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SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

JEFFERY RICHARD, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

MATHESON TRI-GAS, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

**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, 227.3, 246 *et seq.*,
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 Jeffery Richard (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Matheson Tri-Gas, Inc. (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 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 Matheson Tri-Gas, Inc. (“DEFENDANT”) is a Corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT is a supplier of industrial and specialty gases, and gas handling
27 equipment. The company offers semiconductor, medical gases, welding, atmospheric and bulk,
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1 and cylinder gases for customers using gas in their labs, fabs, plants, and processes.

2 6. PLAINTIFF was employed by DEFENDANT in California from August of 2019
3 to May of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
4 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
5 of minimum and overtime wages due for all time worked.

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

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
17 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
18 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
19 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
20 employees within the meaning of Labor Code § 2699, *et seq.*

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

1 caused the injuries and damages hereinafter alleged.

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

10 THE CONDUCT

11
12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
13 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
16 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they were
17 under DEFENDANT's control. DEFENDANT required PLAINTIFF and the AGGRIEVED
18 EMPLOYEES to work off the clock without paying them for all the time they performed work
19 duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that
20 DEFENDANT expected PLAINTIFF and the AGGRIEVED EMPLOYEES to complete on a
21 daily and/or weekly basis. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off
22 the clock with respect to time spent undergoing mandatory drug testing or any other testing
23 and/or examination required as a condition of employment. From time to time, DEFENDANT
24 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's
25 off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments.
26 DEFENDANT also engaged in the practice of requiring PLAINTIFF and the AGGRIEVED
27 EMPLOYEES to perform work off the clock in that DEFENDANT paid PLAINTIFF and other
28 AGGRIEVED EMPLOYEES via a piece-rate scheme after PLAINTIFF and other

1 AGGRIEVED EMPLOYEES traveled outside fifty (50) miles of their assigned terminal.
2 DEFENDANT only paid PLAINTIFF and other AGGRIEVED EMPLOYEES based upon miles
3 driven, not hours worked. DEFENDANT failed to pay PLAINTIFF and other AGGRIEVED
4 EMPLOYEES for their time spent performing the mandatory waiting off the clock work tasks
5 including but not limited to, non-driving work such as pre and post trip inspections of the truck,
6 waiting to be loaded and unloaded at designated terminals, hooking up and unhooking the
7 trailers, emergency roadside situations, and mandatory inspections. Additionally,
8 DEFENDANT, as a matter of established company policy and procedure, administered a
9 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the
10 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
11 of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid less than
12 they would have been paid had they been paid for actual recorded time rather than “rounded”
13 time. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
14 wage and overtime compensation by from time to time working without their time being
15 accurately recorded and without compensation at the applicable minimum wage and overtime
16 rates. DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other
17 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT’s business
18 records.

19 12. State and federal law provides that employees must be paid overtime and meal and
20 rest break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and
21 other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that
22 was tied to specific elements of an employee’s performance.

23 13. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
24 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
25 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
26 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
27 hourly basis with incentive compensation when the employees met the various performance
28 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay

1 overtime and meal and rest break premiums, to PLAINTIFF and other AGGRIEVED
2 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
3 employees' "regular rate of pay" for purposes of calculating overtime and the correct meal and
4 rest break premium pay. Management and supervisors described the incentive program to
5 potential and new employees as part of the compensation package. As a matter of law, the
6 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
7 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
8 overtime compensation and meal and rest break premium pay to PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES by DEFENDANT.

10 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
12 and are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
14 for more than five (5) hours during some shifts without receiving a meal break. Further,
15 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
16 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
17 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
18 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
19 and in accordance with DEFENDANT's corporate policy and practice.

20 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were also required from time to time to work in excess of four (4) hours without being provided
22 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
23 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
24 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
25 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
26 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
27 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
28 wages in lieu thereof.

1 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
2 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
3 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
4 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
5 time worked, meaning the time during which an employee was subject to the control of an
6 employer, including all the time the employee was permitted or suffered to permit this work.
7 DEFENDANT required these employees to work off the clock without paying them for all the
8 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
9 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
10 for all time worked. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES
11 forfeited time worked by working without their time being accurately recorded and without
12 compensation at the applicable minimum wage and overtime wage rates. To the extent that the
13 time worked off the clock does not qualify for overtime premium payment, DEFENDANT fails
14 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§
15 1194, 1197, and 1197.1.

16 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
18 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an
23 hourly basis. As such, the wage statements should reflect all applicable hourly rates during the
24 pay period and the total hours worked, and the applicable pay period in which the wages are
25 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
26 provided to PLAINTIFF and the other AGGRIEVED EMPLOYEES failed to identify such
27 information. More specifically, the wage statements failed to identify the accurate total hours
28 worked each pay period. When the hours shown on the wage statements were added up, they

1 did not equal the actual total hours worked during the pay period. Additionally, DEFENDANT
2 violated Cal. Lab. Code Section 226(a)(8) by failing to include the full name of the correct legal
3 entity that is the employer of PLAINTIFF. Aside, from the violations listed above in this
4 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
5 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
6 time to time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
7 statements which violated Cal. Lab. Code § 226.

8 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
9 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
10 wages are paid not more than seven calendar days following the close of the payroll period.
11 Cal. Lab. Code § 210 provides:

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

19 19. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
20 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
21 Lab. Code § 204(d).

22 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
23 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
24 and other non-exempt employees earned non-discretionary remuneration, including but not
25 limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular
26 rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
27 EMPLOYEES at their base rates of pay.

28 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

1 2802, employers are required to indemnify employees for all expenses incurred in the course
2 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

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

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

23 **JURISDICTION AND VENUE**

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

26 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
28

1 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
2 in this County and/or conducts substantial business in this County, and (ii) committed the
3 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
4 EMPLOYEES.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

21 28. PLAINTIFF, and such persons that may be added from time to time who
22 satisfy the requirements and exhaust the administrative procedures under the Private
23 Attorney General Act, brings this Representative Action on behalf of the State of California
24 with respect to himself and all individuals who are or previously were employed by
25 DEFENDANT as Truck Drivers and/or other similar job titles in California and classified as
26 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of June 11,
27 2020 until a date as determined by the Court (the "PAGA PERIOD").

28 29. On June 11, 2021, PLAINTIFF gave written notice by electronic mail to the

1 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
4 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
5 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
6 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

20 21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

- 24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:
26 A) Recovery of civil penalties as prescribed by the Labor Code Private

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

1 Attorneys General Act of 2004; and,

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

4 Dated: August 17, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
5 LLP

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7 By: /s/ Norman Blumenthal
8 Norman B. Blumenthal
9 Attorneys for Plaintiff
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