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Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

SUMMONS ISSUED

Attorneys for Plaintiff DIEGO ARMANDO SALAS RODRIGUEZ,
individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF CONTRA COSTA

DIEGO ARMANDO SALAS RODRIGUEZ,
individually and on behalf of all others similarly
situated,

Case No. C25-00274

COMPLAINT

Plaintiff(s),

v.

LVL MOVING SYSTEMS INC - UPLINE
MOVING; and DOES 1 through 100,

Defendant(s).

- 1. Failure to Provide Compliant Meal Breaks**
- 2. Failure to Provide Complaint Rest Breaks**
- 3. Failure to Pay All Hours Worked**
- 4. Failure to Pay All Overtime Owed**
- 5. Willful Misclassification**
- 6. Wage Statement Violation**
- 7. Waiting Time Penalties**
- 8. Violation of Unfair Competition**
- 9. Private Attorneys General Act**
- 10. Retaliation**
- 11. Wrongful Termination**

RELEVANT PARTIES

1. Plaintiff Diego Armando Salas Rodriguez ("Plaintiff") is an adult resident of Contra Costa County, California, and was at all times relevant residing in Contra Costa County, California.
2. Defendant LVL Moving Systems Inc - Upline Moving ("Defendant") is a California corporation with its principal place of business located in Contra Costa County, California. Defendant is registered to and does conduct business in the State of California and is subject to the

1 laws of the State of California. All acts and omissions of Defendant employees as alleged herein
2 occurred while they were acting within the course and scope of their employment.

3 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
4 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
5 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
6 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
7 informed and believes, and based on such information and belief alleges, that each of the fictitiously
8 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
9 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
10 and Doe Defendants are collectively referred to as “Defendants”.

11 **JURISDICTION AND VENUE**

12 4. This action is properly filed in Contra Costa County because the acts and omissions that give
13 rise to Plaintiff’s claims took place in Contra Costa County, and Defendants transact substantial
14 business in this County.

15 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
16 alleged herein occurred in Contra Costa County, California and Plaintiff suffered damages from
17 such conduct within Contra Costa County, California.

18 **FACTUAL ALLEGATIONS**

19 6. At all times relevant, Plaintiff was Defendants’ employee.

20 7. Plaintiff was employed by Defendants from May 31, 2024 as a mover/driver.

21 8. Plaintiff complained to Defendants about missing or incorrect pay. Specifically to Ari
22 Nelson, the field manager, repeatedly from June to September 2024, through direct conversations
23 and text messages. In retaliation, Plaintiff was removed from the schedule.

24 9. Plaintiff performed work in the ordinary course of business of Defendants. Defendants
25 willfully misclassified Plaintiff as an independent contractor.

26 10. Defendants failed to provide Plaintiff with compliant meal breaks because meal breaks were
27 regularly missed. Further, no second meal break was provided for shifts over 10-hours. Despite not
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1 being provided with compliant meal breaks, Defendant did not pay premium pay for these missed
2 breaks at Plaintiff's regular rate of pay.

3 11. Defendant failed to provide Plaintiff with compliant rest breaks because rest breaks were
4 regularly missed. Despite not being provided with compliant rest breaks, Defendant did not pay
5 premium pay for these missed breaks at Plaintiff's regular rate of pay.

6 12. Defendants failed to pay Plaintiff for all hours worked because Defendants modified
7 Plaintiff's logged worked hours to reflect less hours than he actually worked. Therefore, Plaintiff
8 was not paid for all hours worked.

9 13. Defendants failed to pay Plaintiff all overtime owed because Plaintiff regularly worked in
10 excess of eight hours in a day and 40 hours in a workweek. Therefore, any unpaid time is
11 necessarily overtime.

12 14. Defendants failed to provide Plaintiff with accurate wage statements because the wage
13 statements issued to Plaintiff did not accurately list total wages owed and hours worked, among
14 other things.

15 15. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it
16 follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as
17 well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

18 **PAGA ALLEGATIONS**

19 16. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
20 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures outlined in Labor Code section 2699.3.

24 17. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action
25 under PAGA after the following requirement have been met:

26 18. The aggrieved employee has provided written notice by online filing to the LWDA and by
27 certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the
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1 Labor Code alleged to have been violated, including the facts and theories to support the alleged
2 violations; and

3 19. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and the
4 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee’s
5 claims. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide such Notice within
6 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may
7 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
8 to any other penalties to which the employee may be entitled.

9 20. On November 1, 2024, Plaintiff provided written notice by online filing to the LWDA and
10 by certified mail to Defendants of specific provisions of the Labor Code alleged to have been
11 violated by Defendants, including the facts and theories to support the alleged violations.

12 21. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
13 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks
14 PAGA Penalties on behalf of all Aggrieved Employees.

15 22. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current
16 and former, who were employed by Defendants within one year prior to November 1, 2024, through
17 final disposition of this action.”

18 **FIRST CAUSE OF ACTION**

19 **Failure to Provide Compliant Meal Periods**

20 **By Plaintiff Against All Defendants**

21 23. Plaintiff incorporates by reference the paragraphs above.

22 24. Labor Code section 512 and the Wage Orders provide that “an employer shall not employ an
23 employee for a work period of more than five hours per day without providing the employee with a
24 meal period of not less than 30 minutes” or “for a work period of more than 10 hours per day
25 without providing the employee with a second meal period of not less than 30 minutes”.

26 25. An employer provides compliant meal breaks to its employees “if it relieves its employees
27 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
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1 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
2 1004, 1040 (2012)).

3 26. Not only must an employer affirmatively relieve its employees of all duty during their meal
4 breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks.
5 (*Brinker*, supra).

6 27. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

7 28. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
8 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
9 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
10 11 Cal. 5th 858 (2021)).

11 29. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a meal
12 break was missed.

13 30. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
14 penalties, attorney fees, and costs.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Provide Compliant Rest Periods**

17 **By Plaintiff Against All Defendants**

18 31. Plaintiff incorporates by reference the paragraphs above.

19 32. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
20 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
21 per four hours or major fraction thereof.

22 33. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and
23 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
24 5th 257, 269 (2016)).

25 34. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

26 35. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
27 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
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1 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
2 11 Cal. 5th 858 (2021)).

3 36. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest
4 break was missed.

5 37. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
6 penalties, attorney fees, and costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Pay for All Hours Worked**

9 **By Plaintiff Against All Defendants**

10 38. Plaintiff incorporates by reference the paragraphs above.

11 39. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
12 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
13 40 hours in a workweek.

14 40. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

15 41. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
16 penalties, attorney fees, and costs.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Pay All Overtime Owed**

19 **By Plaintiff Against All Defendants**

20 42. Plaintiff incorporates by reference the paragraphs above.

21 43. Labor Code section 510 provides that "[a]ny work in excess of eight hours in one workday
22 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
23 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee."

25 44. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

26 45. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages,
27 interest, penalties, attorney fees, and costs.

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1 **FIFTH CAUSE OF ACTION**

2 **Wage Statement Penalties**

3 **By Plaintiff Against All Defendants**

4 46. Plaintiff incorporates by reference the paragraphs above.

5 47. Labor Code section 226(a) requires employers to provide itemized wage statements to its
6 employees that identify accurate information regarding their compensation. Defendants, as a matter
7 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
8 statements to Plaintiff in violation of Labor Code section 226(a).

9 48. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
10 and incomplete.

11 49. Defendants knowingly and intentionally issued wage statements that were inaccurate and
12 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
13 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

14 50. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
15 costs.

16 **SIXTH CAUSE OF ACTION**

17 **Waiting Time Penalties**

18 **By Plaintiff Against All Defendants**

19 51. Plaintiff incorporates by reference the paragraphs above.

20 52. Labor Code sections 201 and 202 require that an employer provide an employee with all
21 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
22 employee's resignation.

23 53. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
24 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
25 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
26 thirty days.

27 54. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
28 conclusion of employment.

1 55. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
2 and costs.

3 **SEVENTH CAUSE OF ACTION**

4 **Willful Misclassification**

5 **By Plaintiff Against All Defendants**

6 56. Plaintiff incorporates by reference the paragraphs above.

7 57. Defendants' conduct described herein constitutes willful misclassification in violation of
8 Labor Code section 226.8.

9 58. Specifically, Defendants employed Plaintiff as a mover and/or driver performing work
10 within the usual course of Defendant's business.

11 59. Plaintiff is not engaged in an independently established trade.

12 60. Plaintiff was hired directly by Defendants.

13 61. Notwithstanding, Defendant misclassified Plaintiff as an independent contractor in violation
14 of Labor Code section 226.8.

15 62. Defendant is liable for civil penalties of at least \$5,000 for each violation.

16 **EIGHTH CAUSE OF ACTION**

17 **Violation of Unfair Competition Law**

18 **By Plaintiff Against All Defendants**

19 63. Plaintiff incorporates by reference the paragraphs above.

20 64. Defendants' conduct described herein constitutes unfair competition.

21 65. Specifically, Defendants have gained an unfair advantage over other similarly situated
22 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
23 owed.

24 66. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
25 wrongfully withheld wages.

26 67. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **Private Attorneys General Act**

3 **By Plaintiff and the Aggrieved Employees Against All Defendants**

4 68. Plaintiff incorporates by reference the paragraphs above.

5 69. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
6 violation(s) of the Labor Code.

7 70. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

8 71. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to
9 provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in
10 lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

11 72. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
12 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
13 the penalties in Labor Code section 2699 apply.

14 73. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate
15 Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code
16 sections 1197.1 and 2699 apply.

17 74. With respect to violations of Labor Code section 510 for Defendants' failure to compensate
18 Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code
19 sections 558, 1197.1, and 2699 apply.

20 75. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
21 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
22 and 2699 apply.

23 76. With respect to violations of Labor Code section 203 for failure to pay all wages due to
24 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
25 Labor Code section 2699 apply.

26 77. With respect to violations of labor Code section 226.8 for willfully misclassifying an
27 individual as an independent contractor, civil penalties of not less than \$5,000 and not more than
28 \$15,000 for each violation, in addition to other penalties or fines permitted by law.

1 78. Pursuant to Labor Code section 2699(k)(1), Plaintiff further seeks public injunctive relief in
2 the form of an Order enjoining Defendants from continuing to violate the California Labor Code in
3 the manner alleged herein.

4 79. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
5 to Labor Code section 2699(g).

6 **TENTH CAUSE OF ACTION**

7 **Violation of California Government Code § 12940 (h) - Retaliation**

8 **By Plaintiff Against All Defendants**

9 80. Plaintiff incorporates by reference the paragraphs above.

10 81. Government Code § 12940(h) makes it unlawful for an employer to discriminate against any
11 employee who opposes or makes a complaint for practices forbidden by FEHA.

12 82. Plaintiff engaged in protected activity under § 12940(h) as set forth herein.

13 83. Defendants retaliated against Plaintiff in violation of California Government Code §
14 12940(h).

15 84. The actions of Defendants against Plaintiff constitute unlawful retaliation, in violation of
16 FEHA. Such violations were a proximate cause in Plaintiff's damage as stated below.

17 **ELEVENTH CAUSE OF ACTION**

18 **Wrongful Termination in Violation of Public Policy**

19 **By Plaintiff Against All Defendants**

20 85. Plaintiff incorporates by reference the paragraphs above.

21 86. At all times mentioned in this complaint, it was a fundamental policy of the State of
22 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
23 race, national origin, ancestry, physical disability, mental disability, medical condition, sex, and/or
24 engagement in protected activity.

25 87. Based on the actions described above, Defendants constructively discharged Plaintiff for
26 engaging in protected activity.

27 88. Defendants actions were in violation of California Public Policy.

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1 89. As a proximate result of the acts of Defendants, and each of them, Plaintiff has suffered and
2 will continues to suffer damages, as stated below.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

5 First Cause of Action

- 6 1. Damages and/or penalties pursuant to Labor Code section 226.7
- 7 2. Interest
- 8 3. Attorneys' fees
- 9 4. Costs
- 10 5. Other relief the court deems proper

11 Second Cause of Action

- 12 1. Damages and/or penalties pursuant to Labor Code section 226.7
- 13 2. Interest
- 14 3. Attorneys' fees
- 15 4. Costs
- 16 5. Other relief the court deems proper

17 Third Cause of Action

- 18 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1
- 19 2. Liquidated damages
- 20 3. Interest
- 21 4. Attorneys' fees
- 22 5. Costs
- 23 6. Other relief the court deems proper

24 Fourth Cause of Action

- 25 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194
- 26 2. Interest
- 27 3. Attorneys' fees
- 28 4. Costs

1 5. Other relief the court deems proper

2 Fifth Cause of Action

3 1. Penalties pursuant to Labor Code section 226

4 2. Attorneys' fees

5 3. Costs

6 4. Other relief the court deems proper

7 Sixth Cause of Action

8 1. Penalties pursuant to Labor Code section 203

9 2. Attorneys' fees

10 3. Costs

11 4. Other relief the court deems proper

12 Seventh Cause of Action

13 1. Civil Penalties

14 2. Attorneys' fees

15 3. Costs

16 4. Other relief the court deems proper

17 Eighth Cause of Action

18 1. Restitution of all wrongfully withheld wages

19 2. Attorneys' fees

20 3. Costs

21 4. Other relief the court deems proper

22 Ninth Cause of Action

23 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.

24 2. Public injunctive relief in the form of an Order enjoining Defendants from continuing to
25 violate the California Labor Code in the manner alleged herein

26 3. Attorneys' fees

27 4. Costs

28 5. Other relief the court deems proper

1 Tenth Cause of Action

- 2 1. Compensatory damages
3 2. Punitive damages
4 3. Attorneys' fees
5 4. Costs
6 5. Other relief the court deems proper

7 Eleventh Cause of Action

- 8 1. Back pay and front pay
9 2. Interest on the above amounts
10 3. Compensatory damages
11 4. Punitive damages
12 5. Attorneys' fees
13 6. Costs
14 7. Other relief the court deems proper

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16 DATED: January 29, 2025

FRONTIER LAW CENTER

17 /s/ Daniel Ginzburg

DANIEL GINZBURG

18
19 Attorneys for Plaintiff
20 DIEGO ARMANDO SALAS
21 RODRIGUEZ,
22 individually and on behalf of all others
23 similarly situated
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