

1 Alan I. Schimmel, Esq. SBN 101328
Michael W. Parks, Esq. SBN 154531
2 Arya Rhodes, Esq. SBN 299390
Inga Orbeli, Esq. SBN 328445
3 SCHIMMEL & PARKS, APLC
15303 Ventura Blvd., Suite 650
4 Sherman Oaks, CA 91403
Telephone: 818.464.5061
5 Facsimile: 818.464.5091

6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 SANTIAGO ALVAREZ; individually, and
on behalf of other aggrieved employees
12 pursuant to the California Private Attorneys
General Act;

13 Plaintiff,

14 vs.

15 BIAGI BROS., INC.; and DOES 1 through
16 100, inclusive,

17 Defendant.
18
19
20
21
22
23
24
25
26
27
28

Case No.: **21STCV38247**

PAGA COMPLAINT

(1) Violation of California Labor Code § 2698,
et seq. (Private Attorneys General Act of
2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff SANTIAGO ALVAREZ (“Plaintiff”), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This PAGA action is brought against Defendant BIAGI BROS., INC. (“Defendant” or “BIAGI BROS.”) to recover penalties, and all other available relief on behalf of Plaintiff and all other aggrieved employees who suffered one or more of the Labor Code violations set forth in California Labor Code Private Attorneys General Act of 2004. The damages and penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction” in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant Corporation has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, including the County of Los Angeles, and the acts and omissions giving rise to this action alleged herein relating to Plaintiff began and took place in the State of California, and the County of Los Angeles.

PARTIES

5. Plaintiff incorporates by reference the allegations set forth above as though fully set forth herein.

///

1 6. Plaintiff is an individual who at all times relevant herein resided and resides in
2 the State of California, County of Los Angeles.

3 7. Defendant at all relevant times, was and is, upon information and belief, a
4 corporation and at all relevant times, an employer whose employees were engaged
5 throughout the State of California, including the County of Los Angeles.

6 8. At all relevant times, Defendant was the “employer” of Plaintiff within the
7 meaning of all applicable state laws and statutes. On information and belief, Defendant
8 BIAGI BROS. and DOES 1 through 10, are joint employers engaged in an integrated
9 enterprise, and they suffer and/or permit Plaintiff to work and/or exercise joint control over
10 the wages, hours, and/or working conditions of BIAGI BROS. employees.

11 9. At all times herein relevant, Defendant and DOES 1 through 100, and each of
12 them, were the agents, partners, joint venturers, joint employers, representatives, servants,
13 employees, successors-in-interest, alter egos, co-conspirators and assigns, each of the other,
14 and at all times relevant hereto were acting with the authority and ratification of one another
15 and within the course and scope of their authority as such agents, partners, joint venturers,
16 representatives, servants, employees, successors, co-conspirators and/or assigns, alter egos,
17 and all acts or omissions alleged herein were duly committed with the ratification,
18 knowledge, permission, encouragement, authorization and/or consent of each defendant
19 designated as a DOE herein.

20 10. The true names and capacities, whether corporate, associate, individual or
21 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
22 said defendants by such fictitious names. Plaintiff is informed and believes, and based on
23 that information and belief alleges, that each of the defendants designated as a DOE is legally
24 responsible for the events and happenings referred to in this Complaint, and unlawfully
25 caused the injuries and damages to Plaintiff and the other aggrieved employees as alleged in
26 this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true
27 names and capacities when the same have been ascertained.

28 ///

11. Defendant and DOES 1 through 100 will hereinafter collectively be referred to as “Defendant” or “BIAGI BROS.”

12. Plaintiff further alleges that Defendant and DOES 1 through 100 directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other aggrieved employees so as to make each of said Defendant employers and employers liable under the statutory provisions set forth herein.

FACTUAL BACKGROUND

13. Plaintiff incorporates by reference the allegations set forth above as though fully set forth herein.

14. Plaintiff was employed by Biagi Bros. from June 2019 to May 2021. At all material times, Biagi Bros. was Plaintiff’s employer and exercised sole and/or joint control over the wages, terms, and working conditions of Plaintiff’s employment.

15. Plaintiff worked in one of Biagi Bros.’ warehouses located at 1420 N. McKinley Avenue in Los Angeles, California 90059.

16. Plaintiff worked between 8-12 hours per day as a “warehouse lead.” His job duties included operating a forklift or pallet jack to prepare cargo for shipment, overseeing the warehouse’s day-to-day operations, and maintaining and updating a list of outgoing inventory using a laptop computer. Plaintiff spent approximately 6-8 hours per day on the laptop. He was required to do this work standing up despite asking for a chair or other seating numerous times.

17. On information and belief, the Biagi Bros. facility located in Los Angeles, California did not have A/C or heating at any time during Plaintiff’s employment. During the cold winter months, the facility lacked heating and would be uncomfortably cold. On information and belief, the structural layout and ventilation systems in the facility were uniform and the temperature conditions Plaintiff experienced when entering the building, traveling to his work space, working, and using rest areas within the facility are the same experienced by other employees. Moreover, on information and belief, other areas of the

1 facility where Plaintiff did not access or have access too were uncomfortably cold and/or hot
2 depending on the structural components, ventilation, lack of AC/Heating, and the type of
3 goods that were being stored.

4 18. On information and belief, Plaintiff and the other aggrieved employees felt
5 hotter inside of the facility than outside. According to temperature data published online,
6 Plaintiff worked in a facility situated in a location with recorded temperatures exceeding 97
7 degrees Fahrenheit and dipping to as low as 40 degrees Fahrenheit. The poor ventilation and
8 lack of air conditioning caused Plaintiff and the other aggrieved employees to feel
9 uncomfortably hot which caused sweating, fatigue, and other symptoms of heat related
10 discomfort. On information and belief, the facility operated during hours where it was even
11 colder inside than outside, and without proper heating or temperature regulation methods, the
12 aggrieved employees felt uncomfortably cold inside the facility.

13 19. On information and belief, the uncomfortable temperature conditions occurred
14 at all of Biagi Bros.' California based facilities and warehouses regardless of size, shape,
15 location, or the type of product being stored. On information and belief, the uncomfortable
16 temperature conditions were uniform across all of Biagi Bros.' California depots because
17 such depots were uniformly maintained, managed, and operated under the same set of
18 policies, practices, and procedures, including use of the same consultants, vendors,
19 architects, engineers, and design schematics and specifications. On information and belief,
20 Biagi Bros.' aggrieved employees throughout California, regardless of location or job title,
21 have suffered heat related and cold related illnesses and injuries due to the indoor
22 temperature practices of Biagi Bros. has actual and/or constructive notice of these conditions,
23 illnesses, and injuries for many years. The aggrieved employees are defined in this action as
24 all California employees, and the temperature allegations are informed by the definition of
25 the aggrieved employees without limitation based on specific job title or location. On
26 information and belief, temperature policies, practices, procedure, and conditions applied
27 uniformly to all of Biagi Bros.' California depots and to all of its hourly paid nonexempt
28 employees regardless of job description or job location.

20. Plaintiff is informed and believes that none of Biagi Bros.' depots in California had air conditioning or heating such that the employees therein experienced uncomfortably cold and hot temperature conditions depending on the time of the year. Plaintiff is further informed and believes that to the extent any of Biagi Bros.' depots in California had some form of temperature regulation systems within the depots, said systems were inadequate for the size and shape of the depot, the amount of employees working therein, and the type of work being performed, such that the aggrieved employees were forced to endure uncomfortable and dangerous temperature conditions while working.

PAGA ALLEGATIONS

21. Plaintiff incorporates by reference the allegations set forth above as though fully set forth herein.

22. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendant. At all relevant times set forth herein, DEFENDANT employed PLAINTIFF and the other aggrieved hourly-paid or non-exempt employees who worked for DEFENDANT in the State of California.

23. The “aggrieved employees” pursuant to Labor Section 2699(c) include: all current and former hourly paid, non-exempt employees who worked for BIAGI BROS. at any of its locations in the State of California at any time during the applicable PAGA period who were not provided suitable temperature conditions in the workplace in violation of IWC Wage Order Section 15.

24. Plaintiff is an “aggrieved employee” as defined in Labor Code section 2699(c), because he was employed by BIAGI BROS. during the applicable statutory period and suffered the violations of the IWC Wage Order and the Labor Code as set forth herein. Plaintiff intends to seek penalties on behalf of all aggrieved employees as defined herein.

25. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other

1 current or former employees pursuant to procedures outlined in California Labor Code
2 section 2699.3.

3 26. PAGA expressly establishes that any provision of the California Labor Code
4 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
5 departments, divisions, commissions, boards, agencies or employees for a violation of the
6 California Labor Code, may be recovered through a civil action brought by an aggrieved
7 employee on behalf of himself or herself, and other current or former employees. Whenever
8 the LWDA, or any of its departments, divisions, commissions, boards, agencies, or
9 employees has discretion to assess a civil penalty a court in a civil action is authorized to
10 exercise the same discretion, subject to the same limitations and conditions, to assess a civil
11 penalty.

12 27. Pursuant to PAGA, a civil action under PAGA may be brought by an
13 “aggrieved employee,” who is any person that was employed by the alleged violator and
14 against whom one or more of the alleged violations was committed.

15 28. PLAINTIFF was employed by DEFENDANTS and the alleged violation was
16 committed against him during the time of his employment and he is, therefore, an aggrieved
17 employee. PLAINTIFF and the other employees are “aggrieved employees” as defined by
18 California Labor Code section 2699(c) in that they are all current or former employees of
19 DEFENDANTS, and one of more of the alleged violations were committed against them.

20 29. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
21 employee, including Plaintiff, may pursue a civil action arising under PAGA after satisfying
22 the requirements of California Labor Code sections 2699.3 and 2699.5, which at the time that
23 Plaintiff sought to satisfy the statutory requirements, provided as follows:

- 24 a. The aggrieved employee was required to give written notice by
25 certified mail (hereinafter “Employee's Notice”) to the LWDA and the
26 employer of the specific provisions of the California Labor Code
27 alleged to have been violated, including the facts and theories to
28 support the alleged violations.

1 b. The LWDA was required to provide notice (hereinafter “LWDA
2 Notice”) to the employer and the aggrieved employer by certified mail
3 that it does not intend to investigate the alleged violation within sixty
4 (60) calendar days of the postmark date of the Employee’s Notice.
5 Upon receipt of the LWDA Notice, or if the LWDA Notice is not
6 provided within sixty-five (65) calendar days of the postmark date of
7 the Employee’s Notice, the aggrieved employee may commence a civil
8 action pursuant to California Labor Code section 2699 to recover civil
9 penalties in addition to any other penalties to which the employee may
10 be entitled.

11 30. On August 11, 2021, Plaintiff provided written notice by U.S. Certified Mail
12 to the LWDA and to Defendant of the specific provisions of the California Labor Code
13 alleged to have been violated, including the facts and theories to support the alleged
14 violations.

15 31. As of the date of the filing of this Complaint, the LWDA has not provided
16 notice of its intention to investigate DEFENDANTS’ alleged violations within sixty-five (65)
17 calendar days of the August 11, 2021, postmark date of the PAGA NOTICE sent by
18 PLAINTIFF. (See Cal. Lab. Code section 2699.3(a)(2)(A).)

19 32. Therefore, Plaintiff satisfied the then-applicable administrative prerequisites
20 under California Labor Code section 2699.3(a) to recover civil penalties against Defendants,
21 in addition to other remedies, for violations of California Labor Code sections identified
22 therein.

23 **FIRST CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **(Against Defendant and DOES)**

26 **(Violation of California Labor Code §§ 2698, *et seq.*)**

27 33. Plaintiff incorporates by reference the allegations set forth above as though
28 fully set forth herein.

1 34. PAGA expressly establishes that any provision of the California Labor Code
2 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
3 departments, divisions, commissions, boards, agencies or employees for a violation of the
4 California Labor Code, may be recovered through a civil action brought by an aggrieved
5 employee on behalf of herself or himself, and other current or former employees.

6 35. Whenever the LWDA, or any of its departments, divisions, commissions,
7 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil
8 action is authorized to exercise the same discretion, subject to the same limitations and
9 conditions, to assess a civil penalty.

10 36. Based on the facts and theories set forth herein, Plaintiff alleges that BIAGI
11 BROS. has willfully violated and/or continues to willfully violate, among other provisions
12 of the Labor Code and applicable wage law, Labor Code section 1198, and the applicable
13 Industrial Welfare Commission (“IWC”) Wage Order. California Labor Code § 1198
14 provides that “The employment of any employee ... under conditions of labor prohibited by
15 the [Industrial Wage Orders] is unlawful.” Such unlawful conduct gives rise to PAGA
16 violations and are subject to the statutory penalties set forth therein.

17 37. Plaintiff is entitled to any penalties permitted by law, including civil penalties
18 pursuant to Labor Code sections 2699(a) and 2699(f). Plaintiff seeks all such penalties on
19 behalf of the State of California, himself as an aggrieved employee, and all other current and
20 former aggrieved employees of BIAGI BROS. Plaintiff and the other hourly-paid and/or non-
21 exempt employees, are “aggrieved employees” as defined by California Labor Code section
22 2699(c) in that they are all current or former employees of Defendant, and one or more of the
23 alleged violations was committed against them.

24 38. One of the standard conditions of labor is IWC Wage Order Section 14, which
25 provides that:“(A) All working employees shall be provided with suitable seats when the
26 nature of the work reasonably permits the use of seats. (B) When employees are not engaged
27 in the active duties of their employment and the nature of the work requires standing, an
28 adequate number of suitable seats shall be placed in reasonable proximity to the work area

1 and employees shall be permitted to use such seats when it does not interfere with the
2 performance of their duties.”

3 39. Despite the aforementioned, throughout PLAINTIFF and the other aggrieved
4 employees’ employment, DEFENDANTS required PLAINTIFF and other aggrieved
5 employees to be standing and working during the entirety of their shifts and for a long period
6 of time each workday.

7 40. On information and belief, BIAGI BROS violated every aspect of IWC Wage
8 Order Section 14. The nature of the work reasonably permitted the use of seats for Plaintiff
9 and other aggrieved employees who worked in the warehouses regardless of their job title.
10 Duties that could have been performed sitting down include but are not limited to performing
11 administrative tasks using a laptop computer. BIAGI BROS failed and continues to fail to
12 provide any seats or reasonably seating opportunities for Plaintiff and other aggrieved
13 employees in violation of IWC Wage Order Section 14. BIAGI BROS also failed and
14 continues to fail to provide an adequate number of suitable seats in reasonable proximity to
15 the work areas where Plaintiff and other aggrieved employees worked can take seated rest
16 periods, in violation of IWC Wage Order Section 14.

17 41. DEFENDANTS also failed to provide PLAINTIFF and the other aggrieved
18 employees with suitable temperatures in their workplace, in violation of California Labor
19 Code section 1198 and IWC Wage Order Section 15 (“TEMPERATURE”). IWC Wage
20 Order Section 15 provides that: “(A) The temperature maintained in each work area shall
21 provide reasonable comfort consistent with industry-wide standards for the nature of the
22 process and the work performed. (B) If excessive heat or humidity is created by the work
23 process, the employer shall take all feasible means to reduce such excessive heat or humidity
24 to a degree providing reasonable comfort. Where the nature of the employment requires a
25 temperature of less than 60° F, a heated room shall be provided to which employees may
26 retire for warmth, and such room shall be maintained at not less than 68° F. (C) A
27 temperature of not less than 68° F shall be maintained in the toilet rooms, resting rooms, and
28 change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over

1 any conflicting provision of this section.”

2 42. Under California law, the workplace should not be a source of injury or illness
3 of threaten the lives of those who work there. (Cal. Code Reg. tit. 8, § 3203.) Per Senate
4 Bill 1167 signed and approved by Governor Jerry Brown and later codified as California
5 Labor Code section 6720, the California Division of Occupational Safety and Health
6 (Cal/OSHA) shall propose an indoor heat illness standard by January 1, 2019. In
7 Cal/OSHA’s most recent January 29, 2019, revised draft standard, the proposed regulation
8 would apply to “all indoor work areas where the temperature equals or exceeds 82 degrees
9 Fahrenheit when employees are present.” The U.S. Department of Labor’s Division of
10 Occupational Safety and Health Administrator (OSHA) also recommends office temperature
11 control in the range of 68° F to 76° F.

12 43. On information and belief, BIAGI BROS. violated every aspect of IWC Wage
13 Order Section 15. Plaintiff and other aggrieved employees being subjected to excessive heat
14 or cold in the workplace. Plaintiff worked in a facility situated in a location with recorded
15 temperatures exceeding 97 degrees Fahrenheit and dipping to as low as 40 degrees
16 Fahrenheit. BIAGI BROS. failed to provide reasonable temperature regulation including
17 adequate air conditioning, heating, insulation, and/or ventilation. BIAGI BROS. failed to
18 provide reasonably comfortable indoor temperatures. Biagi Bros. also failed to maintain a
19 temperature of not less than 68° in their toilet rooms, resting rooms, and/or change rooms
20 during hours of use.

21 44. During their employment and at their workplace with DEFENDANTS,
22 PLAINTIFF and other aggrieved employees were subjected to excessive heat or humidity.
23 Nevertheless, in violation of Labor Code 1198 and IWC Wage Order 15, DEFENDANTS
24 failed and continue to fail to provide PLAINTIFF and the other aggrieved employees with
25 reasonable comfort, such as, inter alia, by providing adequate air conditioning, fans (if any),
26 ventilation system, or cooling areas to cool the excessive high temperatures. Furthermore,
27 DEFENDANTS also failed and continued to fail to maintain temperature that provided
28 reasonable comfort (warmth) for PLAINTIFF and the other aggrieved employees.

1 Additionally, in further violation of IWC Wage Order Section 15, specifically subdivision
2 (C) and thereby Labor Code section 1198, DEFENDANTS failed to maintain temperature of
3 not less than 68° F in their toilet rooms, resting rooms, and/or change rooms during hours of
4 use.

5 45. Plaintiff is informed and believes that the violations described above occurred
6 at all of Biagi Bros. 's California based facilities and warehouses regardless of size, shape,
7 location, or the type of product being stored.

8 46. PLAINTIFF is informed and believes, and based thereon alleges, that
9 DEFENDANTS knew or should have known that PLAINTIFF and the other aggrieved
10 employees were entitled to suitable seats per California Labor Code section 1198 and IWC
11 Wage Order Section 14.

12 47. PLAINTIFF is also informed and believes, and based thereon alleges, that
13 DEFENDANTS knew or should have known that PLAINTIFF and the other aggrieved
14 employees were entitled to suitable temperatures in the workplace per California Labor Code
15 section 1198 and IWC Wage Order Section 15.

16 48. **Failure to Provide Suitable Seats in the Workplace:** DEFENDANTS' failure
17 to provide suitable seats to PLAINTIFF and the other aggrieved employees in their workplace
18 violates the IWC Wage Order Section 14 and constitutes unlawful activity prohibited by
19 California Labor Code section 1198.

20 49. **Failure to Provide Suitable Temperature in the Workplace:**
21 DEFENDANTS' failure to provide suitable temperature for PLAINTIFF and the other
22 aggrieved employees in their workplace violates the IWC Wage Order Section 15 and
23 constitutes unlawful activity prohibited by California Labor Code section 1198.

24 50. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
25 behalf of all aggrieved employees, requests and is entitled to recover from Defendant and
26 each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as
27 well as all statutory penalties against Defendant, and each of them, including but not limited
28 to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11070 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

51. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

52. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699 and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act, prays for relief and judgment against Defendant and those fictitiously named defendants, jointly and severally, as follows:

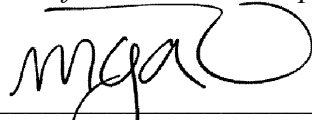
1 **AS TO THE FIRST CAUSE OF ACTION**

2 53. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and
3 (g), in addition to costs/expenses and attorneys' fees for violation of California Labor Code
4 section 1198 and the applicable IWC Wage Order; and

5 54. For such other and further relief as the Court may deem equitable and
6 appropriate.

7
8 Dated: October 18, 2021

SCHIMMEL & PARKS
A Professional Law Corporation

9
10 

11 Alan I. Schimmel
12 Michael W. Parks
13 Arya Rhodes
14 Inga Orbeli
15 *Attorneys for Plaintiff*

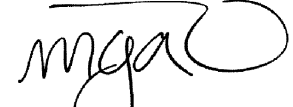
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

Dated: October 18, 2021

SCHIMMEL & PARKS
A Professional Law Corporation



Alan I. Schimmel
Michael W. Parks
Arya Rhodes
Inga Orbeli
Attorneys for Plaintiff