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6 Attorneys for Plaintiff MARCUS SMITH,
as an Aggrieved Employee, and on behalf of all other
7 Aggrieved Employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 MARCUS SMITH, as an aggrieved employee,
12 and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
13 General Act of 2004

14 Plaintiff,

15 v.

16 MAERSK WAREHOUSING &
17 DISTRIBUTION SERVICES USA LLC, a
Delaware Limited Liability Company;
18 HUMANO LLC, a California Limited
Liability Company; and DOES 1 through 100,
19 inclusive

20 Defendants.
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CASE NO.: CIVSB2600729

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

[Amount in Controversy Greater Than
\$35,000.00]

1 Plaintiff MARCUS SMITH (“Plaintiff”), as an Aggrieved Employee, and on behalf of all
2 other Aggrieved Employees under the Labor Code Private Attorneys’ General Act of 2004, alleges
3 as follows:

4 **INTRODUCTION**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys’
6 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against MAERSK
7 WAREHOUSING & DISTRIBUTION SERVICES USA LLC, a Delaware limited liability
8 company, and any of its respective subsidiaries or affiliated companies within the State of California
9 (“MAERSK”), and HUMANO LLC, a California limited liability company, and any of its respective
10 subsidiaries or affiliated companies within the State of California (“HUMANO”) as a proxy of the
11 Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of
12 Plaintiff and all other current and former non-exempt employees of Defendants working within the
13 Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to
14 comply with the Labor Code. Specifically, in connection with the alleged claims for failure to
15 comply with Labor Code sections 201, 201.3, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 233,
16 234, 245, 246, 432, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1198, 1197,
17 1197.1, 2100, 2800, 2802, 2810.5, 2699, among others, California Code of Regulations, Title 8,
18 sections 3395, as well as applicable Wage Orders, Plaintiff seeks to represent all current and former
19 employees that worked for Defendants during the PAGA Period. On all other claims mentioned
20 herein, Plaintiff seeks to represent only non-exempt current and former employees that worked for
21 Defendants during the PAGA Period. Collectively, these employees are herein referred to as
22 “Aggrieved Employees.” The “PAGA Period” refers to three years preceding the date notice was
23 submitted to the LWDA, continuing past the date of notice to the LWDA into perpetuity.

24 **PARTIES**

25 2. Plaintiff MARCUS SMITH is a resident of the State of California. At all relevant
26 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 employed Plaintiff as a non-exempt employee. Plaintiff worked as a Warehouse Associate with
28 duties that included, but were not limited to, material handling. Plaintiff is informed and believes,

1 and based thereon alleges, that Plaintiff MARCUS SMITH worked for Defendants from
2 approximately October of 2024 through approximately November of 2024.

3 3. Plaintiff is informed and believes and based thereon alleges that defendant MAERSK
4 is, and at all times relevant hereto was, a limited liability company organized and existing under and
5 by virtue of the laws of the State of Delaware and doing business in the County of San Bernardino,
6 State of California. At all relevant times herein, MAERSK employed Plaintiff and Aggrieved
7 Employees within the State of California.

8 4. Plaintiff is informed and believes and based thereon alleges that defendant
9 HUMANO is, and at all times relevant hereto was, a limited liability company organized and
10 existing under and by virtue of the laws of the State of California and doing business in the County
11 of San Bernardino, State of California. At all relevant times herein, HUMANO employed Plaintiff
12 and similarly situated employees within the State of California.

13 5. The true names and capacities, whether individual, corporate, associate, or otherwise,
14 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
15 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
16 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
17 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
18 Plaintiff will seek leave of court to amend this complaint to reflect the true names and capacities of
19 the defendants designated hereinafter as DOES when such identities become known.

20 **JOINT LIABILITY ALLEGATIONS**

21 6. Plaintiff is informed and believes, and based thereon alleges, that each defendant
22 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint
23 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
24 legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made
25 to "Defendants," it shall include Maersk, Humano, and any of their parent, subsidiary, or affiliated
26 companies within the State of California, as well as DOES 1 through 100 identified herein.

27 7. Plaintiff is informed and believes and based thereon alleges that all the times
28 mentioned herein, each of the Defendants was the agent, principal, employee, employer,

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
3 employment, joint venture, and conspiracy.

4 8. All of the acts and conduct described herein of each and every corporate defendant
5 was duly authorized, ordered, and directed by the respective and collective defendant corporate
6 employers, and the officers and management-level employees of said corporate employers. In
7 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
8 their said employees, agents, and representatives, and each of them; and upon completion of the
9 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
10 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
11 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
12 aforementioned corporate employees, agents and representatives.

13 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
14 thereon alleges that Defendants, and each of them, are joint employers.

15 **JURISDICTION**

16 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
17 of Civil Procedure section 410.10.

18 11. Venue is proper in San Bernardino County, California pursuant to Code of Civil
19 Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where the
20 causes of action complained of herein arose; the county in which the employment relationship
21 began; the county in which performance of the employment contract, or part of it, between Plaintiff
22 and Defendants was due to be performed; the county in which the employment contract, or part of
23 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
24 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
25 and Aggrieved Employees in San Bernardino County, and Defendants employ Aggrieved
26 Employees in San Bernardino County.

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PAGA REPRESENTATIVE ALLEGATIONS

12. Plaintiff is an “Aggrieved Employee” under PAGA, as Plaintiff was employed by Defendants during the PAGA Period and suffered the Labor Code violations set forth herein, even if not in the precise exact fashion as other Aggrieved Employees. Accordingly, Plaintiff seeks to recover civil penalties under PAGA, plus reasonable attorneys’ fees and costs, for Plaintiff and all other Aggrieved Employees of Defendants during the PAGA Period.

13. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

14. Labor Code section 2699, subdivisions (a) and (g), authorizes Aggrieved Employees such as Plaintiff to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3 on behalf of Plaintiff and all other Aggrieved Employees within the PAGA Period.

15. Pursuant to Labor Code section 2699.3, on or around January 2, 2025, Plaintiff provided written notice of Defendants’ violation of various provisions of the Labor Code to the LWDA online and by certified mail, with return receipt requested, to Defendants (“PAGA Notice”).

16. Pursuant to Labor Code section 2699.3, on or around February 27, 2025, Plaintiff provided written notice of Defendants’ violation of various provisions of the Labor Code to the LWDA online and by certified mail, with return receipt requested, to Defendants (“Amended PAGA Notice”).

17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the PAGA Notice.

18. To the extent Defendants, or either of them, previously used the notice and cure provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), then Defendants, or those who have availed themselves of the cure provisions validly, are not eligible to cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation

1 conference process pursuant to section 2699.3(f).

2 19. In the event that Defendants, or either of them, is/are determined to have satisfied
3 sections 2699(g), 2699(h), or otherwise 2699(d)(1), Defendants, or any that is determined to have
4 satisfied sections 2699(g), 2699(h), is also, in the alternative, liable for civil penalties pursuant to
5 Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

6 20. In the event that Defendants, or either of them, is/are determined to have, prior to
7 this notice or a request for records pursuant to Labor Code section 226, 432, , from Plaintiff and/or
8 Plaintiff's counsel, adequately taken all reasonable steps to be in compliance with all provisions
9 identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to section
10 2699(g)(1)-(3).

11 21. In the event that Defendants, or either of them is/are deemed to have adequately taken
12 all reasonable steps to be in compliance with all provisions identified in this notice within sixty (60)
13 days of receiving this notice, said defendant(s) is/are still liable for civil penalties pursuant to Labor
14 Code section 2699(h)(1)-(3).

15 22. In the event, the LWDA and/or a court issued a finding or determination to the
16 Defendants, or either of them, that within five (5) years preceding the date of the PAGA Notice the
17 policies or practices which gave rise to the violations alleged herein were unlawful, Defendants, or
18 any of them, would be subject to heightened penalties pursuant to Labor Code sections
19 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3) and **not** eligible for reduced penalties under either
20 Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the serving
21 of the PAGA Notice. Regardless, Plaintiff alleges Defendants' conduct giving rise to the violations
22 as detailed herein was and is malicious, fraudulent, and/or oppressive, particularly given, among
23 other reasons, Defendants have been sued for these violations in the past. Thus, Defendants, or any
24 of them, are further subject to increased penalties under Labor Code section 2699(f)(2)(B)(ii) and
25 lack eligibility for reduced penalties under either Labor Code sections 2699(g) or 2699(h).

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1 **FACTUAL ALLEGATIONS**

2 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew,
3 or should have known, that Plaintiff and Aggrieved Employees are entitled to receive wages for all
4 time worked, including regular, overtime, and double times wages, and that Plaintiff and Aggrieved
5 Employees were not receiving all wages owed for work that was required to be performed.

6 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
7 and have a policy or practice of requiring Plaintiff and other Aggrieved Employees to work more
8 than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a
9 workweek (in violation of Labor Code sections 551 and 552) without paying them proper overtime
10 wages.

11 25. Upon information and belief, Defendants failed to accurately track and/or pay for all
12 minutes actually worked by Plaintiff and Aggrieved Employees at the proper rates of pay.
13 Defendants also engaged, suffered, or permitted Aggrieved Employees to work off the clock,
14 including, without limitation, by requiring Plaintiff and Aggrieved Employees to don and doff
15 required uniforms and/or safety gear prior to starting their shift; make phone calls off the clock, go
16 through security screenings and/or temperature checks off the clock. In addition, Defendants failed
17 include all forms of remuneration into the regular rate of pay for the pay periods where overtime
18 was worked. Moreover, from the information provided by Defendants, it appears that, at least for a
19 portion of time, Defendants failed to pay for all time clocked in by Plaintiff and Aggrieved
20 Employees because of, although unclear from the time and pay records shown, editing and/or
21 manipulation of time entries to show less hours than actually worked.

22 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 violated, without limitation, Labor Code sections 223, 551, 552, 1197, 1182.12, and applicable
24 Wage Orders based on its continued failure to pay minimum and overtime wages for all hours
25 worked. Thus, Plaintiff and other Aggrieved Employees are entitled to actual and liquidated
26 damages under, without limitation, Labor Code sections 1194, 1194.2, and 1198. Plaintiff is further
27 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
28 violations and was malicious, fraudulent, or oppressive. Defendants would also be liable for civil

1 penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558, 1197.1,
2 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further
3 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

4 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
5 each of them, had and have a policy or practice of compelling Plaintiff and other Aggrieved
6 Employees during the PAGA Period to work every day in excess of five (5) and ten (10) hours per
7 day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or
8 compensation in lieu thereof. By way of example, Defendants regularly denied Plaintiff and
9 Aggrieved Employees lawful meal periods by, without limitation, failing to provide meal periods
10 all together; failing to provide a suitable break area; interrupting meal periods; not providing timely
11 meal periods; failing to provide second meal periods; providing short meal periods, including
12 without, limitation meal periods that that may appear on the record to be thirty minutes or longer
13 but in practice were shorter than thirty minutes due to walking time to get to a designated break area,
14 time spent having to wait in line to clock back in, having to don and doff safety gear and/or uniforms,
15 having to undergo security or bag checks during the meal period, and /or having to retrieve and store
16 personal belongings during the meal period; requiring that employees carry cellular telephones or
17 walkie-talkies during meal periods; not permitting employees to leave the premises; requiring on-
18 duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law
19 or during which employees worked. Plaintiff and other Aggrieved Employees personally suffered
20 these violations. Consequently, Plaintiff is informed and believes, and based thereon alleges, that
21 Defendants violated Labor Code sections 512 and 1198 each day for each Aggrieved Employee
22 during the PAGA Period, and thus each Aggrieved Employee was owed one hour of premium pay
23 at their regular rate of pay for each day worked during the PAGA Period under Labor Code section
24 226.7. However, Plaintiff is informed and believes that those premium payments under Labor Code
25 section 226.7 were not made for these non-compliant meal periods, either at all or at the proper
26 regular rate of pay. Defendants would thus be liable for civil penalties pursuant to Labor Code
27 sections 210 (for failure to timely pay these wages), 558, 1198 and 2699 for both failing to authorize
28 the taking of compliant meal periods and for failing to provide premium pay under Labor Code

1 section 226.7, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further
2 informed and believes, and based thereon alleges, that Defendants' conduct that gave rise to such
3 violations and was malicious, fraudulent, or oppressive. As such, Defendants are further liable for
4 civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

5 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 maintain policies or practices of compelling Plaintiff and other Aggrieved Employees every day to,
7 including, without limitation, work over four-hour periods (or major fractions thereof) without
8 authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, timely,
9 and complete ten-minute rest periods in which the employees are completely relieved of all of their
10 duties. By way of example, Defendants regularly denied Plaintiff and Aggrieved Employees lawful
11 rest periods by, without limitation, failing to provide rest periods all together; failing to provide a
12 suitable break area; failing to provide rest periods that were at least ten minutes in length, including
13 rest periods that may have encompassed a total of ten minutes but were in practice less than ten
14 uninterrupted minutes due to, without limitation, walking time to get to a designated break area,
15 time spent having to don and doff safety gear and/or uniforms during the rest period, having to
16 retrieve and store personal belongings during the rest period, and/or having to undergo security or
17 bag checks during the rest period; requiring that rest periods be bundled and taken together and/or
18 with meal periods; interrupting rest periods; requiring Aggrieved Employees carry cellular
19 telephones or walkie-talkies during rest periods; not providing rest periods in a timely fashion; not
20 permitting Aggrieved Employees to leave the premises during rest periods; and otherwise requiring
21 on-duty/on-call rest periods. Plaintiff and other Aggrieved Employees personally suffered these
22 violations. Consequently, Plaintiff is informed and believes, and based thereon alleges, that
23 Defendants violated the applicable Wage Order(s) each day for each Aggrieved Employee during
24 the PAGA Period, and that, thus each Aggrieved Employee was owed one hour of premium pay at
25 their regular rate of pay for each day worked during the PAGA Period under Labor Code section
26 226.7. However, Plaintiff is informed and believes that those premium payments under Labor Code
27 section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper
28 regular rate of pay, in violation of Labor Code sections 226.7 and 1198. Defendants would thus be

1 liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages),
2 558, 1198 and 2699 for both failing to authorize the taking of compliant rest periods and for failing
3 to provide premium pay under Labor Code section 226.7, or injunctive relief under sections
4 2699(e)(1) and 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that
5 Defendants' conduct above gave rise to such violations and was malicious, fraudulent, or
6 oppressive. As such, Defendants are further liable for civil penalties pursuant to Labor Code section
7 2699(f)(2)(B)(ii).

8 29. As a result of, among other things, Defendants' herein-described policy or practice
9 of failing to: accurately record time; failing to pay overtime and minimum wages; failing to provide
10 meal periods; failing to provide rest periods; and failing to provide compensation in lieu of meal or
11 rest periods, as described above, and due to independent failures in connection therewith, Plaintiff
12 is informed and believes, and based thereon alleges, that Defendants also intentionally failed and
13 continues to fail to furnish Plaintiff and Aggrieved Employees with itemized wage statements that
14 accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; the
15 inclusive dates of the period for which the employee is paid; the name of the employee and only the
16 last four digits of their social security number or an employee identification number other than a
17 social security number; all deductions; all applicable hourly rates in effect during the pay period and
18 the corresponding number of hours worked at each hourly rate by the employee; the legal name and
19 address of the employer, and other such information as required by Labor Code section 226,
20 subdivision (a). Specifically, Defendants intentionally failed to furnish employees with itemized
21 wage statements that accurately reflect the hours worked by Plaintiff and other Aggrieved
22 Employees and the rates of pay at which they were or should have been paid (including due to failure
23 to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and
24 paid at each rate, as well. Consequently, Plaintiff is informed and believes, and based thereon
25 alleges, that Defendants violated Labor Code sections 226, and 1198 each day for each Aggrieved
26 Employee during the PAGA Period, and that, thus Plaintiff and each Aggrieved Employee
27 personally suffered these violations and was owed penalties under Labor Code section 226 for each
28 pay period worked during the PAGA Period. Plaintiff is informed and believes that those penalties

1 under Labor Code section 226 were not paid for these violations of Labor Code section 226.
2 Defendants would thus be liable for civil penalties pursuant to Labor Code sections 226.3, 558,
3 1198, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further
4 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
5 violations and was malicious, fraudulent, or oppressive. Thus, Defendants would further be liable
6 for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii). Plaintiff is informed and
7 believes, and based thereon alleges, that Defendants also willfully or intentionally failed and
8 refused, and continue to fail and refuse, to timely pay compensation to Plaintiff and other terminated
9 or resigned employees, including but not limited to, all overtime wages owed; all minimum wages
10 owed; all paid sick leave, vacation pay and paid time off; and all premium pay owed as set out
11 above, including, without limitation, among other things. Consequently, Plaintiff is informed and
12 believes, and based thereon alleges, that Defendants violated Labor Code sections 201, 202 203,
13 and 1198 each pay period for each Aggrieved Employee during the PAGA Period, and thus Plaintiff
14 and each Aggrieved Employee personally suffered these violations and was owed penalties under
15 Labor Code section 203 for each pay period worked during the PAGA Period. However, Plaintiff
16 is informed and believes that those penalties under Labor Code section 203 were not made for these
17 violations of Labor Code sections 201, 202, and 203. Defendants would thus be liable for civil
18 penalties pursuant to Labor Code sections 558, 1198 and 2699, or injunctive relief under sections
19 2699(e)(1) and 2699(j). Plaintiff is further informed and believes, and based thereon alleges, that
20 Defendants' conduct above gave rise to such violations and was malicious, fraudulent, or
21 oppressive. As such, Defendants would further be liable for civil penalties pursuant to Labor Code
22 section 2699(f)(2)(B)(ii).

23 30. Plaintiff is further informed and believes, and based thereon alleges that Defendants
24 failed and refused, and continue to fail and refuse, to comply with the notice requirements of Labor
25 Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing
26 to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay
27 applicable to their employment; any allowances claimed as part of the minimum wage; the regular
28 payday designated by Defendants; the name of the employer, including any "doing business as"

1 names used by the employer; the physical address of the employer's main office and the telephone
2 number of the employer; the name, address and telephone number of the workers' compensation
3 insurance carrier; information regarding paid sick leave; and other pertinent information required to
4 be disclosed by Defendants under Labor Code section 2810.5. Plaintiff is informed and believes that
5 Defendants' failure to provide such information, including rates of pay that are in effect, has
6 permitted Defendants to pay employees at rates of pay that were not agreed upon and violate
7 minimum wage and overtime wage laws in California. Plaintiff is informed and believes that
8 Defendants violated Labor Code sections 1198 and 2810.5. Plaintiff and other Aggrieved
9 Employees personally suffered these violations. Plaintiff is further informed and believes, and based
10 thereon alleges, that Defendants' conduct above gave rise to such violations and was malicious,
11 fraudulent, or oppressive. Among other relief, employees may collect from Defendants in
12 connection with these violations' civil penalties pursuant to Labor Code sections 558, 1198 and
13 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable
14 for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii). Plaintiff is informed and
15 believes, and based thereon alleges that Defendants also failed and refused, and continue to fail and
16 refuse, to reimburse employees, including, without limitation, Plaintiff and other Aggrieved
17 Employees, with their costs incurred for purchasing uniforms, providing uniform and other deposits,
18 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for
19 the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of
20 the discharge of their duties, or of their obedience to the directions of Defendants, as required by
21 Labor Code sections 1198, 2800, 2802, and other statutory and common law offenses. As a result,
22 Plaintiff and other Aggrieved Employees have personally suffered these violations and Defendants
23 are liable to reimburse Plaintiff and other Aggrieved Employees for these costs incurred in
24 furtherance of work duties. Defendants would thus be liable for civil penalties pursuant to Labor
25 Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
26 Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above
27 gave rise to such violations and was malicious, fraudulent, or oppressive. As such, Defendants
28 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

1 31. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
2 have a policy or practice of failing to pay Aggrieved Employees their wages in accordance with
3 Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days,
4 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during
5 which the labor was performed, and labor performed between the 16th and the last day, inclusive of
6 any calendar month, shall be paid for between the 1st and 10th day of the following month.” Plaintiff
7 is informed and believes and based thereon alleges that Defendants did not and do not pay Plaintiff
8 and other Aggrieved Employees every day and every workweek in accordance with Labor Code
9 sections 204 and 1198. Plaintiff is informed and believes, and based thereon alleges, that
10 Defendants violated Labor Code section 204 and that Plaintiff and other Aggrieved Employees have
11 personally suffered these violations. As such, Defendants would be liable for civil penalties pursuant
12 to Labor Code sections 210, 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
13 2699(k). Plaintiff further informed and believes, and based thereon alleges, that Defendants’ conduct
14 above gave rise to such violations and was malicious, fraudulent, or oppressive. Therefore,
15 Defendants would further be liable for civil penalties pursuant to Labor Code section
16 2699(f)(2)(B)(ii).

17 32. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
18 have or had a policy or practice of failing to provide Plaintiff and other Aggrieved Employees with
19 all rights afforded to them under the Healthy Workplace Healthy Families Act of 2014, codified at
20 Labor Code section 245, *et seq.*, including, without limitation, the amount of paid sick leave required
21 to be provided pursuant to California and local laws. Plaintiff is further informed and believes that
22 the sick pay was not provided at the proper regular of pay as required under California law due to
23 failure to properly calculate the regular rate. Plaintiff is additionally informed and believes that the
24 notice requirement of Labor Code section 221, 223, 233, 234, 245 and 246 involves a mandatory
25 payroll or workplace injury reporting. Plaintiff is thus informed and believes that Defendants
26 violated these Labor Code sections, as well as Labor Code section 1198. As such, Plaintiff and
27 other Aggrieved Employees have personally suffered violations under these sections and
28 Defendants would be liable for civil penalties for violation of the paid sick leave regulations under

1 Labor Code sections 1198 and 2699, as well as equitable, injunctive, or restitutionary relief, and
2 reasonable attorneys' fees and costs. Plaintiff further informed and believes, and based thereon
3 alleges, that Defendants' conduct above gave rise to such violations and was malicious, fraudulent,
4 or oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
5 2699(f)(2)(B)(ii).

6 33. Plaintiff is informed and believes, and based thereon alleges, as follows: Defendants
7 knew or should have known it imposed systematic quota and production demands on Plaintiff and
8 other Aggrieved Employees which violated the rights of Plaintiff and Aggrieved Employees under
9 Labor Code sections 2100, *et seq.* Specifically, Plaintiff is informed and believes, and based thereon
10 alleges, that Defendants had a duty to ensure its production demands/quotas did not prevent Plaintiff
11 and Aggrieved Employees from complying with laws pertaining to meal periods, rest periods,
12 bathroom breaks (including, without limitation, reasonable travel time to and from bathroom
13 facilities), and/or exposing them to safety or Occupational Safety and Health Administration
14 ("OSHA") hazards. Defendants, or some of them, constitute a "covered employer" and its
15 warehouse employees are "covered employees." Defendants, or some of them, implement quotas
16 as defined in Labor Code section 2100, subdivision (h) and subjects Plaintiff and Aggrieved
17 Employees to adverse employment actions as defined in Labor Code section 2102. Furthermore,
18 Defendants, or some of them, willfully, knowingly and intentionally established quotas that harmed
19 Plaintiff and Aggrieved Employees all to increase Defendants' profits without concern for employee
20 safety. Defendants, in fact, tracked meals, rest, and recovery periods, that were not provided and
21 did nothing to change its policies and practices. Defendants also restricted and monitored the use
22 of bathroom facilities and charged the time Plaintiff and Aggrieved Employees used the bathroom
23 against their quota. In other words, Plaintiff and Aggrieved Employees who did not wait to use the
24 restroom during meal or rest periods or before or after their shift, were penalized for not meeting
25 the quota either through reprimands, warnings, and termination. Defendants maintained a point
26 system designed to prevent Plaintiff and Aggrieved Employees from complying with California law
27 as alleged in this Notice and systematically used to punish Plaintiff and Aggrieved Employees.
28 Furthermore, Defendants prevented compliance with California's meal and rest break laws and

1 failed to consider meal and rest breaks as productive time when Plaintiff and Aggrieved Employees
2 were required to remain on call in violation of Labor Code section 2103, subdivision (b). Plaintiff
3 and Aggrieved Employees were not permitted to take compliant meal breaks, rest breaks, and/or
4 rest and recovery periods when requested, due to Defendants' unlawful policy and practice to favor
5 production goals over the rights of Plaintiff and Aggrieved Employees. Consequently, Plaintiff and
6 other Aggrieved Employees were not provided with meal periods (or second meal periods); and/or
7 authorized or permitted to take rest periods (including second or third rest periods); and/or recovery
8 periods; and Defendants' policies prevented Aggrieved Employees from taking these meal, rest
9 and/or recovery periods as required by California law. Furthermore, Defendants did not provide to
10 Plaintiff and Aggrieved Employees a written description of each quota that was applicable to
11 Plaintiff and Aggrieved Employees; maintained secret (undisclosed) quotas; and failed to provide
12 written disclosures each and every time quotas changed either seasonally, daily, hourly, weekly
13 and/or monthly. This includes the number of tasks to be performed or materials that must be
14 produced or handled within a time period, and any potential adverse employment action that could
15 result from failing to meet the quota. This information has not been given by Defendants to Plaintiff
16 and Aggrieved Employees, including when hired, commencing on January 1, 2022 to the present.
17 Additionally, Defendants changed the "quota" regularly without notice, as often as per pay period.
18 Defendants were also required to provide a new written quota disclosure each and every time the
19 quota changed and failed to do so since the Notice was provided. Defendants failed to produce
20 Plaintiff's written quota disclosure upon written request pursuant to Labor Code sections 2100
21 through 2112, and failed to provide written disclosures to Plaintiff and Aggrieved Employees,
22 including new hires, since January 1, 2022, as well as to current employees each time the quota
23 changed. Defendants had and has a policy and practice of taking adverse employment action against
24 Plaintiff and Aggrieved Employees for failing to meet a quota that does not allow Plaintiff and
25 Aggrieved Employees to comply with meal and rest periods, or occupational health and safety laws
26 in the Labor Code or Division Standards, or for failure to meet a quota that has not been disclosed
27 to Plaintiff and Aggrieved Employees pursuant to Labor Code section 2101. Plaintiff thus violated
28 Labor Code sections 2100 through 2112. Plaintiff and the Aggrieved Employees personally suffered

1 these violations, which in turn would entitle Plaintiff and other Aggrieved Employees to penalties
2 prescribed by Labor Code sections 226. Defendants would also be liable for civil penalties pursuant
3 to Labor Code sections 558, 1174.5, 1695.55, 1198 and 2699. Plaintiff further informed and
4 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations and
5 was malicious, fraudulent, or oppressive, particularly given, among other reasons, Defendants have
6 been sued for these violations in the past. Thus, Defendants would further be liable for civil
7 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

8 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 maintain policies or practices of failing to permit Plaintiff and other Aggrieved Employees from
10 taking cooldown periods every day as required under California Code of Regulations, Title 8,
11 Section 3395; and premium pay in lieu thereof under Labor Code section 226.7. Defendants would
12 thus be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these
13 wages), 221, 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant rest
14 periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive relief
15 under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based thereon
16 alleges, that Defendants conduct above gave rise to such violations and was malicious, fraudulent,
17 or oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
18 2699(f)(2)(B)(ii).

19 35. In addition to the above, Plaintiff is informed and believes, and based thereon alleges
20 that Defendants failed and continue to fail to keep adequate or accurate time records including wage
21 statements and similar payroll documents under Labor Code section 226, documents signed to
22 obtain or hold employment under Labor Code section 432, personnel records under Labor Code
23 section 1198.5, time records under Labor Code section 1174, making it difficult for Plaintiff and
24 other Aggrieved Employees to calculate their unpaid wages and/or premium payments. Plaintiff
25 and the Aggrieved Employees personally suffered these violations, which in turn would entitle
26 Plaintiff and other Aggrieved Employees to penalties prescribed by Labor Code sections 226 and
27 1198.5. Defendants would also be liable for civil penalties pursuant to Labor Code sections 558,
28 1174.5, and 2699. Plaintiff further informed and believes, and based thereon alleges, that

1 Defendants' conduct above gave rise to such violations and was malicious, fraudulent, or
2 oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
3 2699(f)(2)(B)(ii).

4 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 and have a policy of failing to provide all temporary workers, including without limitation, Plaintiff,
6 with owed wages weekly by not later than the regular payday of the following week. Plaintiff is
7 informed and believes that this has resulted in a violation of Labor Code sections 201.3 and 1198.
8 As a result, pursuant to Labor Code section 201.3, Plaintiff and other Aggrieved Employees have
9 personally suffered violations thereto and Defendants would be liable for civil penalties pursuant to
10 Labor Code sections 201.3, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
11 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
12 conduct above gave rise to such violations and was malicious, fraudulent, or oppressive. Defendants
13 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

14 37. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
15 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
16 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
17 Employees pursuant to PAGA.

18 **FIRST AND ONLY CAUSE OF ACTION**

19 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

20 38. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
21 preceding paragraphs as though fully set forth hereat.

22 **Civil Penalties Under Labor Code § 210**

23 39. At all relevant times herein, Labor Code section 204, requires and required that:
24 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
25 between the 16th and 26th day of the month during which the labor was performed, and labor
26 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
27 between the 1st and 10th day of the following month.”

28 40. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated

1 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
2 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
3 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
4 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
5 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
6 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

7 41. At all relevant times herein, Defendants have had a consistent policy or practice of
8 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
9 per Labor Code section 204 including, without limitation, for the reasons and in a manner set forth
10 in the preceding paragraphs. Thus, pursuant to Labor Code section 210, Plaintiff and other
11 Aggrieved Employees are entitled to recover as civil penalties injunctive relief and monetary civil
12 penalties in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial
13 violation per employee, and two hundred dollars (\$200) for each failure to pay each employee, plus
14 25 percent of the amount unlawfully withheld for each Aggrieved Employee for each subsequent
15 violation in connection with each payment that was made in violation of Labor Code section 204.

16 Civil Penalties Under Labor Code § 226.3

17 42. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
20 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
21 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

22 43. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
23 this section are in addition to any other penalty provided by law.”

24 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
25 and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by
26 intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements
27 that accurately reflect gross wages earned; total hours worked; net wages earned; the name and
28 address of each employer with whom they have been placed to work; all applicable hourly rates in

1 effect during the pay period and the corresponding number of hours worked at each hourly rate; the
2 legal name of the employer; and other such information as required by Labor Code section 226,
3 subdivision (a).

4 45. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
5 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
6 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
7 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
8 period for each subsequent violation.

9 Violation of Labor Code § 558

10 46. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
11 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
12 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
13 penalty as follows:

14 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
15 pay period for which the employee was underpaid in addition to an amount sufficient
16 to recover underpaid wages;

17 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to
19 an amount sufficient to recover underpaid wages;

20 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

21 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
22 each of them, violated, or caused to be violated, the Labor Code sections and Wage Orders
23 regulating wages, hours and days of work described herein, including but not limited to Labor Code
24 sections 201-204, 223, 226.7, 510, 511, 512, 551, 552, 1182.12, 1194, 1197, 1198, and 2802.

25 48. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
27 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
28 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars

1 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

2 Violation of Labor Code § 1174.5

3 49. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
4 every person employing labor in California to “[a]llow any member of the commission or the
5 employees of the Division of Labor Standards Enforcement free access to the place of business or
6 employment of the person to secure any information or make any investigation that they are
7 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
8 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
9 or papers of the person.”

10 50. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
11 every person employing labor in California to “[k]eep a record showing the names and addresses of
12 all employees employed and the ages of all minors.”

13 51. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
14 every person employing labor in California to “[k]eep, at a central location in the state or at the
15 plants or establishments at which employees are employed, payroll records showing the hours
16 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
17 piece rate paid to, employees employed at the respective plants or establishments. These records
18 shall be kept in accordance with rules established for this purpose by the commission, but in any
19 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
20 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
21 earned.”

22 52. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
23 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
24 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
25 member of the commission or employees of the division to inspect records pursuant to subdivision
26 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

27 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
28 willfully failed to keep adequate or accurate time records including wage statements and similar

1 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
2 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
3 under Labor Code section 1174.

4 54. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
7 hundred dollars (\$500) per violation per pay period per Aggrieved Employee.

8 Violation of Labor Code § 1197.1

9 55. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
10 person acting either individually or as an officer, agent, or employee of another person, who pays
11 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
12 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
13 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
14 Section 203 as follows:

15 (1) For any initial violation that is intentionally committed, one hundred dollars
16 (\$100) for each underpaid employee for each pay period for which the
17 employee is underpaid. This amount shall be in addition to an amount
18 sufficient to recover underpaid wages, liquidated damages pursuant to Section
19 1194.2, and any applicable penalties imposed pursuant to Section 203.

20 (2) For each subsequent violation for the same specific offense, two hundred fifty
21 dollars (\$250) for each underpaid employee for each pay period for which the
22 employee is underpaid regardless of whether the initial violation is
23 intentionally committed. This amount shall be in addition to an amount
24 sufficient to recover underpaid wages, liquidated damages pursuant to Section
25 1194.2, and any applicable penalties imposed pursuant to Section 203.

26 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
27 Section 203, recovered pursuant to this section shall be paid to the affected
28 employee."

1 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
2 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants
3 routinely failing to accurately track and/or pay for all minutes actually worked by Plaintiff and
4 Aggrieved Employees at the proper rates of pay, as described above.

5 57. As a direct and proximate result of the herein-described Labor Code violations,
6 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
7 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of one
8 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
9 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
10 subsequent violation.

11 Civil Penalties Under Labor Code § 2699

12 58. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
13 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
14 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
15 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
16 action brought by an Aggrieved Employee on behalf of himself or herself and other current or former
17 employees pursuant to the procedures specified in Labor Code section 2699.3.

18 59. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
19 each of them, violated the Labor Code sections described in the preceding paragraphs.

20 60. As such, Plaintiff and Aggrieved Employees are entitled to injunctive relief, one
21 hundred dollars (\$100) for each Aggrieved Employee for each pay period in the PAGA Period, and
22 two hundred dollars (\$200) for each Aggrieved Employee for each pay period in the PAGA Period
23 to the extent Defendants' conduct is found to be malicious, fraudulent and/or oppressive.

24 61. Moreover, Plaintiff and other Aggrieved Employees within the State of California
25 whom Plaintiff seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
26 connection with their herein-described claims for civil penalties.

27 ///

28 ///

1 **PRAYER**

2 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
3 judgment against Defendants as follows:

- 4 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
5 1174.5, 1197.1, and 2699;
- 6 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
7 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 8 C. For equitable, including, without limitation, injunctive relief;
- 9 C. Pre-judgment and post-judgment interest;
- 10 D. For costs of suit incurred herein; and
- 11 E. Such other and further relief as the Court deems just and proper.

12
13
14 Dated: January 8, 2026

BIBIYAN LAW GROUP, P.C.

15 BY: /s/ Rafael Yedoyan

16 SARAH H. COHEN

17 RAFAEL YEDOYAN

18 Attorneys for Plaintiff MARCUS SMITH and
19 on behalf of all other Aggrieved Employees
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