
27 the paycheck stubs. Defendants violated section 226(a) and Wage Order 4 by failing to maintain accurate
28 records and by failing to furnish each employee with accurate itemized wage statements either
semimonthly or for each pay period that reflected all time spent waiting for shifts to become available,
time spent undergoing waiting periods, times spent driving back after completion of a job, and expenses
improperly imposed on Movers. Defendants’ refusal to properly record these times and expenses, to
include it in its itemized wage statements, or to properly pay its employees for this time, was willful and
intentional. As a result of these violations, Plaintiff and members of the Class suffered injury because
they were not paid for all hours worked.

66. Labor Code § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among other things, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation of one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

FIFTH CAUSE OF ACTION

Failure to Pay Waiting Time Penalties

Violation of Cal. Lab. Code § 203

67. Plaintiff re-alleges and incorporates all previous paragraphs herein.

68. California Labor Code § 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge.

69. California Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon separation from employment, as required by either section 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) workdays.

70. Defendants willfully failed and refused to timely pay overtime compensation to putative Class Members whose employment terminated. Therefore, Defendants are liable to these putative Class Members for waiting time penalties, together with costs, under California Labor Code § 203.

71. As a result of Defendants' unlawful conduct, Plaintiff and putative Class Members have suffered damages, as they were not paid all wages due. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records.

SIXTH CAUSE OF ACTION

Failure to Pay Reimbursed Business Expenses

Violation of Cal. Lab. Code §§ 2800 and 2802

72. Plaintiff re-alleges and incorporates all previous paragraphs herein.

73. Cal. Lab. Code § 2802 provides that “[a]n 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”

74. During the relevant employment period, Plaintiff and the Class were required to maintain smart phones with data plans to work for Defendants and pay for all expenses related to the business use of their phones and related business expenses during the discharge of their duties for Defendants. However, Defendants failed to reimburse Plaintiff and the Class for these expenditures. Plaintiff and the Class were also required to provide their own vehicles to transport passengers and were solely responsible to pay for tolls while driving, to maintain the vehicle's upkeep, pay for fuel, and insurance.

75. On several occasions Plaintiff would receive a job through the mobile app for a job that would require over an hour drive. Upon arrival, the customer would cancel the job, and Plaintiff would have wasted fuel to drive along with their time and the ability to not accept other jobs.

76. Defendants willfully failed and refused to timely reimburse Plaintiff and putative Class Members for necessary expenses related to the employment. Therefore, Defendants are liable to the Plaintiff and putative Class Members for failure to reimburse business expenses, under California Labor Code §§ 2800 and 2802.

SEVENTH CAUSE OF ACTION

Violation of Local and Municipal Ordinances

77. Plaintiff re-alleges and incorporates all previous paragraphs herein.

78. The foregoing conduct violates of the following local ordinances because Plaintiff and the Class were not paid the applicable minimum wage and/or provided healthcare benefits: (a) Berkely Municipal Code Chs. 13.99 & 13.100; (b) Cupertino Municipal Code Ch. 6.95; (c) El Cerrito Municipal Code Ch. 6.95; (d) Emeryville Municipal Code Ch. 37; (e) Los Altos Municipal Code Ch. 3.50; (f) Los Angeles Municipal Code Ch. XVIII; (g) Los Angeles County Code Chs. 8.100, 8.101; (h) Mountain View City Code Ch. 42; (i) Oakland Municipal Code Ch. 5.92; (j) Palo Alto Municipal Code Ch. 4.62; (k) Pasadena Code of Ordinances Ch. 5.02; (l) Richmond Municipal Code Ch. 7.108; (m) San Diego Municipal Code Ch. 3, Art. 9; (n) San Francisco Administrative Code Chs. 12R, 12W; (o) San Jose Municipal Code Ch.4.100; (p) San Leandro Municipal Code Ch. 4-35; (q) San Mateo Municipal Code Ch. 5.92; (r) Santa Clara City Code Ch. 3.20; (s) Santa Monica Municipal Code Ch. 4.62; and (t) Sunnyvale Municipal Code Ch. 3.80.

79. Plaintiff and the Class are entitled to all available remedies for these claims including

1 damages, liquidated damages (including where cumulative under local ordinances), punitive damages,
2 civil and statutory penalties (including where cumulative under local ordinances), prejudgment interest,
3 injunctive relief, and attorneys' fees and costs.

4 **EIGHTH CAUSE OF ACTION**

5 **Violation of the Household Movers Act**

6 **Bus. & Prof. Code § 19225 *et seq.***

7 80. Plaintiff re-alleges and incorporates all previous paragraphs herein.

8 81. Cal. Bus. & Prof. Code § 19237 provides, "...there is in force a permit issued by the
9 bureau authorizing those operations," in order to "engage, or attempt to engage, in the business of the
10 transportation of used household goods and personal effects by motor vehicle over any public highway
11 in this state, including by any means or media, advertising, soliciting, offering, arranging as a broker,
12 or entering into an agreement regarding the transportation of used household goods and personal
13 effects."

14 82. Through information and belief, Defendants did not have the necessary and required
15 permits and solicited and offered the transportation of household goods and personal effects throughout
16 several cities in this state, over several public highways. They advertised online and announced entry
17 into new cities through various platforms, including, but not limited to, Instagram, LinkedIn, and Yelp.

18 83. Defendants did not and still do not have the required permits to operate within the state
19 of California and keep violating this code section with every job they accept and are thus liable to
20 Plaintiff and Class Members under the Business and Professions Code § 19237.

21 **NINTH CAUSE OF ACTION**

22 **Violation of the Unfair Competition Law**

23 **Bus. & Prof. Code § 17200 *et seq.***

24 84. Plaintiff re-alleges and incorporates all previous paragraphs herein.

25 85. Cal. Bus. & Prof. Code § 17204 prohibits unfair competition, defined as "any unlawful,
26 unfair or fraudulent business act or practice." Plaintiff and the Class seek compensation for the loss of
27 their property and for the personal financial impacts they have suffered as a result of Defendants' unfair
28 business practices. Defendants' conduct, as described above, has been and continues to be deleterious

1 to Plaintiff and the Class. Plaintiff and the Class seek to enforce important rights affecting the public
2 interest within the meaning of California Code of Civil Procedure § 1021.5.

3 86. The conduct of Defendants, as described above, constituted unlawful, unfair,
4 unconscionable, fraudulent business acts or practices, or a combination of such statutory violations,
5 which injured Plaintiff and the Class and caused them loss of money. Defendants' misconduct, as alleged
6 herein, gave Defendants an unfair competitive advantage over their competitors, who did not engage in
7 such practices such as failing to pay wages due, ignoring compensable waiting periods, failing to pay
8 business expenses, and failing to provide sufficient wage statements. The misconduct, as alleged herein
9 also violated established law and public policies that seek to regulate the employer-employee
10 relationship in California. Failing to pay couriers the minimum wage and adhere to standard labor
11 practices is against the goals and policies of the State of California.

12 87. Defendants have engaged and continue to engage in unfair and unlawful business
13 practices alleged in the preceding counts in California by practicing, employing, and utilizing the
14 employment practices outlined above, inclusive, to wit, by: (a) failing to pay to Plaintiff and the Class
15 minimum wage as required by California law; (b) failing to compensate Plaintiff and the Class for time
16 spent waiting for their passengers and returning to and spending time at pick up sites; (c) failing to
17 furnish accurate wage statements pursuant to Labor Code § 226; and (d) failing to maintain accurate
18 timesheet and payroll records pursuant to 29 C.F.R. § 516.1.

19 88. The acts complained of herein, and each of them, constitute unfair, unlawful,
20 unconscionable, fraudulent business practices, or a combination of such statutory violations, in violation
21 of Cal. Bus. & Prof. Code § 17200 *et seq.* Defendants' acts and practices described herein offend
22 established public policies, including those set forth in applicable wage and hour laws, and involve
23 business practices that are immoral, unethical, oppressive, or unscrupulous.

24 89. The unfair business practices set forth above have and continue to injure Plaintiff, the
25 Class, and the general public and cause injury and the loss of money, as described above. These
26 violations have unjustly enriched Defendants at the expense of Plaintiff, the Class, and the general
27 public. Defendants' actions deprived Plaintiff and their Class and the general public of their expenses
28 and full pay; consequently, Plaintiff, the Class, and the general public have lost money and property, are

1 entitled to restitution in the amount of the wages and expenses that Defendants withheld. As a result,
2 Plaintiff and the Class are entitled to restitution and an injunction.

3 90. Plaintiff and the Class seek full restitution of monies, as necessary and according to
4 proof, to restore any and all monies withheld, acquired, or converted by the Defendants by means of the
5 unfair practices complained of herein within the last four years preceding the filing of the complaint in
6 this action.

7 91. Plaintiff is informed and believes, and, on that basis, alleges that at all times mentioned
8 Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by
9 California Business and Professions Code §§ 17200 *et seq.*, including those set forth above, thereby
10 depriving Plaintiff of the minimum working condition standards and conditions due to them under the
11 California laws and Industrial Welfare Commission wage orders as specifically described
12 therein. Violations of the California Labor Code are unlawful acts which are independently actionable
13 under the UCL. *See Farmers Ins. Exchange v. Superior Court*, 2 Cal. 4th 377, 383, 826 P.2d 730 (Cal.
14 1992).

15 **APPLICABLE CIVIL PENALTIES**

16 92. Plaintiff seeks an award for the for the failure to reimburse Workers for all necessary
17 expenses incurred in performing their duties for Defendants, including but not limited to vehicle rental
18 and vehicle fuel, in violation of California Labor Code § 2802.

19 93. Plaintiff seeks an award for the failure to ensure that all Workers received the appropriate
20 overtime premium pay for all overtime hours worked in excess of 40 per week or eight per day in
21 violation of California Labor Code §§ 510, 554, 1194, and 1198.

22 94. California Labor Code § 2699(f) provides for civil penalties for Labor Code violations
23 for which no civil penalty is specifically provided. There is no specified civil penalty for violations of
24 California Labor Code § 2802.

25 95. Plaintiff seeks an award for the failure of overtime pay violations under California Labor
26 Code §§ 510 and 558 a statutory civil penalty in addition to any other penalty provided by law of fifty
27 dollars (\$50) for initial violations (per employee per pay period in which that employee is underpaid) in
28 addition to an amount sufficient to recover the balance of unpaid wages. The statute orders an additional

1 penalty of one hundred dollars (\$100) for subsequent violations for each underpaid employee for each
2 pay period in which the employee was underpaid, in addition to an amount sufficient to recover the
3 balance of unpaid wages.

4 96. Plaintiff seeks an award for violations of California Labor Code § 226.8. California Labor
5 Code § 226.8(b) imposes a civil penalty of a minimum of \$5,000 and not more than \$15,000 per
6 violation.

7 97. Plaintiff seeks an award for violations of California Labor Code §§ 201-204. California
8 Labor Code § 210 imposes a civil penalty in addition to any other penalty provided by law of one
9 hundred dollars (\$100) per aggrieved employee for the first violation and two hundred dollars (\$200)
10 per aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld for
11 subsequent violations.

12 98. Plaintiff seeks an award for violations of California Labor Code § 1174(d). California
13 Labor Code § 117.5 imposes a civil penalty of \$500 per aggrieved employee for each willful failure to
14 maintain proper records.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests the following relief:

- 17 1. An award of civil penalties under PAGA;
- 18 2. An award for unpaid wages, pursuant to the California Labor Code as set forth above;
- 19 3. A declaratory judgment that the policies and practices complained of herein are unlawful
20 under the laws of California;
- 21 4. An award of appropriate equitable and injunctive relief to remedy Defendants' violations of
22 the laws of California, including but not limited to an order enjoining Defendants from
23 continuing their unlawful policies and practices;
- 24 5. An award of damages, liquidated damages, statutory penalties, and restitution to be paid by
25 Defendants according to proof pursuant to the California Labor Code, including the Private
26 Attorney General Act ("PAGA"), Labor Code § 2698, *et seq.*, as set forth above;
- 27 6. An award of damages to be paid by Defendants according to proof pursuant to California
28 Business and Professions Code § 19225 *et seq.*;

- 1 7. An award of general damages according to proof;
2 8. An award of reasonable attorneys' fees and costs incurred by Plaintiff and the Class in this
3 action pursuant to state law;
4 9. An award of pre- and post-judgement interest to Plaintiff and the Class in this action pursuant
5 to state law; and
6 10. Such further relief as this Court deems equitable, just, and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff seeks a trial by jury for all appropriate issues on each and every claim for relief in this
9 Complaint.

10
11 ZIMMERMAN REED LLP

12
13 Dated: November 23, 2022

By:



Caleb Marker (SBN 269721)
Hrag Alexanian (SBN 333430)
6420 Wilshire Blvd., Suite 1080
Los Angeles, CA 90048
(877) 500-8780 telephone
(877) 500-8781 facsimile

Attorneys for Plaintiff and aggrieved employees

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[Exhibit A] – LWDA Notice Letter

October 26, 2021

Via Electronic Submission

REPLY TO LOS ANGELES

Labor and Workforce Development Agency
320 W. Fourth Street, Suite 450
Los Angeles, CA 90013

Via Certified Mail with Return Receipt Requested

Lugg, Inc.
2261 MARKET ST
SUITE 4050
SAN FRANCISCO, CA 94114

**RE: *Notice of Violations of the California Labor Code Pursuant to the
Private Attorneys General Act, Labor Code § 2698 et seq***

To Whom It May Concern:

Please be advised that Zimmerman Reed LLP represents Jorge Horna ("Employee"), an employee of Lugg, Inc. ("Company"). Employee intends to file claims for violations of Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* against Company.

Employee's claims include numerous violations of the California Labor Code, including those under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* PAGA authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations. Please consider this communication as notice of the claims detailed below pursuant to PAGA. PAGA requires that new claim notices, responses, and certain court documents be filed with the Labor and Workforce Development Agency (LWDA) prior to filing suit.

Claim Background

Employee worked for Lugg, Inc. as a from to present. During that time, Employee worked more 8 hours in a 24-hour period and was not paid overtime wages in violation of California Labor Code § 1194(a) and §2699(a). In the event, Employee is subject to an Alternative Workweek Schedule authorized under California Labor Code § 511, Employee and the other employees did not vote to implement such a schedule and were required to work different hours other than those outlined under the Alternative Workweek Schedule. As a result, Employee seeks to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code.

Notice of Labor Code Violations

Employee seeks the maximum civil penalties available under the following sections of the Labor Code:

§ 1194

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

§204

- (a) All wages, other than those mentioned in Section 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

§210

- (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
 - (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.
 - (3) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

§ 221

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

§ 225.5

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

- **§ 226**

- (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

- **§ 226.2**

- This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.
- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
- (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:
 - (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.
 - (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.
- (3)(A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

Non-Spoilation Notice

Please be advised that Company is under a legal duty to maintain, preserve, retain, protect, and not destroy any and all documents and data, both electronic and hard copy, which may be relevant to Employee's claims as set forth herein. The failure to preserve and retain the electronic data and evidence outlined in this notice may constitute spoliation of evidence which may subject you to legal claims for damages and/or evidentiary and monetary sanctions. For purposes of this notice, electronic data or electronic evidence shall include, but not be limited to, all text files (including word-processing documents), presentation files (such as PowerPoint), financial data, spreadsheets, e-mail files and information concerning e-mail files (including logs of e-mail history and usage, header information, and deleted files), internet history files and preferences, graphical files in any format, databases, calendar and scheduling information, task lists, voice mail, instant messaging and other electronic communications, telephone logs, contact managers, computer system activity logs, and all file fragments, internet usage files, offline storage or information stored on removable media or storage media, information contained on laptops, or other portable devices, network access information and backup files containing electronic data or electronic evidence, SMS messages, any other electronic communications, including, but not limited to Google Apps, Google Mail, Confide, WhatsApp, and Telegram. Specifically, you are instructed not to destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic data and/or evidence relevant to the Employee's claims, and you are further instructed to take reasonable efforts to preserve such data and/or evidence.

To meet this burden, you are instructed by way of example and not limitation, to:

- Preserve all data storage backup files (i.e., not overwrite any previously existing backups);
- Preserve and retain all electronic data generated or received by employees who may have personal knowledge of the facts involved in the claims against the Defendant as set forth herein;
- Refrain from operating, removing or altering, fixed or external drives and media attached to any workstations or laptops, voice mail systems, and cell phones, copy machines that are reasonably thought to have data related to the claims, including but not limited to the workstations and/or laptops used by any employee or contractor;
- Preserve and retain all data from servers and networking equipment logging network access activity and system authentication;
- Preserve and retain all electronic data in any format, media, or location relating to the claims, including data on hard drives, hard disks, floppy disks, zip drives, CD-ROMs, CD-RWs, DVDs, backup tapes, PDAs, cell phones, smart phones, memory cards/sticks, or digital copiers or facsimile machines;
- Prevent employees from deleting or overwriting any electronic data related to the Employees claims including data stored on social-media websites and services such as Facebook, Instagram, Snapchat detailing purchases made with payments from Defendant; and
- Take such other security measures, including, but not limited to, restricting physical and electronic access to all electronically stored data directly or indirectly related to the Employee s claims.

In addition, you are required to instruct all current and former employees and contractors to preserve the following for all electronic devices in their possession including but not limited to a cell phone, smartphone, tablet, iPad, laptop, and GPS:

- Maintain and preserve the actual electronic device(s) that were used and/or owned during the time they worked for Defendant;
- Maintain their cell phone and/or data usage records during the time they worked for Defendant; and
- Preserve all calls, voicemails, text messages, emails, instant messages, social-media messages, social- media posts, internet searches, GPS data, and other electronic communication or data during the time they worked for Defendant.

You are instructed not to alter, delete, destroy, or discharge any of your electronic devices and/or the above-requested data until we have had an opportunity to have them inspected by an expert. To facilitate the retrieval of said data, be advised that a forensic accounting firm may be retained to forensically acquire the hard drives and other media that may contain electronic data related to the action. Please be advised that failure to preserve evidence may be considered spoliation of evidence and could result in penalties assigned by the Court.

Conclusion

Employee is entitled to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code. They intend to bring an action against Lugg, Inc. pursuant to the Private Attorneys General Act ("PAGA") and other state laws to recover wages, damages,

October 26, 2021

Page 6

restitution, interest, penalties, and attorneys' fees and costs. If permitted, Employee will seek any and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 *et seq.*

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a series of loops and a final flourish.

Caleb Marker

Partner | 877.500.8780 | caleb.marker@zimmreed.com