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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 ALONZO SMITH, on behalf of the State
15 of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 CLEAN HARBORS ENVIRONMENTAL
20 SERVICES, INC., a Corporation; and Does
21 1 through 50, Inclusive;

22 Defendants.

Case No. 34-2021-00293374

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Alonzo Smith (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant CLEAN HARBORS
8 ENVIRONMENTAL SERVICES, INC. (“DEFENDANT”) seeking only to recover PAGA civil
9 penalties for himself, and on behalf of all current and former aggrieved employees that worked
10 for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Clean Harbors Environmental Services, Inc. (“DEFENDANT”) is a
25 Corporation that at all relevant times mentioned herein conducted and continues to conduct
26 substantial and regular business throughout California.
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1 5. DEFENDANT is a provider of environmental, energy and industrial services,
2 including hazardous waste disposal for companies, including Fortune 500 companies, small
3 waste generators and federal, state, provincial and local governments.

4 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
5 employee entitled to overtime pay and meal and rest periods from October of 2018 to July of
6 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
7 a non-exempt employee paid in whole or in part on an hourly basis and received additional
8 compensation from DEFENDANT in the form of non-discretionary incentive wages.

9 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, brings this Representative Action on behalf of the State of California with respect to
12 himself and all individuals who are or previously were employed by DEFENDANT in
13 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
14 the time period of November 20, 2019 until a date as determined by the Court (the "PAGA
15 PERIOD").

16 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
17 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
18 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
19 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
20 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
21 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives rise
22 to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and all
23 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
24 2699, *et seq.*

25 9. The true names and capacities, whether individual, corporate, subsidiary,
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
2 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
3 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
4 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
5 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
6 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
7 responsible in some manner for one or more of the events and happenings that proximately
8 caused the injuries and damages hereinafter alleged.

9 10. The agents, servants and/or employees of the Defendants and each of them acting
10 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
11 agent, servant and/or employee of the Defendants, and personally participated in the conduct
12 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
13 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
14 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
16 agents, servants and/or employees.

17 18 THE CONDUCT

19 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
20 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
21 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
22 calculate minimum and overtime wages for time worked by PLAINTIFF and other
23 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
24 compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
25 wages due them for working without compensation at the correct minimum wage and overtime
26 rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the
27 correct compensation for all time worked in accordance with applicable law is evidenced by
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1 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
2 purposefully avoid the payment of the correct compensation as required by California law which
3 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
4 complied with the law. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time
5 to time were not paid wages for all time worked, including overtime wages, such that in the
6 aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice
7 of unevenly rounding time worked by its employees.

8 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
9 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
10 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
12 time worked, meaning the time during which an employee was subject to the control of an
13 employer, including all the time the employee was permitted or suffered to permit this work.
14 DEFENDANT required these employees to work off the clock without paying them for all the
15 time they were under DEFENDANT's control. Specifically, DEFENDANT required
16 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
17 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
18 were days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and
19 other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by
20 working without their time being accurately recorded and without compensation at the
21 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
22 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
23 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

24 13. State and federal law provides that employees must be paid overtime at one-and-
25 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
26 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.

1 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
2 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
3 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
4 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
5 hourly basis with incentive compensation when the employees met the various performance
6 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
7 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
8 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
9 of calculating overtime pay. Management and supervisors described the incentive program to
10 potential and new employees as part of the compensation package. As a matter of law, the
11 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
12 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
13 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
14 DEFENDANT. Further, DEFENDANT underpaid sick pay wages to PLAINTIFF and other
15 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of
16 pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn non-
17 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
18 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
19 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

20 15. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
22 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
23 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
24 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
25 compensation as required by California law which allowed DEFENDANT to illegally profit and
26 gain an unfair advantage over competitors who complied with the law. To the extent equitable
27 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
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1 PAGA PERIOD should be adjusted accordingly.

2 16. As a result of their rigorous work schedules, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
4 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
6 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
7 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
8 off-duty meal period from time to time in which these employees were required by
9 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
11 accordance with DEFENDANT's corporate policy and practice.

12 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
13 were from time to time also required to work in excess of four (4) hours without being provided
14 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
15 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
16 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
17 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
18 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
19 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
20 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
22 managers. Additionally, the applicable California Wage Order requires employers to provide
23 employees with off-duty rest periods, which the California Supreme Court defined as time
24 during which an employee is relieved from all work related duties and free from employer
25 control. In so doing, the Court held that the requirement under California law that employers
26 authorize and permit all employees to take rest period means that employers must relieve
27 employees of all duties and relinquish control over how employees spend their time which
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1 includes control over the locations where employees may take their rest period. Employers
2 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
3 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
4 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
5 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
6 leave the work premises during their rest period.

7 18. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
8 employment are due and payable twice during each calendar month, on days designated in
9 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
10 requires employers to pay employees all wages owed within seven (7) days of the close of the
11 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
12 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
13 payroll period.

14 19. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
15 employees with an accurate itemized wage statement in writing showing, among other things,
16 gross wages earned and all applicable hourly rates in effect during the pay period and the
17 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
18 failed to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
19 identify the correct gross and net wages earned, the applicable number of hours worked and
20 rates of pay. Specifically, DEFENDANT violated Section 226 by failing to identify the correct
21 rates of pay and number of hours worked, including for the "Per Diem NT," "Prevailing Wage",
22 and "Retro Pay" items of pay, which were wage payments. Aside, from the violations listed
23 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF and other AGGRIEVED
24 EMPLOYEES an itemized wage statement that lists all the requirements under California Labor
25 Code 226 *et seq.*

26 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
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1 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
3 2802, employers are required to indemnify employees for all expenses incurred in the course
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
6 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
7 directions of the employer, even though unlawful, unless the employee, at the time of obeying
8 the directions, believed them to be unlawful."

9 21. In the course of their employment PLAINTIFF and other AGGRIEVED
10 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
11 cellular phones as a result of and in furtherance of their job duties as employees for
12 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
13 associated with the use of their personal cellular phones for DEFENDANT's benefit.
14 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
15 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
16 the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
18 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
19 of DEFENDANT.

20 22. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
21 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
22 to accurately calculate and record the correct overtime rate for the overtime worked by
23 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
24 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
25 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
26 calculate and/or pay all required overtime compensation for work performed by the
27 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
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1 promulgated thereunder as herein alleged.

2 23. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
6 AJDAR 12157 (Certified for Publication 12/19/18).

7 **JURISDICTION AND VENUE**

8 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10.

10 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
12 maintained offices and facilities in this County and/or conducts substantial business in this
13 County, and (ii) committed the wrongful conduct herein alleged in this County against
14 PLAINTIFF and the AGGRIEVED EMPLOYEES.

15 **FIRST CAUSE OF ACTION**

16 **For Violation of the Private Attorneys General Act**

17 **[Cal. Lab. Code §§ 2698, *et seq.*]**

18 **(By PLAINTIFF and Against All Defendants)**

19 26. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 27. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
24 fundamentally a law enforcement action designed to protect the public and not to benefit private
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
26 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
27 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
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1 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
2 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
3 subject to arbitration.

4 28. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to
7 himself and all individuals who are or previously were employed by DEFENDANT in
8 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
9 the time period of November 20, 2019 until a date as determined by the Court (the "PAGA
10 PERIOD").

11 29. On November 20, 2020, PLAINTIFF gave written notice by electronic mail to the
12 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
13 employer of the specific provisions of this code alleged to have been violated as required by
14 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
15 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
16 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
17 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

18 30. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
20 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
21 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
22 to pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide
23 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
24 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
25 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and
26 the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
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1 such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
2 Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES.

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: January 29, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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18 By: Norman B. Blumenthal

19 Attorneys for Plaintiff

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27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).