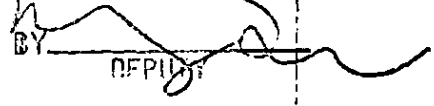


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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

CELSO DE ANDA, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

WHITE GLOVE DELIVERY OF NCA INC.,
a California Corporation; MARTIN DAVIS,
an individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0009634

CLASS ACTION

SECOND AMENDED COMPLAINT FOR
DAMAGES:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Failure to Pay Vested Vacation Time
9. Unfair Competition
10. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff CELSO DE ANDA ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this First Amended Complaint against Defendants WHITE GLOVE DELIVERY OF NCA INC., a California Corporation; MARTIN DAVIS, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

SECOND AMENDED CLASS ACTION COMPLAINT

FILE BY FAX

1. INTRODUCTION.

2. 1. This is a class action and a Private Attorneys General Act ("PAGA") lawsuit brought by
3 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
4 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, untimely
5 payment of wages, and unfair competition.

6 JURISDICTION AND VENUE

7 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
8 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
9 Labor Code, California Business and Professions Code, and Wage Order No. 9.

10 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that the
11 wrongful acts and violations of law asserted herein occurred within San Joaquin County, and
12 Defendants' obligation to pay wages arose in San Joaquin County pursuant to *Madera Police Officers*
13 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

14 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
15 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
16 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
17 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
18 ("LWDA") on approximately September 7, 2023, and November 30, 2023. Plaintiff provided facts and
19 legal basis for his claims within the notice to the LWDA on all violations asserted under the Private
20 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The September 7,
21 2023, and the November 30, 2023, notice were also sent via certified mail to Defendants on the same
22 day. To date, the LWDA has not provided any response to Plaintiff's notice-correspondence.
23 Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys
24 General Act ("PAGA") and may bring this action on behalf of himself and all similarly situated
25 employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
26 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
27 include, but is not limited to the following: all non-exempt employees who worked, or continue to work
28 for Defendants in California at any time from September 7, 2022 to the present.

PARTIES

5. CELSO DE ANDA is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, WHITE GLOVE DELIVERY OF NCA INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. On information and belief, Plaintiff alleges, MARTIN DAVIS, is now and/or at all times mentioned in this Complaint was an individual and the owner and operator of an industry, business and/or facility doing business in the State of California. Plaintiff is informed and believes, and thereupon alleges, that MARTIN DAVIS is an individual over the age of eighteen (18) and is a resident of the State of New Jersey. Plaintiff further alleges that MARTIN DAVIS is an owner, director, officer, and/or managing agent of WHITE GLOVE DELIVERY OF NCA INC., responsible for causing the violations outlined in the (first) through (ninth) causes of action. As such MARTIN DAVIS is individually liable pursuant to California Labor Code section 558.1. Pursuant to California Labor Code section 558.1, WHITE GLOVE DELIVERY OF NCA INC., and MARTIN DAVIS, are jointly and severally liable for each cause of action asserted herein. On information and belief, Plaintiff alleges that MARTIN DAVIS trained subordinate staff to implement and carry out the policies and practices identified herein. As a result, whether directly or indirectly, MARTIN DAVIS caused the violations identified herein. MARTIN DAVIS was responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

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1 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
2 other Defendants and was acting within the course and scope of such agency or employment. The
3 Defendants are jointly and severally liable to Plaintiff.

4 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
5 were members of and/or engaged in a joint employment, joint venture, partnership and common
6 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
7 joint venture, partnership and common enterprise.

8 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
9 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

10 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
11 wrongs, complaints, injuries and/or damages alleged in this Complaint.

12 **CLASS ALLEGATIONS**

13 13. Plaintiff brings the First through Ninth Causes of Action on behalf of himself and all
14 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
15 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

16 All non-exempt employees who worked, or continue to work, for
17 Defendants in California at any time from September 8, 2019, to the
18 present.

19 14. This action has been brought and may be properly maintained as a class action,
20 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
21 defined community of interests in the litigation and the proposed class is easily ascertainable.

22 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
23 is impracticable under the circumstances of this case. While the exact number of class
24 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
25 Defendants have employed as many as fifty (50) individuals falling within the above
26 stated class definition throughout the State of California during the applicable statute of
27 limitations, who were subjected to the policies and practices outlined in this Complaint.
28 As such, joinder of all members of the putative class is not practicable.

1 (b) Common Questions Predominate: Common questions of law and fact exist as to all
2 members of the putative class and predominate over questions that affect only individual
3 members of the class. These common questions of law and fact include, without
4 limitation, the following:

- 5 (1) Whether Defendants maintained accurate payroll records;
- 6 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
7 class members were not paid all overtime wages owed;
- 8 (3) Whether as a result of Defendants' policies and practices, Plaintiff and putative
9 class members were not paid all wages owed;
- 10 (4) Whether as a result of Defendants' policies and practices, Plaintiff and putative
11 class members were not reimbursed for using personal cell phones for work
12 purposes;
- 13 (5) Whether Defendants failed to pay meal and rest period premiums for meal and
14 rest period violations;
- 15 (6) Whether as a result of Defendants' policies and practices Plaintiff's and putative
16 class members received all wages, due and owing, at the time of their termination
17 or separation; and
- 18 (7) Whether Defendants provided Plaintiff's and putative class members with wage
19 statements that complied with Labor Code section 226.

20 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
21 class. The putative class also sustained damages arising out of Defendants' common
22 course of conduct in violation of the law as complained of herein. Plaintiff and all
23 members of the putative class were non-exempt employees who were not paid all
24 minimum wages owed, overtime wages owed, meal and rest period premiums, as a result
25 of Defendants' policies and practices resulting in inaccurate wage statements that did not
26 itemize the accurate minimum wages owed, overtime wages owed, meal and rest period
27 premiums, and sick leave accrued time/wages. Additionally, Defendants issued Plaintiff
28 and all members of the putative class wage statements that did not comply with Labor

1 Code section 226. As a result, Plaintiff and each member of the putative class will have
2 suffered the same type of harm and seek the same type of recovery based on the same
3 legal theories.

4 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
5 putative class. For all relevant times, Plaintiff resided in California and worked for
6 Defendants in California. Moreover, Plaintiff is (an) adequate representatives of the
7 putative class as Plaintiff has no interests that are adverse to those of putative class
8 members. Additionally, Plaintiff has retained counsel who has substantial experience in
9 complex civil litigation and wage and hour matters.

10 (e) Superiority: A class action is superior to other available means for the fair and efficient
11 adjudication of the controversy since individual joinder of all members of the putative
12 class is impracticable. Class action treatment will permit a larger number of similarly
13 situated persons to prosecute their common claims in a single forum simultaneously,
14 efficiently, and without the unnecessary duplication of effort and expense that numerous
15 individual actions would engender. Further, as damages suffered by each individual
16 member of the class may be relatively small, the expenses and burden of the individual
17 litigation would make it difficult or impossible for individual members of the class to
18 redress the wrongs done to them, and an important public interest will be served by
19 addressing the matter as a class action. The cost to the court system of adjudication of
20 such individualized litigation would be substantial. Individualized litigation would also
21 present the potential for inconsistent or contradictory judgments.

22 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
23 management of this action that would preclude its maintenance as a class action.

24 GENERAL ALLEGATIONS

25 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
26 set forth herein.

27 17. Plaintiff was employed by Defendants from March 2021 to March 13, 2023, as a non-
28 exempt employee. Plaintiff was paid \$17 per hour. Defendants deliver products to customers. Some of

1 these products include appliances, furniture, large TVs and other items. Defendants store the delivery
2 items in warehouses in Northern California and Southern California. Plaintiff worked as a Warehouse
3 Associate at the Stockton, California, warehouse. Plaintiff's job duties included loading and unloading
4 trucks and scanning and organizing items in the warehouse. Plaintiff worked in a fast-paced
5 environment and had to load and unload delivery trucks at required times.

6 18. Plaintiff and similarly situated employees usually worked eight (8) hours per day and
7 forty (40) hours per week. Sometimes, Plaintiff and similarly situated employees worked over eight (8)
8 hours per day and over forty (40) hours per week. Plaintiff typically worked Sunday to Friday.
9 However, at times, Defendants would change the regular schedule for Plaintiff and similarly situated
10 employees and inform them via group text when to report to work. Also, sometimes, Defendants would
11 send Plaintiff and similarly situated employees home early after Plaintiff and similarly situated
12 employees had reached forty (40) hours per week or a certain amount of overtime hours. On such
13 occasions, Defendants failed to pay Plaintiff and similarly situated employees for all the hours worked
14 during the pay period. Plaintiff and similarly situated employees noticed that they were not being paid
15 for all the hours worked. Plaintiff informed his supervisor Noel Lizaraga, that the Defendants did not
16 pay him for all the hours worked. Noel told Plaintiff that Defendants will pay the wages owed to
17 Plaintiff that were not included in the pay period, in the next pay period. However, this never occurred.
18 Defendants did not pay Plaintiff and similarly situated employees for all the hours worked. Plaintiff
19 complained at least three times to his supervisor regarding the unpaid hours issue. This led to Defendant
20 failing to pay Plaintiff and similarly situated employees for all hours worked including minimum and
21 overtime wages.

22 19. Additionally, Defendants failed to provide Plaintiff and similarly situated employees with
23 compliant meal and rest periods. Plaintiff and similarly situated employees were very busy loading and
24 unloading trucks during their shift. Plaintiff and similarly situated employees took their meal periods
25 together. At times, certain trucks needed to be loaded or unloaded during a certain period of time. As a
26 result, Defendants required that Plaintiff and similarly situated employees take their meal period after
27 the truck was loaded or unloaded. For example, Plaintiff's supervisor would tell Plaintiff and similarly
28 situated employees to finish loading the truck and then go to lunch. This led to Plaintiff and similarly

1 situated employees taking late meal periods, after their fifth hour of work. Plaintiff estimates that he and
2 similarly situated employees took late meal periods about two (2) to three (3) times per week. Similarly,
3 at times, Defendants required Plaintiff and similarly situated employees to finish loading or unloading
4 trucks before taking their rest period. This also resulted in Plaintiff and similarly situated employees
5 taking late rest periods, which were after their fourth (4) hour of work. Plaintiff also estimates that he
6 and similarly situated employees took late rest periods about two (2) to three (3) times per week. Rest
7 periods were unpaid as Defendants required Plaintiff and similarly situated employees to clock out
8 during any rest periods during their shifts. Defendants did not pay Plaintiff and similarly situated
9 employees for the two fifteen (15) minute rest periods or pay rest period premiums in lieu thereof.

10 20. Furthermore, Defendants failed to include the amount of accrued sick time in Plaintiff's
11 and similarly situated employees wage statements and the failure to pay all hours meant the accrued time
12 earned was less than it should have been. This made it confusing and difficult for Plaintiff and similarly
13 situated employees to know how many sick leave hours they had accrued or had available. Plaintiff is
14 informed and believes that as a result of Defendant's practices, Plaintiff and similarly situated
15 employees did not take all their accrued sick leave that they were entitled to.

16 21. Defendants also did not have a policy to reimburse Plaintiff and similarly situated
17 employees for use of their personal cell phones for work purposes. Plaintiff and similarly situated
18 employees used their personal cell phones to communicate with managers and supervisors, regarding
19 work issues. For example, managers required Plaintiff and similarly situated employees to find certain
20 items in the warehouse. Plaintiff and similarly situated employees would look for the items and when
21 found, would send a picture of the item to the manager via text. Additionally, sometimes, managers
22 would text Plaintiff and similarly situated employees the day before their scheduled shift to inform them
23 of any changes to their schedule or to come earlier or later than scheduled. Defendants did not
24 reimburse Plaintiff and similarly situated employees for their cell phone use.

25 22. Moreover, Plaintiff's last day of work was March 12, 2023. However, Defendants did
26 not pay Plaintiff for the hours he worked on March 12, 2023. Furthermore, Defendants did not pay
27 Plaintiff for his accrued vacation PTO that he had earned during the last year of work. Defendants had a
28 policy to begin PTO accrual for Plaintiff and similarly situated employees after their one-year

1 anniversary with the company. Plaintiff and similarly situated employees had accrued, but unused PTO
2 at the end of their employment that Defendants failed to pay out.

3 23. As a result of Defendants' policies and practices, Plaintiff and similarly situated
4 employees were not paid for all wages due, including minimum wages, overtime wages, meal and rest
5 period premiums, sick leave wages, and vested vacation time wages. These amounts were not paid to
6 similarly situated employees at the time of their separation and remain unpaid to date. Additionally, the
7 unlawful practices identified above resulted in Defendants issuing inaccurate paystubs to Plaintiff and
8 similarly situated employees. The paystubs did not accurately itemize the gross wages earned, total
9 hours worked, accrued sick pay, and the net wages earned. Defendants would, on occasion, add an
10 additional half hour of pay when Plaintiff and Aggrieved Employees worked longer than five (5) hours.
11 But, this, as well as the requirement to have employees clock out for rest periods, caused all total hours
12 worked calculations to be inaccurate and misstated on employees' paystubs.

13 24. Plaintiff is informed and believes that Martin Davis was the Chief Executive Officer,
14 Chief Financial Officer, and Secretary of White Glove Delivery of NCA Inc at various points during the
15 claim period. Mr. Davis was responsible for creating, implementing, and overseeing the wage and hour
16 policies and practices outlined herein that resulted in the violation of the California Labor Code.

17 25. Defendant WHITE GLOVE DELIVERY OF NCA INC., identified Defendant MARTIN
18 DAVIS in its filing with the California Secretary of State as its Chief Executive Officer. Plaintiff is
19 informed and believes that MARTIN DAVIS was responsible for creating and electing to implement
20 WHITE GLOVE DELIVERY OF NCA INC.'s payroll and compensation policies and practices or that
21 MARTIN DAVIS was aware of such policies and practices and ratified them.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**
24 **FAILURE TO PAY OVERTIME WAGES**
25 **(As to all Defendants)**

26 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
27 set forth herein.

28 27. During the period Plaintiff was employed by Defendants, Defendants were required to
compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of

1 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
2 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 9, section (3)(A);*
3 Cal. Lab. Code §§ 510, 1194.

4 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
5 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
6 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
7 worked at their regular rate of pay.

8 29. Plaintiff and similarly situated employees were not exempt from overtime protections
9 employees under the California Wage Orders and Labor Code.

10 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
11 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
12 the extent pertinent as if set forth here in full.

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PAY MINIMUM WAGES**
(As to all Defendants)

15 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
16 set forth herein.

17 32. For the period preceding the filing of this Complaint, Defendants were required to
18 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
19 every hour worked. *See MW-Order 2019; IWC Wage Order, No. 9, section 4(A); Cal. Lab. Code §*
20 *1194.*

21 33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
22 obligation to pay the minimum wage for each hour worked but failed to do so.

23 34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
24 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
25 the extent pertinent as if set forth here in full.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 9, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. California Labor Code section 512 and Wage Order No. 9 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

39. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

40. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully set forth herein.

43. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

44. California Labor Code section 226.7 and Wage Order No. 9, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

46. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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

1 *the last four digits of his or her social security number or an employee*
2 *identification number other than a social security number, (8) the name*
3 *and address of the legal entity that is the employer and, if the employer is*
4 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
5 *name and address of the legal entity that secured the services of the*
6 *employer, and (9) all applicable hourly rates in effect during the pay*
7 *period and the corresponding number of hours worked at each hourly rate*
8 *by the employee. The deductions made from payment of wages shall be*
9 *recorded in ink or other indelible form, properly dated, showing the*
10 *month, day, and year, and a copy of the statement and the record of the*
11 *deductions shall be kept on file by the employer for at least three years at*
12 *the place of employment or at a central location within the State of*
13 *California.*

14 50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
15 itemized statement or failed to provide an accurate and complete itemized statement showing the
16 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
17 accurately itemize all regular and overtime hours worked, meal and rest period premiums, and gross
18 and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated
19 employees' total hours worked due to Defendants' practice of not paying Plaintiff and similarly
20 situated employees for all hours worked, that resulted in off-the-clock work. Plaintiff and similarly
21 situated employees were not able to promptly and easily determine their total hours worked from
22 their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion
23 over whether they received all wages owed and were prevented from effectively challenging
24 information on their wage statements.

25 51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
26 employees have been damaged as stated in the section below entitled "DAMAGES," which is
27 incorporated here to the extent pertinent as if set forth here in full.

28 **SIXTH CAUSE OF ACTION**
WAITING TIME PENALTIES
(As to all Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully
set forth herein.

53. An employer must pay an employee who is terminated all unpaid wages immediately
upon termination. See Cal. Lab. Code § 201.

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1 54. An employer must pay an employee who resigns all unpaid wages within seventy-two
2 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

3 55. Plaintiff and similarly situated employees did not receive all wages, including minimum
4 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
5 within the required time after their separation from employment.

6 56. An employer who willfully fails to pay an employee wages in accordance with California
7 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
8 days. *See* Cal. Lab. Code § 203.

9 57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
10 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
11 and similarly situated employees were not paid for all regular and overtime hours worked because
12 Plaintiff and similarly situated employees informed their supervisor many times that Defendants did not
13 pay Plaintiff and similarly situated employees for all hours worked. Plaintiff's supervisor even told
14 Plaintiff that Defendants would pay all the unpaid hours in the next pay period, but Defendants failed to
15 do so. Furthermore, Defendants knew that Plaintiff and similarly situated employees were taking late
16 meal and rest periods because Plaintiff's manager would tell Plaintiff and similarly situated employees
17 to finish unloading the trucks then take their meal or rest period although Defendants' manager knew
18 that finishing unloading the truck would result in late meal and rest periods for Plaintiff and similarly
19 situated employees Defendants did not pay Plaintiff and similarly situated employees for their late meal
20 and rest periods. Defendants also knew that Plaintiff's vacation had vested and did not pay Plaintiff the
21 vested vacation time at termination. Additionally, Defendants also knew that Plaintiff and similarly
22 situated employees were using their personal cell phones to communicate with managers and
23 supervisors because Plaintiff and similarly situated employees texted pictures of items to managers and
24 managers also texted Plaintiff and similarly situated employees regarding their upcoming work
25 schedules. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of
26 separation, yet Defendants still refused to pay the remaining wages owed.

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28 //

1 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
2 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
3 thirty (30) days for Defendants' failure to pay all wages due.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EXPENSES**
6 **(As to all Defendants)**

7 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
8 set forth herein.

9 60. California Labor Code section 2802(a) states that "An employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
11 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
12 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
13 unlawful."

14 61. Defendants required Plaintiff and similarly situated employees to use their personal cell
15 phones for work purposes but failed to reimburse them for such use. Plaintiff and similarly situated
16 employees used their personal cell phones to communicate with managers and supervisors, regarding
17 work issues. Also, managers required Plaintiff and similarly situated employees to find certain items in
18 the warehouse, which resulted in Plaintiff and similarly situated employees looking for such items and
19 texting pictures of the found items to the managers.

20 62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
21 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
22 the extent pertinent as if set forth here in full.

23 **EIGHTH CAUSE OF ACTION**
24 **FAILURE TO PAY VESTED VACATION TIME**
25 **(As to all Defendants)**

26 63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully
27 set forth herein.

28 64. Labor Code section 227.3 provides that "whenever a contract of employment or employer
policy provides for paid vacations, and an employee is terminated without having taken off his vested
vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such

1 contract of employment or employer policy respecting eligibility or time served; provided, however, that
2 an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon
3 termination.” Defendants had a policy to provide Plaintiff and similarly situated employees with PTO
4 but failed to pay Plaintiff and similarly situated employees all PTO they had accrued but not used at the
5 time of their separation.

6 65. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **NINTH CAUSE OF ACTION**
10 **UNFAIR COMPETITION**
11 **(As to WHITE GLOVE DELIVERY OF NCA INC., and DOES 1 to 100)**

12 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
13 set forth herein.

14 67. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
15 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
16 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
17 California Business and Professions (“B&P”) Code § 17200.

18 68. Plaintiff and similarly situated employees were not paid all wages owed, including
19 minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for
20 business expenses, during their employment or any time thereafter. Moreover, through Defendants
21 conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and
22 rest periods.

23 69. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
24 California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to
25 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

26 70. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the
27 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
28 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code

1 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 et seq, 510, 512, and
2 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
3 of this Action.

4 **TENTH CAUSE OF ACTION**
5 **PRIVATE ATTORNEYS GENERAL ACT**
6 **(As to all Defendants)**

7 71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as though
8 fully set forth herein.

9 72. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
10 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
11 current and former employees:

- 12 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 9, § 3 (Failure to Pay Overtime
13 Wages)
- 14 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 9, § 4 (Failure to Pay
15 Minimum Wages)
- 16 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 9, §§ 11(A) and 11(B)
17 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 18 • Violation of Labor Code § 226.7 and Wage Order No. 9, § 12(A) (Failure to Provide Rest
19 Periods or Pay Premiums in Lieu Thereof)
- 20 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 21 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 22 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 23 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
24 Work in Any Industrial Welfare Commission Order)
- 25 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 26 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- 27 • Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
- 28 • Violation of Labor Code § 227.3 (Failure to Pay Vested Vacation Time)

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1 73. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
2 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
3 2699(f)(2).

4 74. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code
5 sections 2699(a) and 2699.3.

6 75. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here
8 to the extent pertinent as if set forth here in full.

9 **DAMAGES**

10 WHEREFORE Plaintiff requests relief as follows:

11 1. A jury trial;

12 2. As to the First Cause of Action:

- 13 a. Wages in an amount to be proven at trial;
14 b. Interest for the wages due pursuant to California Labor Code section 1194;
15 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
16 Code section 1194;

17 3. As to the Second Cause of Action:

- 18 a. Wages in an amount to be proven at trial;
19 b. Interest for the wages due pursuant to California Labor Code section 1194;
20 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
21 Code section 1194;
22 d. Liquidated damages pursuant to California Labor Code section 1194.2;

23 4. As to the Third Cause of Action:

- 24 a. Wages in an amount to be proven at trial;
25 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
26 section 1021.5;

27 5. As to the Fourth Cause of Action:

- 28 a. Wages in an amount to be proven at trial;

1 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
2 section 1021.5;

3 6. As to the Fifth Cause of Action:

4 a. Penalties as provided for in Labor Code section 226, including the greater of all
5 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
6 violation occurred and one hundred dollars (\$100.00) per employee for each
7 violation in the subsequent pay periods, but not to exceed four thousand dollars
8 (\$4,000.00);

9 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
10 226(e);

11 7. As to the Sixth Cause of Action:

12 a. For any initial violations, \$100 for each failure to pay each employee;

13 b. For each subsequent violation or any willful or intentional violations \$200 for
14 each failure to pay each employee, plus 25 percent of the amount unlawfully
15 withheld;

16 8. As to the Seventh Cause of Action:

17 a. An amount to be proven at trial;

18 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

19 9. As to the Ninth Cause of Action:

20 a. Unpaid wages as proven at trial;

21 10. As to the Tenth Cause of Action:

22 a. For civil penalties as provided in the Labor Code for each enumerated
23 violation;

24 b. For those Labor Code sections where there is no civil penalty provided for their
25 violation, the default penalty provided in Labor Code section 2699(f): for any
26 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
27 period; For any subsequent violation, two hundred dollars (\$200) for each
28 aggrieved employee per pay period;

- 1 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
2 d. For any other remedies as allowed by law and/or deemed appropriate by the
3 Court;

4 11. For such other and further relief as this Court may deem just and proper,
5 including, but not limited to:

- 6 a. Wages as proved at trial;
7 b. Injunctive and Declaratory relief;
8 c. Attorney's fees and costs as provided for by law; and
9 d. Interest.

10
11 Dated: March 11, 2024

Shimoda & Rodriguez Law, PC

12
13 By: 

14 Galen T. Shimoda
15 Justin P. Rodriguez
16 Renald Konini
17 Attorneys for Plaintiff
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1 *De Anda v. White Glove Delivery of NCA Inc., et al.*
2 *San Joaquin County Superior Court of California STK-CV-UOE-2023-0009634*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On March 28, 2024, I served the following documents on the party below:

9 • **SECOND AMENDED COMPLAINT FOR DAMAGES**

10 Christopher C. McNatt, Jr. 11 Scopelitis, Garvin, Light, Hanson & Feary, LLP 12 2 North Lake Avenue, Suite 560 13 Pasadena, CA 91101 14 Phone: 626-795-4700 15 Facsimile: 16 Emails: Michelle Lazo – mlazo@scopelitis.com 17 Derek Mitchell – dmitchell@scopelitis.com 18 Christopher McNatt – cmcnatt@scopelitis.com 19 Youngki Sohn – ysohn@scopelitis.com	
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16 [] [By First Class Mail] I am familiar with my employer's practice for the collection
17 and processing of correspondence for mailing with the United States Postal
18 Service and that each day's mail is deposited with the United States Postal
19 Service that same day in the ordinary course of business. On the date set forth
20 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Salt Lake City, Utah, addressed as set forth above.

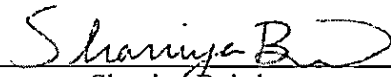
21 [] [By Personal Service] By personally delivering a true copy thereof to the office
22 of the addressee above.

23 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
24 above. No error was reported by the e-mail service that I used.

25 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
26 personally delivered via the following overnight courier service:_____.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing
28 is true and correct, and that this declaration was executed on March 28, 2024, at Salt Lake City,
Utah.

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Shaniya Baird