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Superior Court of California
County of Los Angeles
10/31/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: K. Martinez Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

ERNESTO GUZMAN OROZCO
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

UNITED MOVING CARS, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22STCV30467

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES, INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
PENALTIES AND RESTITUTION**

1. **Failure to Pay Wages For All Hours Worked (Cal. Lab. Code §§ 204, 218, 510, 1194, 1194.2);**
2. **Violation of Labor Code § 2802 (Unreimbursed Business Expenses);**
3. **Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 1174);**
4. **Waiting Time Penalties (Cal. Labor Code §§ 201-203);**
5. **Violation of California's Unfair Competition Law (Cal. Business & Professions Code §§ 17200, *et seq.*).**
6. **Violation of Labor Code §§ 2698 *et seq.* ("PAGA");**

DEMAND FOR JURY TRIAL

1 1. Plaintiff ERNESTO GUZMAN OROZCO (“Plaintiff”), individually, and on
2 behalf of himself and classes of those similarly situated, files this Class Action Complaint against
3 UNITED MOVING CARS, a California Corporation; and DOES 1 through 50 (collectively,
4 “Defendants”), and alleges as follows:

5
6 **I. INTRODUCTION AND FACTUAL BACKGROUND**

7 2. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382
8 against Defendants for, among other things: (a) nonpayment of wages; (b) failure to reimburse
9 for business expenses; (c) failure to provide accurate wage statements; and (d) for failure to
10 pay all wages due upon termination of employment.

11 3. For the four years prior to the filing of this Complaint to the present including tolling
12 (the “Class Period”), Defendants have and continue to employ non-exempt hourly employees.

13 4. Plaintiff is informed and believes, and thereon allege, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
15 advisors knowledgeable about California labor and wage law, employment and personnel practices,
16 and about the requirements of California law.

17 5. Labor Code § 1198 provides: “The maximum hours of work and the standard
18 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
19 conditions of labor for employees. The employment of any employee for longer hours than those
20 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

21 6. In accordance with its power under section 1198, the Industrial Welfare
22 Commission adopted Wage Orders prescribing the minimum wages, maximum hours, and standard
23 conditions of employment for employees in this state.

24 7. During the course of Plaintiff’s and Class members’ employment, Defendants
25 failed to compensate Plaintiff and the Class members for all hours worked (including minimum
26 wage and overtime wages). Despite Plaintiff and Class members regularly working in excess
27 of eight hours per day and/or 40 hours per week and/or 7 days per week, they were not paid all
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1 wages, or wages at the proper rate, for this time as required by, among other things, Labor Code
2 §§ 510 and 1194 in one or more of the following manners:

- 3 1. By failing to pay for all hours worked;
- 4 2. By failing to pay for all hours worked at the appropriate rate (including paying
5 overtime/doubletime hours at the regular rate);
- 6 3. By arbitrarily reducing hours worked;
- 7 4. Through failure to maintain proper records; and
- 8 5. Through other methods to be discovered.

9 8. Furthermore, as a result of Defendants' illegal and unlawful conduct as set forth
10 above, Defendants have knowingly and intentionally failed to comply with the itemized wage-
11 statement provisions and have failed to pay the damages and penalties for said violations as required
12 by California law, including the failure to include gross and net wages earned, total hours worked
13 and the applicable rate of pay, deductions and inclusive dates of the pay period. In fact, Defendant
14 failed to provide any itemize wage statements.

15 9. Furthermore, Defendants failed to reimburse Plaintiff and Class members for
16 reasonable business expenses. This includes refusing to pay for the use of personal cell phones
17 and electronic devices for Defendant's business. Defendants required Plaintiff and the Class to
18 use their personal phone regularly for work including to communicate with Defendant.

19 10. Furthermore, Defendants failed to timely pay for all wages owed to Class
20 members upon termination of employment. As detailed above, Class members were not
21 provided paid all wages owed during their employment, including all overtime hours at the
22 correct rate.

23 11. As a result of the above, Defendants have also engaged in unfair, fraudulent and
24 deceptive business practices within the meaning of the Business & Professions Code §§ 17200, *et*
25 *seq.*, as further detailed below.

26 12. Plaintiff, on behalf of himself and the non-exempt employees, bring this action
27 pursuant to California Labor Code §§ 201-203, 204, 210, 218, 226, 510, 558, 558.1, 1194,
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1 1194.2, 1197, 1197.1, 1198, and 2802, and the applicable Industrial Welfare Commission Wage
2 Orders (“Wage Orders”), seeking unpaid wages (including minimum and overtime wages),
3 unreimbursed business expenses, penalties, injunctive and other equitable relief, and reasonable
4 attorneys’ fees and costs.

5 13. Plaintiff, on behalf of himself and the non-exempt employees, pursuant to Business
6 & Professions Code §§ 17200, *et seq.*, also seeks injunctive relief, and restitution, from Defendants
7 for their failure to pay the wages and penalties as set forth above.

8 **II. THE PARTIES**

9 **A. The Plaintiff**

10 14. Plaintiff is a current resident of Los Angeles County, California. He has been
11 employed by Defendants during the class period. He will serve as an adequate, typical and active
12 participant and class representative for the proposed Class and/or Subclasses as defined herein.

13 15. As detailed above, Plaintiff was not properly paid for all hours worked, was not
14 reimbursed for business expenses and was not provided with compliant itemized wages statements
15 (as none were provided at all) during the Class Period.

16 16. Plaintiff reserves the right to seek leave to amend this complaint to add new
17 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
18 *American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.

19 **B. The Defendants**

20 17. Defendants employed Plaintiff and other non-exempt employees in California. The
21 illegal and unlawful policies and practices described herein were performed by Defendants in
22 California.

23 18. Defendant UNITED MOVING CARS was and is, upon information and belief,
24 a California Corporation with the capacity to sue and to be sued, and doing business, in the
25 State of California, with a principal place of business in Los Angeles County. At all times
26 hereinafter mentioned, Defendant UNITED MOVING CARS was an employer whose
27 employees were engaged throughout this county and the State of California.
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1 19. The true names and capacities, whether individual, corporate, associate or
2 otherwise, of defendants DOES 1 through 50 are unknown to Plaintiff, who therefore sues these
3 defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges
4 that each of these fictitious defendants is in some manner responsible for the acts and occurrences
5 herein set forth. Plaintiff will amend this Complaint to show these defendants' true names and
6 capacities when ascertained, as well as the manner in which each fictitious defendant is responsible.

7 20. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
8 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
9 of, and/or injured Plaintiff and aggrieved employees in the State of California.

10 21. At all times mentioned herein, each Defendant was the agent, servant, or
11 employee of the other Defendants and in acting and omitting to act as alleged herein did so
12 within the course and scope of that agency or employment.

13 **III. JURISDICTION AND VENUE**

14 22. The unlawful acts alleged herein arise under the laws of the State of California
15 and have a direct effect on Plaintiff and other employees who work and/or performed work
16 within the State of California.

17 23. Business & Professions Code § 17204 provides that any person acting on his
18 or her own behalf may bring an action in a court of competent jurisdiction.

19 24. The Los Angeles County Superior Court has personal jurisdiction over
20 Defendants because: (1) they operate within this County; (2) are qualified with the California
21 Secretary of State to do business and is doing business in California, and in this County; and
22 (3) because many of the acts complained of occurred and arose in California, and specifically,
23 this County. Additionally, each is either a citizen of California, has sufficient minimum contacts
24 in California, or otherwise intentionally avails itself of the California market so as to render the
25 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
26 play and substantial justice.
27
28

1 25. Venue as to Defendants is proper in this judicial district, pursuant to Code of
2 Civil Procedure § 395, as one or more of the named Defendants reside, transact business, or
3 have offices in this county and the acts and omissions alleged herein took place in this county.

4 26. California Labor Code sections 2699 et seq., the “Labor Code Private Attorneys
5 General Act” (“PAGA”), authorizes aggrieved employees to sue directly for various civil penalties
6 under the California Labor Code.

7 27. Plaintiff timely provided notice to the California Labor Workforce Development
8 Agency (“LWDA”) and to Defendants, pursuant to California Labor Code section
9 2699.3(a). Therefore, he may proceed with this action for penalties pursuant to California Labor
10 Code § 2699, et seq.

11 **IV. CLASS ACTION ALLEGATIONS**

12 28. Plaintiff is a non-exempt employees who was employed by Defendants during the
13 Class Period.

14 29. Plaintiff brings this action individually, as well as on behalf of each and all other
15 persons similarly situated in a concerted effort to improve wages and working conditions for
16 other non-exempt and/or hourly employees, and thus seek class certification under Code of
17 Civil Procedure § 382.

18 30. The proposed Class consists of and is defined as:

19
20 All individuals (a) who are currently or formerly employed by
21 Defendants and performed work in California as non-exempt hourly
22 employees or similar job position, job title, job code, job classification,
23 or job description, and (b) who were subject to Defendants’ illegal
policies and practices as alleged herein during the Class Period.

24 31. The proposed sub-classes consist of and are defined as:

25 UNPAID WAGE SUBCLASS: All members of the Class who
26 Defendants failed to pay an hourly wage for each hour worked
(or other required compensation) during the Class Period.

27 OVERTIME SUB-CLASS: All members of the Class who
28 were not paid overtime compensation (or not paid at the or
applicable overtime rate) for all hours worked in excess of

eight hours per day and/or 40 hours per week and/or work on the seventh day.

BUSINESS EXPENSE SUBCLASS: All members of the Class who Defendants failed to reimburse for all business expenses during the Class Period.

WAGE STATEMENT SUBCLASS: All members of the Class that Defendants did not provide accurate itemized wage statements showing all hours actually worked at the correct rate, inclusive dates of the pay period, deductions, and all wages earned during the Class Period.

WAITING TIME SUB-CLASS: All members of the Class who, at any time after the date three years prior to the filing of this Complaint, separated their employment from Defendants and were not paid wages within the times specified by Labor Code §§ 201-203 and are owed restitution for waiting time penalties deriving from wages.

UCL SUBCLASS: All members of the Class who, during the Class Period, are owed restitution of unpaid wages resulting from Defendants' systematic violations of California's Labor Code and the Wage Orders.

32. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Subclasses and reserves the right to do so. In any event, Plaintiff will formally define and designate a class definition at such time when Plaintiff seek to certify the Class or Subclasses defined herein.

33. At all material times, Plaintiff Was a member of the Class.

34. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

- a. Numerosity: The members of the class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

- 1 b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
2 interests of each class member with whom there is a shared, well-defined
3 community of interest. Plaintiff's claims (or defenses, if any) are typical of all Class
4 members as demonstrated herein.
- 5 c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
6 interests of each Class member with whom there is a shared, well-defined
7 community of interest and typicality of claims, as demonstrated herein. Plaintiff
8 acknowledges that Plaintiff has an obligation to make known to the Court any
9 relationship, conflicts or differences with any Class member. Plaintiff's attorneys,
10 the proposed Class counsel, are well versed in the rules governing class action
11 discovery, certification, and settlement.
- 12 d. Superiority: The nature of this action makes the use of class action adjudication
13 superior to other methods. A class action will achieve economies of time, effort,
14 and expense as compared with separate lawsuits, and will avoid inconsistent
15 outcomes because the same issues can be adjudicated in the same manner and at the
16 same time for the entire class.
- 17 e. Public Policy Considerations: Employers in the State of California violate
18 employment and labor laws every day. Current employees are often afraid to assert
19 their rights out of fear of direct or indirect retaliation. Former employees are fearful
20 of bringing actions because they believe their former employers might damage their
21 future endeavors through negative references and/or other means. Class actions
22 provide the Class members who are not named in the complaint with a type of
23 anonymity that allows for the vindication of their rights at the same time as their
24 privacy is protected.
- 25 f. Manageability of Class and Common Proof: The nature of this action and the
26 nature of laws available to Plaintiff make use of the class action format and
27 procedure a particularly efficient and appropriate procedure to afford relief to
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1 Plaintiff and members of the Class for the wrongs alleged herein. Specifically,
2 liability will turn on Defendants' own uniform, systematic practices of failing
3 to properly pay their employees, failing to reimburse for business expenses and
4 failure to provide compliant itemized wage statements in violation of California
5 law during the Class Period. Therefore, the violations are predominant
6 questions of fact that are easily capable of being determined through
7 manageable devices of common proof, such as statistical random sampling,
8 survey evidence based on scientific principles, representative testimony,
9 documentary evidence and common practices/procedures of Defendants in
10 treating each of the members of the Class as a homogeneous group. Once the
11 predominant issues of compliance are determined, then each of the derivative
12 subclass claims and damages suffered by each member of the Class will be
13 capable of being shown by several means of common proof and limited by
14 individual showings of entitlement to recovery that can be professionally
15 administered and tailored to the facts and circumstances of the case.
16

17 35. There are common questions of law and fact as to the Class (and each subclass, if
18 any) that predominate over questions affecting only individual members, including but not limited
19 to:

- 20 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
21 accordance with the California Labor Code, was willful;
- 22 b. Whether Defendants' conduct was willful or reckless;
- 23 c. Whether Defendants violated Labor Code § 226 by failing to timely furnish Plaintiff
24 and Class members with accurate compliant wage statements;
- 25 d. Whether Defendants violated Labor Code §2802 by failing to reimburse
26 Plaintiff and Class members for business expenses;
- 27 e. Whether Defendants failed to timely pay all wages due to Plaintiff and Class
28 members upon their discharge or resignation;

- f. Whether Defendants violated Labor Code § 204/210 by failing to pay employees all wages due;
- g. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code § 17200, et seq.;
- h. Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- i. Whether the members of the Class are entitled to injunctive relief;
- j. Whether the members of the Class are entitled to restitution; and
- k. Whether Defendants are liable for attorneys' fees and costs to the extent permitted by California law.

36. Class certification is appropriate under Cal. Civ. Proc. Code § 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. Defendants' 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 Defendants' practices.

37. Class certification is also appropriate pursuant to Cal. Civ. Proc. Code § 382 because Defendants have 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.

38. 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.

39. Pursuant to PAGA, Plaintiff has also given notice to the California Labor and Workforce Development Agency ("LWDA") of the Labor Code violations alleged in this Complaint. The Complaint seeks all recoverable penalties for Labor Code violations as permitted and proscribed by the PAGA. This cause of action includes allegations and remedies

1 available under Labor Code §§ 2699, 2699.5, and 2933.3, among others. *See* Cal. Labor Code
2 § 2933.3(a)(2)(C) (“Notwithstanding any other provisions of law, a plaintiff may as a matter of
3 right amend an existing complaint to add a cause of action arising under this part within 65
4 days of the time periods specified in this part.”)

5 40. Defendants have willfully refused to pay Plaintiff and the members of the Class the
6 required compensation for all hours worked, failed to reimburse for business expenses, failed to
7 provide compliant itemized wage statements and failed to keep complaint records as required by
8 law.

9 41. Defendants’ company-wide policies and practices violate California law as pled
10 herein. Plaintiff seeks declaratory relief, wages, expense reimbursement, liquidated damages, and
11 other damages and penalties as permitted by California law, interest, and attorneys’ fees and costs.
12

13 **V. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **(Failure to Pay Wages For All Hours Worked)**

16 **(Labor Code §§ 204, 210, 218, 510, 1194 and 1194.2)**

17 **(Brought by Plaintiff on Behalf of Himself And Members of The Class Against All**

18 **Defendants)**

19 42. Plaintiff realleges and incorporates by this reference each of the preceding and
20 foregoing paragraphs as if fully set forth herein.

21 43. At all times herein relevant, Labor Code §§ 204, 218, 1194 and 1194.2, and the
22 applicable Wage Orders were in full force and effect. Labor Code § 204 requires employers to
23 pay all wages earned by any employee due and payable twice during each calendar month.

24 44. Pursuant to Labor Code § 218, Plaintiff may bring a civil action for unpaid
25 wages due directly against the employer.

26 45. At all times herein relevant, the Wage Orders and applicable California Code of
27 Regulations have applied and continue to apply to Plaintiff’s and the Class Members’
28 employment with Defendants, which state that “every employer shall pay to each employee

1 wages. . . for all hours worked.”

2 46. “Hours worked” is defined as “the time during which an employee is subject to
3 the control of an employer and includes all the time the employee is suffered or permitted to
4 work, whether or not required to do so.”

5 47. At all times pertinent hereto, Labor Code § 1194 provided: “Notwithstanding
6 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
7 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
8 civil action the unpaid balance of the full amount of this minimum wage or overtime
9 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

10 48. At all times pertinent hereto, Labor Code § 1194.2 provides for the recovery of
11 prejudgment interest in any action brought to recover the nonpayment of wages, at the rate
12 specified in Civil Code § 3289.

13 49. Labor Codes §§ 218.5, 218.6, 1194(a) and 1194.2(a) provide that an employee
14 who has not been paid the legal wage may recover the unpaid balance and together with
15 attorney’s fees and costs of suit, as well as liquidated damages in an amount equal to the wages
16 unpaid and interest thereon.

17 50. At all relevant times herein, Defendants were required to compensate Plaintiff
18 and the members of the Class for all hours worked pursuant to Labor Code § 1194.

19 51. Plaintiff and the Class were at all times subject to California’s laws and
20 regulations protecting the employees’ entitlement to be paid and presumption to be paid
21 overtime wages for requisite hours worked beyond a normal workday or a normal work week,
22 as specified, without limitation, by Cal. Labor Code §§ 510, 1194 and the Wage Orders.

23 52. California law requires employers, such as Defendants, to pay overtime
24 compensation to all nonexempt employees including for all hours worked over 40 hours per
25 week or over 8 hours per day and the first eight hours worked on the seventh consecutive day
26 of work in a workweek. Labor Code § 204 establishes the fundamental right of all employees
27 in the State of California to be paid wages, including straight time and overtime, in a timely
28 fashion for their work. This precludes any waiver for unpaid due and owing wages that remain

1 unpaid at the time of separation.

2 53. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours
3 in one workday and any work in excess of 40 hours in any one workweek ... shall be
4 compensated at the rate of no less than one and one-half times the regular rate of pay for any
5 employee.” In addition, Labor Code § 510(a) provides that “[a]ny work in excess of 12 hours
6 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
7 employee.”

8 54. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
9 the hours set by the IWC.

10 55. By uniformly failing to track and record all of the hours worked by Plaintiff and
11 members of the Class and not paying them for all hours worked, Defendants were able to skim
12 wages from employees by not paying them a proper separate hourly wage for each and every
13 hour worked as required by California law. Through this unlawful and illegal policy and
14 practice, Defendants have failed to pay Plaintiff and the Class all wages owed to them.

15 56. Because the practices alleged herein are uniform, systematic and continuous and
16 affect each proposed member of the Class in a legally identical way, Plaintiff, at the appropriate
17 time will move to certify the Class or Overtime Subclass to the extent permitted by Cal. Civ.
18 Proc. Code § 382.

19 57. By the course of conduct set forth above, Defendants failed to pay all wages and
20 violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

21 58. Plaintiff is informed and believe and based thereupon allege that the result of
22 the unlawful and illegal policy and practice caused damage in the nonpayment of minimum and
23 regular wages to himself and the proposed Class and/or Unpaid Wage Subclass, in an amount
24 according to proof at trial.

25 59. Plaintiff is informed and believe that the nonpayment of wages is fixed and
26 ascertainable on a class wide basis such that prejudgment interest on those wages is
27 recoverable.

28 ///

60. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and the Class Members have sustained damages, including loss of earnings, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

61. Pursuant to Labor Code sections 1194, Plaintiff and the proposed Class and/or Unpaid Wage Subclass are entitled to, and seek to, recover unpaid minimum wage and overtime compensation, and other unpaid wages, plus interest, penalties, attorneys' fees and costs, and liquidated damages in an amount equal to the amount unlawfully unpaid according to Labor Code § 1194.2. The specific amounts are to be determined at trial.

62. Furthermore, as set forth above, Plaintiff and the members of the Class were entitled to be paid overtime compensation for all overtime hours worked. Plaintiff, and members of the Class, were regularly and consistently required to work overtime during the Class Period, but were not properly paid for all overtime hours worked.

63. Throughout the Class Period, Plaintiff and the members of the Class worked in excess of 8 hours in a workday and/or 40 hours in a workweek and worked 7 days/week.

64. During the Class Period, Defendants did not pay Plaintiff and members of the Class overtime pay for all overtime hours worked, including at the correct rate of pay.

65. As a direct and proximate result of Defendants' unlawful conduct as set forth herein, Plaintiff and members of the Class have sustained damages, including loss of earnings for unpaid overtime hours worked, in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to California law.

SECOND CAUSE OF ACTION

(Failure to Reimburse for Business Expenses)

(Labor Code §2800 et. seq.)

(Brought by Plaintiff on Behalf of Himself And Members of the Class)

66. Plaintiff reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

67. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequences of the discharge of his or her duties, or of his or her obedience to the directions
2 of the employer, even though unlawful, unless the employee, at the time of obeying the
3 directions, believed them to be unlawful.”

4 68. As alleged above, Defendants failed and continue to fail to reimburse the Class
5 members for all the necessary expenditures they incurred while performing their duties
6 including, but not limited to, use of personal cell phones and electronic device for Defendants’
7 business activities. Therefore, Plaintiff and Class members are entitled to recover from
8 Defendants the unpaid balance of these expenses, plus interest thereon.

9 69. Plaintiff further requests an award of attorney’s fees pursuant to Labor Code
10 §218.5 and Code of Civil Procedure § 1021.5, and an award of prejudgment interest.

11 **THIRD CAUSE OF ACTION**

12 **(Failure to Provide Accurate Wage Statements)**

13 **(Labor Code §§ 226, 1174, 1174.5, and Industrial Wage Order)**

14 **(Brought by Plaintiff on Behalf of Himself And Members of the Class Against All**
15 **Defendants)**

16 70. Plaintiff realleges and incorporates by this reference each of the preceding and
17 foregoing paragraphs as if fully set forth herein.

18 71. Defendants knowingly and intentionally failed to provide accurate, itemized wage
19 statements including, *inter alia*, accurate gross and net wages earned, deductions, inclusive dates of
20 the pay period, hours worked and applicable rates in accordance with Labor Code § 226(a).

21 69. Labor Code § 226(a) states, in pertinent part, that “[e]very employer shall,
22 semimonthly or at the time of each payment of wages, furnish each of his or his employees, either
23 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
24 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
25 gross wages earned, (2) total hours worked by the employee ..., (5) net wages earned, (6) the
26 inclusive dates of the period for which the employee is paid ..., and (9) all applicable hourly rates
27 in effect during the pay period and the corresponding number of hours worked at each hourly rate
28

1 by the employee ...”

2 70. Labor Code § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
3 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
4 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
5 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
6 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
7 costs and reasonable attorney’s fees.”

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

16 72. Labor Code § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
17 reasonable person would be able to readily ascertain the information without reference to other
18 documents or information.”

19 73. Labor Code § 226(e)(3) states that the phrase “knowing and intentional failure”
20 “does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

21 74. From the outset, Defendants have failed to comply with Labor Code § 226. As a
22 matter of common policy and practice, Defendants did not provide wage statements showing all
23 hours actually worked at the correct rate, gross and net wages, inclusive dates of the pay period,
24 deductions, and all wages earned during the Class Period. In fact, no wage statements at all were
25 provided. Defendants’ knowing, and intentional omissions caused Plaintiff and members of the
26 Class to suffer “injury” by, among other things, impeding them from knowing the amount of wages
27 to which they are and were entitled.
28

1 75. At all times relevant herein, Defendants failed to maintain records of hours worked
2 by Plaintiff and the members of the Class as required under Labor Code § 1174(d).

3 76. Plaintiff and members of the California Class seek (i) injunctive relief requiring
4 Defendants to comply with Labor Code §§ 226(a) and 1174(d), (ii) the amounts provided under
5 Labor Code §§ 226(e) and 1174.5, including the greater of all actual damages or \$50 for the initial
6 pay period in which a violation occurs and \$100 per employee for each violation in a subsequent
7 pay period, and (iii) attorneys' fees and costs.

8 **FOURTH CAUSE OF ACTION**

9 **(Failure to Timely Pay All Wages Due Upon Separation)**

10 **(Labor Code §§ 201, 202, and 203)**

11 **(Brought by Plaintiff on Behalf of Himself And Members of the Class Against All**
12 **Defendants)**

13 77. Plaintiff realleges and incorporates by this reference each of the foregoing
14 paragraphs as if fully set forth herein.

15 78. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
16 due within the time specified by law. California Labor Code § 203 provides that if an employer
17 willfully fails to timely pay such wages, the employer must continue to pay the subject employees'
18 wages until the back wages are paid in full or an action is commenced, up to a maximum of 30 days
19 of wages.

20 79. All members of the Class who ceased employment with Defendants are entitled to
21 unpaid compensation, but to date have not received such compensation.

22 80. More than 30 days have passed since certain members of the Class left Defendants'
23 employ.

24 81. As a consequence of Defendants' willful conduct in not paying compensation for all
25 hours worked, the members of the Class whose employment ended during the Class Period are
26 entitled to 30 days' wages under Labor Code § 203, together with interest thereon and attorneys'
27 fees and costs.
28

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California's Unfair Competition Law)**

3 **(Bus. & Prof. Code § 17200, *et seq.*)**

4 **(Brought by Plaintiff on Behalf of Himself And Members of the Class Against All**
5 **Defendants)**

6 82. Plaintiff realleges and incorporates by this reference each of the foregoing
7 paragraphs as if fully set forth herein.

8 83. Defendants' failure to pay all wages, failure to provide compliant itemize d wage
9 statements, and failure to reimburse for business expenses constitutes unlawful activity, acts and
10 practices that are prohibited by Business & Professions Code §§ 17200, *et seq.* The actions of
11 Defendants described above constitute unfair, fraudulent and deceptive business practices, within
12 the meaning of Business and Professions Code §§ 17200, *et seq.* Defendants have violated multiple
13 provisions of California law and provisions of the Wage Orders, which has the same force and
14 effect of a violation of law. This includes, without limitation, California Labor Code §§ 201-203,
15 204, 210, 218, 226, 510, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198 and 2802, which serve
16 as statutory predicates for which restitution and disgorgement are owed by Defendants.
17

18 84. Plaintiff and members of the UCL Subclass are entitled to an injunction, restitution,
19 and other equitable relief against such unlawful practices in order to prevent future damage, for
20 which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

21 85. As a result of these unlawful acts, Defendants have reaped and continue to reap
22 unfair benefits and illegal profits at the expense of Plaintiff and the members of the Class that
23 Plaintiff seeks to represent. Defendants should be enjoined from this activity and make restitution
24 for these ill-gotten gains to restore to Plaintiff and the members of the Class the wrongfully withheld
25 wages, pursuant to Business & Professions Code § 17203, and specific performance of payment of
26 penalties ordered under Business and Professions Code § 17202.

27 86. Plaintiff is informed and believes, and based thereon allege, that Defendants are
28 unjustly enriched through the acts described above and that he and the Class have and continue to

1 suffer irreparable prejudice by Defendants' unfair practices. Further, by engaging in such activities,
2 Defendants are illegally operating at an advantage to other law-abiding employers in the State of
3 California and underpaying payroll and other applicable taxes that are collected by the State and
4 local governmental entities in California.

5 87. The illegal conduct alleged herein is continuing, and there is no indication that
6 Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants are
7 not enjoined from the conduct set forth in this Complaint, it will continue to fail to pay all wages,
8 business expenses, provide compliant wage statements, comply with the legal requirements
9 addressed above, and paying appropriate taxes, insurance, and unemployment withholdings.

10 88. Plaintiff will request that the Court issue a preliminary and permanent injunction
11 prohibiting Defendants from continuing to fail to do the above, and requiring Defendants to provide
12 accurate hourly wage statements.

13 **SIXTH CAUSE OF ACTION**

14 **(Violation of PAGA)**

15 **(California Labor Code §§ 2698, et seq.)**

16 **(Brought by Plaintiff on Behalf of Himself And the Aggrieved Employees Against All** 17 **Defendants)**

18 72. Plaintiff realleges and incorporates by this reference each of the foregoing
19 paragraphs as if fully set forth herein.

20 73. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code §
22 2699.5.

23 74. At all times herein set forth, PAGA was applicable to Plaintiff's employment
24 by Defendants.

25 75. At all times herein set forth, PAGA provides that any provision of law under the
26 California Labor Code that provides for a civil penalty to be assessed and collected by the
27 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
28

1 a civil action brought by an aggrieved employee on behalf of himself and other current or
2 former employees pursuant to procedures outlined in California Labor Code § 2699.3.

3 76. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
4 employee,” who is any person that was employed by the alleged violator and against whom one
5 or more of the alleged violations was committed.

6 77. Plaintiff and other employees are Aggrieved Employees as defined by California
7 Labor Code § 2699(c) in that they are all current or former employees of Defendants who are
8 or were employed by Defendants, and one or more of the alleged violations were committed
9 against them.

10 78. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved
11 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
12 requirements have been met:

- 13 a. The aggrieved employee shall give written notice (“Employee’s Notice”) to the
14 LWDA and by certified mail to the employer of the specific provisions of the
15 California Labor Code alleged to have been violated, including the facts and theories
16 to support the alleged violations.
17
18 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
19 aggrieved employee by certified mail that it does not intend to investigate the alleged
20 violation within sixty (60) calendar days of the postmark date of the Employee’s
21 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
22 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
23 the aggrieved employee may commence a civil action pursuant to California Labor
24 Code § 2699 to recover civil penalties in addition to any other penalties to which the
25 employee may be entitled.

26 79. On August 25, 2022, Plaintiff provided written notice by certified mail to the
27 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
28 have been violated, including the facts and theories to support the alleged violations.

1 80. Plaintiff has satisfied the administrative prerequisites under California Labor
2 Code § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
3 for violations of California Labor Code including sections 201, 202, 203, 204, 210, 226(a),
4 226.3, 510, 558, 558.1, 1174, 1194, 1194.2, 1197, 1198, 2802, and Industrial Welfare Orders
5 including, but not limited to, Section 7.

6 81. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code including but not limited to the following:

- 8 a. Violation of Labor Code § 226(a) and 226.3 for failing to provide accurate wage
9 statements, as herein alleged.
- 10 b. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all wages
11 owed upon termination, as herein alleged.
- 12 c. Violation of Labor Code § § 204, 210 and 558 for failing to pay all wages owed,
13 as herein alleged.
- 14 d. Violation of Labor Code § 510 for failing to pay all overtime wages, as herein
15 alleged.
- 16 e. Violation of Labor Code § 1174 and Industrial Welfare Orders including, but
17 not limited to, Section 7, for failure to maintain records.
- 18 f. Violation of Industrial Welfare Orders regarding failure to record meal periods.
- 19 g. Violation of Labor Code §§ 1194, 1194.2, 1197 and 1197.1 for failing to pay
20 minimum wage.
- 21 h. Violation of Labor Code §1198 for failure to comply with standard conditions
22 of labor.
- 23 i. Violation of Labor Code §2802 for failure to reimburse for business expenses.
- 24 j. Violation of Labor Code §558.1.

25 82. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and
26 all other aggrieved employees are entitled to recover civil penalties against Defendants, in
27 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,
28

210, 226(a), 226.3, 510, 558, 558.1, 1174, 1194, 1194.2, 1197, 1198, 2802, and Industrial Welfare Orders including, but not limited to, Section 7.

83. Further Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code § 2699 and any other applicable statute.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all members of the Class and Subclasses he seeks to represent, prays for relief as follows:

1. For an order certifying the First through Fifth causes of action and maintaining said causes of action as a class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the members of the Class and/or Subclasses who were either employed or who performed work here in the State of California within the Class Period and that notice of the pendency of this action be provided to members of the Class;

2. Designation of Plaintiff as the Class Representative for the Class and/or Subclasses and Plaintiff's attorneys as Class Counsel for the Class and/or Subclasses;

3. A declaratory judgment that the practices complained of herein are unlawful under appropriate state law;

4. Appropriate equitable relief to remedy Defendants' violations of California law including, but not necessarily limited to, an order enjoining Defendants from continuing their unlawful practices;

5. For an award of unpaid wages and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 1194 and 1194.2;

6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;

7. Damages for failure to reimburse for business expenses.

8. All appropriate California statutory penalties and civil penalties;

9. Labor Code § 203 penalties;

10. Damages and penalties pursuant to Labor Code §§ 226(a);

11. For an order that Defendant make restitution to Plaintiff and the Class due to their unlawful business practices, including unlawfully-collected compensation pursuant to Business & Professions Code §§ 17203 and 17204;

12. Pre-judgment and post-judgment interest, as provided by law;

13. Penalties, wages and attorney's fees and costs under PAGA;

14. Such other equitable relief as the Court may deem just and proper; and

15. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among others, California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to which he has a state and/or federal constitutional right to a jury trial.

Dated: October 31, 2022

BISNAR | CHASE LLP/ALPERS LAW GROUP

By: *Ian M. Silvers*
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