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

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

14 JASON TAAD, on behalf of the State of
15 California, as a private attorney general,

16 Plaintiff,

17 vs.

18 BIGGE CRANE AND RIGGING CO., a
19 California Corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.

Case No. RG21103112

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,
221, 226(a), 226.7, 233, 246, 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)

ENDORSED
FILED
ALAMEDA COUNTY

JUN 29 2021

CLERK OF SUPERIOR COURT
By JERRIE MOYER Deputy

1 Plaintiff Jason Taad (“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 his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant Bigge Crane and Rigging Co. (“DEFENDANT”) is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT offers bare lease, crane sales, crane and rigging services,
27 transportation, pre-planning, project management, and engineering services to its customers.
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since August of
2 2015 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
10 during the time period of February 19, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,
16 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
17 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
18 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
19 employees within the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
28 caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. Also, DEFENDANT, as a matter of established company policy and procedure, administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by

1 DEFENDANT's business records.

2 12. State and federal law provides that employees must be paid overtime at one-and-
3 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
4 are compensated at an hourly rate plus incentive pay that is tied to specific elements of an
5 employee's performance.

6 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
7 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
8 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
9 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
10 hourly basis with incentive compensation when the employees met the various performance
11 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
12 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
13 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
14 of calculating overtime pay. Management and supervisors described the incentive program to
15 potential and new employees as part of the compensation package. As a matter of law, the
16 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
17 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
18 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
19 DEFENDANT.

20 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
21 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
22 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
23 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
24 more than five (5) hours during some shifts without receiving a meal break. Further,
25 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
26 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
27 are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
28 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation

1 and in accordance with DEFENDANT's corporate policy and practice.

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

22 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
23 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
24 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
25 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
26 meaning the time during which an employee was subject to the control of an employer,
27 including all the time the employee was permitted or suffered to permit this work.
28 DEFENDANT requires these employees to work off the clock without paying them for all the

1 time they are under DEFENDANT's control, including, but not limited to, time spent
2 undergoing mandatory drug testing or any other testing and/or examination required as a
3 condition of employment. As such, DEFENDANT knew or should have known that
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for all time
5 worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time worked
6 by working without their time being accurately recorded and without compensation at the
7 applicable minimum wage and overtime wage rates. To the extent that the time worked off the
8 clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
9 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
10 1197.1.

11 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
13 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
14 provides that every employer shall furnish each of his or her employees with an accurate
15 itemized wage statement in writing showing, among other things, gross wages earned and all
16 applicable hourly rates in effect during the pay period and the corresponding amount of time
17 worked at each hourly rate. PLAINTIFF and other AGGRIEVED EMPLOYEES are paid on
18 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
19 the pay period and the total hours worked, and the applicable pay period in which the wages are
20 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
21 provides to PLAINTIFF and other AGGRIEVED EMPLOYEES fail to identify such
22 information. More specifically, the wage statements fail to identify the accurate total hours
23 worked each pay period. When the hours shown on the wage statements are added up, they do
24 not equal the actual total hours worked during the pay period. Aside, from the violations listed
25 above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage
26 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
27 DEFENDANT from time to time provides PLAINTIFF and the other AGGRIEVED
28 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

1 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
2 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
3 wages are paid not more than seven calendar days following the close of the payroll period.

4 Cal. Lab. Code § 210 provides:

5 [I]n addition to, and entirely independent and apart from, any other penalty provided in
6 this article, every person who fails to pay the wages of each employee as provided in
7 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
8 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

9 19. DEFENDANT from time to time fails to pay PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
11 accordance with Cal. Lab. Code § 204(d).

12 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
13 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
14 and other non-exempt employees earn non-discretionary remuneration, including but not limited
15 to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate
16 of pay, DEFENDANT underpays sick pay to PLAINTIFF and other AGGRIEVED
17 EMPLOYEES at their base rates of pay.

18 21. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
20 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
21 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
22 2802, employers are required to indemnify employees for all expenses incurred in the course
23 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
25 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
26 directions of the employer, even though unlawful, unless the employee, at the time of obeying
27 the directions, believed them to be unlawful."

28 22. In the course of their employment PLAINTIFF and other AGGRIEVED

1 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
2 cellular phones as a result of and in furtherance of their job duties as employees for
3 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
4 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
5 PLAINTIFF and other AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
6 personal cellular phones to for work related issues. As a result, in the course of their
7 employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred
8 unreimbursed business expenses which included, but were not limited to, costs related to the use
9 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

15
16 **JURISDICTION AND VENUE**

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

19 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
20 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
21 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
22 in this County and/or conducts substantial business in this County, and (ii) committed the
23 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
24 EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

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

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

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

5 26. PLAINTIFF realleges and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

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

17 28. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, brings this Representative Action on behalf of the State of California
20 with respect to himself and all individuals who are or previously were employed by
21 DEFENDANT in California and who were classified as non exempt employees
22 ("AGGRIEVED EMPLOYEES") during the time period of February 19, 2020 until a date as
23 determined by the Court (the "PAGA PERIOD").

24 29. On February 19, 2021, PLAINTIFF gave written notice by electronic mail to
25 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
28 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now

1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
2 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 30. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
6 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
7 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse employees
8 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
9 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512,
10 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
11 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives
12 rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
13 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
14 the representative of the State of California for the illegal conduct perpetrated on
15 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

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

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

24 B) An award of attorneys' fees and cost of suit, as allowable under the

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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: June 28, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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6 By: 

Norman B. Blumenthal
Attorneys for Plaintiff