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And JUAN GONTEZ, on behalf of themselves
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SANTA CLARA**

JENNIFER MONTOYA and JUAN
GONTEZ, individually, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

v.

FPR II, L.L.C., dba LEADPOINT
BUSINESS SERVICES, a Limited
Liability
Company; and DOES 1 through 50,
inclusive,

Defendants

Case No.: 22CV404499

[Assigned for all purposes to the Hon.
Theodore C. Zayner in Dept.: 19]

**DECLARATION OF DAVID D. BIBIYAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

DECLARATION OF DAVID D. BIBIYAN

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am the principal of Bibiyan Law Group, P.C., counsel of record for plaintiff Juan Gontez (“Plaintiff Gontez”) and all others similarly situated and aggrieved. As such, I am familiar with the file in this matter and, if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

Procedural History

2. On or around October 18, 2022, Plaintiff Gontez filed with the California Labor and Workforce Development Agency (“LWDA”) and served on MarBorg Industries and FPR II, LLC d.b.a. Leadpoint Business Services (“Defendant”) a notice under Labor Code section 2699.3, stating that he intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations (“PAGA Notice”). A true and correct copy of the “PAGA Notice” is attached hereto as Exhibit 1.

3. On or around October 20, 2022, Plaintiff Gontez filed a putative wage-and-hour class action, captioned *Gontez v. Marborg Industries, et al.*, in the Superior Court of the State of California for the County of Santa Barbara, Case Number 22CV04157, alleging causes of action against MarBorg Industries and Defendant (“Gontez Class Action”).

4. On or around December 19, 2022, Plaintiff Gontez filed an amended PAGA Notice with the LWDA, adding Marborg Recovery Management, LLC, as a respondent, and served on MarBorg Industries, Defendant, and Marborg Recovery Management, LLC (“Amended PAGA Notice”). A true and correct copy of the “Amended PAGA Notice” is attached hereto as Exhibit 2.

5. On or around December 25, 2023, after sixty-five (65) days had passed without any action by the LWDA with respect to the alleged Labor Code violations, Plaintiff Gontez filed a separate representative action against MarBorg Industries, Defendant, and Marborg Recovery Management, LLC, under PAGA, captioned *Gontez v. Marborg Industries, et al.* in the Superior Court of the State of California for the County of Santa Barbara, Case No. 23CV00298, seeking civil penalties under California Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699

1 (“Gontez PAGA Action”).

2 6. On or around June 26, 2024, plaintiff Jennifer Montoya filed a First Amended
3 Complaint in this instant action in the Superior Court of the State of California for the County of
4 Santa Clara, Case No. 22CV404499, adding Plaintiff Gontez and his claims alleged in the Gontez
5 Class Action and Gontez PAGA Action.

6 7. On or around July 14, 2024, the Superior Court of the State of California for the
7 County of Santa Barbara dismissed the Gontez PAGA Action without prejudice.

8 8. On or around September 9, 2024, the Superior Court of the State of California for
9 the County of Santa Barbara dismissed the Gontez Class Action without prejudice.

10 **Adequacy of Class Counsel**

11 9. I am an experienced class action attorney, have been appointed as class counsel in
12 other class actions, and have a successful track record in litigating class actions.

13 10. I graduated with a Bachelor of Arts degree from the University of California, Los
14 Angeles in 2009.

15 11. I received my Juris Doctorate from The University of Chicago Law School in 2012.

16 12. After practicing for several years as a member of Cohen & Lord, P.C., practicing
17 in an amorphous range of civil litigation on behalf of both plaintiffs and defendants, I opened up
18 a law firm in 2014 with a concentration in representation of employees against employers to
19 recover unpaid wages and vindicate harassment, discrimination and retaliation in various contexts.

20 13. I am an active member of the California Employment Lawyers’ Association
21 (“CELA”), one of only a few members of its Reverse Auctions Subcommittee and serve as a
22 mediator between other plaintiffs’ counsel who bring overlapping class actions. I have also
23 attended various Continuing Legal Education courses pertaining to advocacy on behalf of
24 employees.

25 14. In fact, I recently created the content for, helped organize, and served as the
26 Moderator for the 2023 California Complex Symposium Wage and Hour/PAGA Section, a
27 Continuing Legal Education seminar and forum featuring four respected Judges serving in the
28 Complex Divisions of their respective county Superior Courts. In addition, my firm served as a

1 sponsor of that event.

2 15. Not only have I practiced almost exclusively in this field for years and have
3 contributed to the legal education curriculum for attorneys practicing within it, I am also a
4 published author in the Daily Journal as a contributor in the Wage and Hour and PAGA context,
5 including, in December 15, an article entitled: “PAGA: What’s Gone, What’s Left and What’s
6 Next.” I have also been a quoted source in multiple other publications, including in article
7 published by Bloomberg Law dated November 1, 2023, entitled: “Adidas, Home Depot Sued in
8 Test Cases on Job Ad Pay Transparency.”

9 16. My firm has the experience, resources and means necessary to allow us to provide
10 adequate representation as Class Counsel to all class members in this litigation.

11 17. I have filed contested motions for class certification in the past and have been
12 appointed Class Counsel by the Superior Court of California in the past. Some examples of
13 Actions in which I was appointed Class Counsel include:

14 • *Santoyo v. Consolidated Foundries, Inc.*, Case No. BC612298, California Superior
15 Court, County of Los Angeles, Honorable Judge Ann I. Jones, presiding;

16 • *Arendsdorff v. Stanley Steamer International, Inc.*, Case No. BC681368, California
17 Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos, presiding;

18 • *Barreto v. Don Roberto Jewelers, Inc.*, Case No. BC495451, California Superior Court,
19 County of Los Angeles, Honorable Ann I. Jones, presiding;

20 • *Junior Amilcar Laguna Gonzalez v. Takaaki Koyama*, Case No. BC641998, Los Angeles
21 Superior Court, Honorable Elihu M. Berle, presiding;

22 • *Rios v. Nongshim America, Inc.*, Case No. CIVDS1807390, California Superior Court,
23 County of San Bernardino, Honorable David S. Cohn, presiding;

24 • *Stoddard v. Molded Fiber Glass – West*, Case No. 1517758, California Superior Court,
25 County of San Bernardino, Honorable David S. Cohn, presiding;

26 • *Mata v. Sahara Scaffold, Inc.*, Case No. CIVDS1810785, California Superior Court,
27 County of San Bernardino, Honorable David S. Cohn, presiding;

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1 • *Carrasco v. Pure Dental Solutions*, Case No. BC645995, Los Angeles Superior Court,
2 Honorable Kenneth R. Freeman, presiding;
3 • *Gonzalez v. Gochez, et al.*, Case No. BC648729, Los Angeles Superior Court, Honorable
4 Maren Nelson, presiding;
5 • *Montoya v. Superior Paving Co.*, Case No. CIVDS1833422, County of San Bernardino,
6 Honorable David S. Cohn, presiding;
7 • *Lopez v. Norred & Associates, Inc.*, Case No. CIVDS1824109, California Superior
8 Court, County of San Bernardino, David S. Cohn, presiding;
9 • *Noyola v. Lacren, LLC*, Case No. BC717024, California Superior Court, County of Los
10 Angeles, Hon. Anthony Mohr, presiding;
11 • *Luciano, et al. v. O'Tasty Foods, Inc., et al.*, Case No. BC711988, California Superior
12 Court, County of Los Angeles, Honorable Maren Nelson, presiding;
13 • *Gordon v. Hospice Source, LLC*, Case No. 34-2018-00250022-CU-OE-GDS, California
14 Superior Court, County of Sacramento, Honorable Christopher E. Krueger, presiding;
15 • *Barragan v. Refrigeration Supplies Distributor*, Case No. 19STCV09312, California
16 Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;
17 • *Ramirez v. Acre Gourmet, Inc.*, Case No. CGC-19-575117, California Superior Court,
18 County of San Francisco, Honorable Andrew Y.S. Cheng, presiding;
19 • *Villafuerte v. Bay Alarm Company*, Case No. BC689110, California Superior Court,
20 County of Los Angeles, Honorable Amy D. Hogue, presiding;
21 • *Cazares v. Areas USA LAX, LLC*, Case No. 19STCV08209, California Superior Court,
22 County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;
23 • *Magana v. Castlerock Environmental, Inc., et al.*, Case No. 19STCV38353, California
24 Superior Court, County of Los Angeles, Honorable Ann I. Jones, presiding;
25 • *Chilel v. Sushi California, Inc.*, Case No. 19STCV08209, California Superior Court,
26 County of Los Angeles, Honorable Ann I. Jones, presiding;
27 • *Malone v. Orange Courier, Inc., et al.*, Case No. 30-2016-00763474, California Superior
28 Court, County of Orange, Honorable Glenda Sanders, presiding;

1 • *Rivera v. Talamo Food Services, Inc.*, Case No. 19CV355856, California Superior Court,
2 County of Santa Clara, Honorable Patricia M. Lucas, presiding;
3 • *Olguin v. Cal Central Harvesting, Inc.*, Case No. 18CV03860, California Superior Court,
4 County of Santa Barbara, Honorable James F. Rigali, presiding;
5 • *Pence v. Sober Living by the Sea, Inc.*, Case No. 2018-00988742, California Superior
6 Court, County of Orange, Honorable Randall J. Sherman, presiding;
7 • *Franco v. Vincent Rags, Inc.*, Case No. 20STCV07768, California Superior Court,
8 County of Los Angeles, Honorable Ann I. Jones, presiding;
9 • *Cabral v. Miller Castings, Inc.*, Case No. 19STCV39556, California Superior Court,
10 County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;
11 • *Bolanos v. Texas Roadhouse, Inc.*, Case No. 19STCV39556, California Superior Court,
12 County of Los Angeles, Honorable Sunshine Sykes, presiding;
13 • *Rodriguez v. Scott A. Humphreys, Inc.*, Case No. 30-2021-01184556-CU-OE-CXC,
14 California Superior Court, County of Ventura, Honorable Matthew P. Guasco, presiding;
15 • *Torres v. Primal Pet Foods, Inc.* Case No. FCS054783, California Superior Court,
16 County of Solano, Honorable Wendy G. Getty, presiding;
17 • *Hanson v. Zapata Nuccio, Inc.*, Case No. 20STCV28951, California Superior Court,
18 County of Los Angeles, Honorable Elihu M. Berle, presiding;
19 • *Molina v. Avibank Mfg, Inc.*, Case No. 20STCV03910, California Superior Court,
20 County of Los Angeles, Honorable John P. Doyle, presiding;
21 • *Cetina v. Lawry's Restaurants, Inc.*, Case No. 19STCV05201, California Superior Court,
22 County of Los Angeles, Honorable Amy D. Hogue, presiding;
23 • *Luna v. Pronto California General Agency, LLC*, Case No. 19STCV39951, California
24 Superior Court, County of Los Angeles, Honorable Elihu M. Berle, presiding;
25 • *Alvarez v. Kazak-Mars, Inc.*, Case No. 20STCV42587, California Superior Court,
26 County of Los Angeles, Honorable Elihu M. Berle, presiding;
27 • *Noe v. My Pillow, Inc.* Case No. CIVDS 2011360, California Superior Court, County of
28 San Bernardino, Honorable David Cohn, presiding;

1 • *Nunez v. 2751 West Coast Acquisition Company*, Case No. 30-2020-01145215-CU-
2 OE-CXC, California Superior Court, County, County of Orange, Honorable Randall J. Sherman,
3 Presiding;
4 • *Smith v. McMillen Enterprises, Inc.*, Case No. CV-20-002938, California Superior Court,
5 County of Stanislaus, Honorable John R. Mayne, presiding;
6 • *Turner v. Plant Prefab Inc., et al.*, Case No. CIVDS2017517, California Superior Court,
7 County of San Bernardino, Honorable David Cohn, presiding;
8 • *Duran v. Fresh Select, LLC*, Case No. VCU284892, California Superior Court, County
9 of Tulare, Honorable Bret Hillman, presiding;
10 • *Reynoso, et al. v. Cream of the Crop AG Service, Inc.*, Case No. VCU278847, California
11 Superior Court, County of Tulare, Honorable Bret Hillman, presiding;
12 • *Michel v. Universal Waste Systems, Inc.*, Case No. 19STCV46181, California Superior
13 Court, County of Los Angeles, Honorable David S. Cunningham presiding;
14 • *Jungers v. U.S. Borax Inc., et al.*, Case No. BCV-21-10003, California Superior Court,
15 County of Kern, Honorable Bernard C. Barmann Jr. presiding;
16 • *Fortune v. Amoroso Limited Partnership, et al.*, Case No. 20STCV25874, California
17 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding;
18 • *Montoya, et al. v. Remo, Inc.* Case No. 20STCV34614, California Superior Court,
19 County of Los Angeles, Honorable Maren Nelson presiding;
20 • *Rincon, et al. v. New-Indy Tripaq, LLC, et al.* Case No. 20STCV17118, California
21 Superior Court, County of Los Angeles, Honorable Maren Nelson presiding;
22 • *De Leon, et al. v. Wismettac Asian Foods, Inc.* Case No. 19STCV18172, California
23 Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding;
24 • *Tapia v. Mercer Foods, Inc.* Case No. CV-21-000020, California Superior Court,
25 County of Stanislaus, Honorable Sonny S. Sandhu presiding;
26 • *Molina v. Reser's Fine Foods, Inc.* Case No. 37-2021-00013052-CU-OECTL, California
27 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding;
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- 1 • *Reyes v. Imperial Sprinkler Supply, Inc.*. Case No. 30-2020-01167748-CU-OE-CXC,
2 California Superior Court, County of Los Angeles, Honorable Peter Wilson presiding;
- 3 • *Zavala, et al. v. PLS Check Cashers, Inc.*. Case No. 20STCV42586, California Superior
4 Court, County of Los Angeles, Honorable Elihu M. Berle presiding;
- 5 • *Paz v. Hill Brothers Chemical Company*. Case No. 20STCV48279, California Superior
6 Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;
- 7 • *Garcia v. Inwesco Incorporated*. Case No. 20STCV46833, California Superior Court,
8 County of Los Angeles, Honorable Carolyn B. Kuhl presiding;
- 9 • *Guevara v. J&K Culver, LLC, et al.*. Case No. 19STCV39951, California Superior Court,
10 County of Los Angeles, Honorable Elihu M. Berle presiding;
- 11 • *Hamilton v. Michael Kors Stores, Inc. et al.*, Case No. 19STCV37061, California
12 Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos presiding;
- 13 • *Arzooian v. A&M Administration, LLC, et al.* Case No. 21STCV05576, California
14 Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos presiding;
- 15 • *Santos, et al. v. Maruzen of America, Inc.*, Case No. 19STCV37662, California Superior
16 Court, County of Los Angeles, Honorable Kenneth R. Freeman presiding;
- 17 • *Schaffino v. M.O. Dion & Sons., Inc., et al.*, Case No. 20STCV38023, California Superior
18 Court, County of Los Angeles, Honorable Gail Killefer presiding;
- 19 • *Moreno v. Santa Paula Post Acute, LLC, et al.* Case No. 21STCV12533, California
20 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding;
- 21 • *Singer v. Desert Area Resources and Training*, Case No. BCV-21-101093, California
22 Superior Court, County of Kern, Honorable Thomas S. Clark presiding;
- 23 • *Clarizio v. Guard-Systems, Inc.*, Case No. 21STCV28667, California Superior Court,
24 County of Los Angeles, Honorable Armen Tamzarian presiding;
- 25 • *Guzman v. Freschco Painters, Inc.*, Case No. 21STCV04683, California Superior Court,
26 County of Los Angeles, Honorable Lawrence P. Riff presiding;
- 27 • *Koutny v. PAE Aviation and Technical Services, LLC*, Case No. 21C-0106, California
28 Superior Court, County of Kings, Honorable Melissa R. D’Morias presiding;

1 • *Rodriguez v. Pacifica Trucks, LLC*, Case No. 20STCV37576, California Superior Court,
2 County of Los Angeles, Honorable Stuart Rice presiding;
3 • *Ramos v. AEGIS Treatment Centers, LLC*, Case No. 20STCV41429, California Superior
4 Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;
5 • *Valdez v. Integrated Building Services, Inc.* Case No. 20STCV37793, California Superior
6 Court, County of Los Angeles, Honorable Elihu M. Berle presiding;
7 • *Harris v. America One Security, Inc.* Case No. 21STCV01399, California Superior Court,
8 County of Los Angeles, Honorable Lawrence P. Riff presiding;
9 • *Moreno v. M&J Seafood Company, Inc.* Case No. 22STCV03341, California Superior
10 Court, County of Los Angeles, Honorable William F. Highberger presiding;
11 • *Corrales v. Q&B Foods, Inc.* Case No. 20STCV40885, California Superior Court,
12 County of Los Angeles, Honorable Elihu Berle presiding;
13 • *Arteaga v. Demolition Specialist, Inc.* Case No. RIC2001133, California Superior Court,
14 County of Riverside, Honorable Harold Hopp presiding;
15 • *Vigil, et al. v. Capstone Turbine Corporation*, Case No. 20STCV32123, California
16 Superior Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;
17 • *Ramirez v. Sea-Win, Inc.* Case No. 21STCV22026, California Superior Court, County of
18 Los Angeles, Honorable Lawrence P. Riff presiding;
19 • *Ortega Chavez v. Winpak Lane, Inc.* Case No. CIVSB2207313, California Superior
20 Court, County of San Bernardino, Honorable Jessica Morgan presiding;
21 • *Garcia v. American Licorice Company.* Case No. RG21107049, California Superior
22 Court, County of Alameda, Honorable Brad Seligman presiding;
23 • *Madrono v. Vitale Nursing, Inc, et al.*, Case No. 21STCV09845, California Superior
24 Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;
25 • *Orellana v. Advanced Building Maintenance.* Case No. 34-2020-00286791-CU-OE-
26 GDS, California Superior Court, County of Sacramento, Honorable Jill Talley presiding;
27 • *Aguilar v. Bioness, Inc., et al.*, Case No. 21STCV41702, California Superior Court,
28 County of Los Angeles, Honorable Lawrence P. Riff presiding;

1 • *Antoine v. Pinky Beverly Hills, LLC., et al. Case No. 19STCV44856*, California
2 Superior Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;
3 • *Bailey v. Cannon Constructors, Inc., et al. Case No. 21STCV38274*, California
4 Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;
5 • *Phambui v. Fashion Marketing and Merchandising Group, Inc., et al. Case No.*
6 *21STCV06634*, Superior Court, County of Los Angeles, Honorable Stuart M. Rice presiding;
7 • *Ortega Chavez v. Winpak Lane, Inc., et al. Case No. CIVSB2202274*, California
8 Superior Court, County of San Bernardino, Honorable Jessica Morgan presiding;
9 • *Carrasco v O.H. Barkhordar D.D.S., Inc., et al. Case No. 22STCV21188*, California
10 Superior Court, County of Los Angeles, Honorable Lawrence Riff presiding;
11 • *Correia v. Gallo Glass Company, et al. Case No. CV-21-006459*, California Superior
12 Court, County of Stanislaus, Honorable Sonny S. Sandhu presiding;
13 • *Davis v. Beeline Import and Services, LLC, et al. Case No. CIVSB2119287*, California
14 Superior Court, County of San Bernardino, Honorable David Cohn presiding;
15 • *Angel Lopez v Innovative Coatings Technology Corporation dba Incotec, et al. Case No.*
16 *30-2020-01173245-CU-OE-CXC*, California Superior Court, County of Orange, Honorable Lon
17 Hurwitz presiding;
18 • *Lopez v UPM, Inc., et al. Case No. 20STCV36695*, California Superior Court, County of
19 Los Angeles, Honorable Lawrence P. Riff presiding;
20 • *Moreno v. Infiniti Group LLC., et al. Case No. CIVSB2223551*, California Superior
21 Court, County of San Bernardino, Honorable Joseph T. Ortiz presiding;
22 • *Kelley v. Applus Technologies, Inc., et al. Case No. CIVSB2204889*, California Superior
23 Court, County of San Bernardino, honorable Jessica Morgan presiding;
24 • *Hernandez v Bromley Foods, Inc., et al. Case No. 56-2021-00561326-CU-OE-VTA*,
25 California Superior Court, County of Ventura, Honorable Henr Walsh presiding;
26 • *Heredia v. Alan Smith Pool Plastering, Inc., et al. Case No. 30-2020-01163609-CU-OE-*
27 *CXC*, California Superior Court, County of Orange, Honorable Randall J. Sherman presiding;
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1 • *Martinez Guzman v Freshco Painters Inc., et al. Case No. 21STCV04683*, California
 2 Superior Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;
 3 • *Gonzalez v. Total Education Solutions, Inc., et al. Case No. 20STCV37984*, California
 4 Superior Court, County of Los Angeles, Honorable Maren Nelson presiding;
 5 • *Gomez Mireles v. USG Ceilings Plus, LLC., et al. Case No. 21STCV45606*, California
 6 Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding;
 7 • *Garzon v. Mobile Hi-Tech Wheels, LLC., et al., Case No. 21STCV15396*, California
 8 Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;
 9 • *Dethrasavong v. ASI Computer Technologies, Inc., et al. Case No. 20STCV32312*,
 10 California Superior Court, County of Contra Costa, Honorable Kenneth R. Freeman presiding;
 11 • *Iraheta v. Legacy Farmers, Inc.*, Case No. MSC21-00762, California Superior Court,
 12 County of Contra Costa, Honorable Edward G. Weil presiding;
 13 • *Echegoyen v. The ADT Security Corporation.*, Case No. 21STCV07206, California
 14 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding; and
 15 *Tarin v. TPS Solutions, Inc.*, Case No. 21STCV07844, California Superior Court, County
 16 of Los Angeles, Honorable Maren E. Nelson presiding.
 17 18. I have also settled matters on a “PAGA Only” basis for aggrieved employees in the
 18 past, including in:
 19 • *Flores v. Delta Apparel, Inc.*, Case No. BC641499, California Superior Court, County
 20 of Los Angeles, Honorable Daniel J. Buckley, presiding;
 21 • *Segura v. CJ Foods Service Holdings USA, LLC*, Case No. 19STCV24918, California
 22 Superior Court, County of Los Angeles, Honorable Maureen Duffy-Lewis, presiding;
 23 • *Sierra v. Nexem-Allied, LLC*, Case No. 20STCV11281, California Superior Court,
 24 County of Los Angeles, Honorable Randolph M. Hammock, presiding;
 25 • *Nodal v. Sodexo, Inc.*, Case No. 20STCV40601, California Superior Court, County of
 26 Los Angeles, Honorable Lawrence Riff, presiding;
 27 • *Cooper v. Lucas Health Partners*, Case No. 20STCV20050, California Superior Court,
 28 County of Los Angeles, Honorable Maren Nelson, presiding;

1 • *Herrera v. Greystar Management, LP, et al.*, Case No. 37-2020-00009672-CU-OE-CTL,
2 California Superior Court, County of San Diego, Honorable Carolyn Caietti, presiding;
3 • *Slater v. Jo-Ann Stores, LLC.*, Case No. 21STCV18454, California Superior Court,
4 County of Los Angeles, Honorable Maurice A. Leiter, presiding;
5 • *Bolanos v. Canoga Park Heating & Air Conditioning, Co., Inc.*, Case No.
6 21STCV12674, California Superior Court, County of Los Angeles, Honorable Yolanda Orozco,
7 presiding;
8 • *Granados v. Cosmetic Ideas, Inc.* Case No. 21STCV10797, California Superior Court,
9 County of Los Angeles, Honorable Richard L. Fruin, presiding;
10 • *Ruano v. DPC Woodwork, Inc.* Case No. 21STCV00408, California Superior Court,
11 County of Los Angeles, Honorable Jon R. Takasugi presiding;
12 • *Tarin v. TPS Solutions, Inc.*, Case No. 21STCV07844, California Superior Court,
13 County of Los Angeles, Honorable Maren E. Nelson presiding;
14 • *Echegoyen v. The ADT Security Corporation.*, Case No. 21STCV07206, California
15 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding;
16 • *Iraheta v. Legacy Farmers, Inc.*, Case No. MSC21-00762, California Superior Court,
17 County of Contra Costa, Honorable Edward G. Weil presiding
18 • *Davood v. NKSFB, LLC., et al.* Case No. 22STCV17305, California Superior Court,
19 County of Los Angeles, Honorable Christopher K. Lui presiding;
20 • *Hardy v. Texas Roadhouse Management Corp., et al.* Case No. CIVSB2222259,
21 California Superior Court, County of San Bernardino, Honorable Jessica Morgan presiding;
22 • *Michelle v. Smithfield Packaged Meats Corp., et al.* Case No. JCCP5244, California
23 Superior Court, County of San Bernardino, Honorable Jesica Morgan, presiding;
24 • *Hernandez v. SC Commercial, LLC, d.b.a. SC Fuels, et al.*, Case No. 30-2020-01166961-
25 CU-OE-CXC, California Superior Court, County of Orange, Honorable Lon. Hurwitz presiding;
26 • *Hines v. Constellis Integrated Risk Management Services, et al.* Case No.
27 20STCV26962, California Superior Court, County of Los Angeles, Honorable Christopher K. Lui
28 presiding; and

1 • *Landin v Central Janitors' Supply Co., Inc., et al. Case No. CV-21-006391*, California
2 Superior Court, County of Stanislaus, Honorable Sonny S. Sandhu presiding.

3 19. I believe that I am sufficiently experienced and qualified to evaluate the Class
4 Members' claims and viability of Defendant's defenses.

5 20. Vedang J. Patel has been a member of my law firm for over two (2) years and served
6 as class counsel on numerous actions on which I was also named class counsel. Prior to working
7 with Bibiyan Law Group, P.C., he practiced law as a member of Murchison & Cumming, LLP,
8 on a variety of matter on behalf of defendants. Thereafter, he joined Bibiyan Law Group, P.C.
9 practicing law on behalf plaintiffs in matters of employment law, and specifically on issue of
10 unpaid wages and class action settlements. He is currently a senior attorney at Bibiyan Law Group,
11 P.C. Among other tasks, he oversees and manages all settlements at Bibiyan Law Group, P.C.

12 21. Currently, my firm is acting as counsel in dozens of wage and hour class actions
13 and representative PAGA actions.

14 22. Class Counsel believe no conflicts, disabling or otherwise, exists between Plaintiff
15 Gontez and Class Members because Plaintiff Gontez alleges to have been damaged by the same
16 alleged conduct of Defendant (i.e., Plaintiff Gontez was an employee of defendant FPR II, L.L.C.,
17 dba Leadpoint Business Services., classified as a non-exempt, hourly-paid employee, not paid
18 premium pay, etc.) and thus has the incentive to fairly represent all Class Members' claims to
19 achieve the maximum possible recovery.

20 23. After a thorough investigation and settlement discussions, my office arrived at
21 terms that we viewed was in the best interest of both the class members and the parties.

22 24. Should the Court refuse to grant preliminary approval of this Settlement, many of
23 the Class Members may be denied any recourse for Defendant's alleged violations.

24 25. For these reasons, as well as the reasons provided in the Declaration of Kyle
25 Nordrehaug, I believe that Class Counsel is sufficiently experienced and qualified to evaluate the
26 class members' claims and viability of defendant's defenses.

27 26. I believe, and as further set out in the Declaration of Kyle Nordrehaug, the settlement
28 presented here only resulted after having engaged in extensive informal discovery and investigation

1 and is the product of hard-fought litigation and extensive arm's-length negotiations.

2 27. Bibiyan Law Group, P.C. has no interest in or conflict with the Class Members or the
3 settlement administrator, ILYM Group, Inc.

4 28. I believe, based on my experience as class counsel, that the Settlement is fair,
5 reasonable, adequate and in the best interests of class members.

6 I declare under penalty of perjury under the laws of the state of California that the
7 foregoing is true and correct this October 23, 2024, at Los Angeles, California.

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9 David D. Bibiyan
10 David D. Bibiyan
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EXHIBIT 1

October 18, 2022

PAGA NOTICE FILED ELECTRONICALLY

Re: Notice Letter of Juan Manso Gontez on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.3

Employers: Marborg Industries
728 E. Yanonali St.
Santa Barbara, CA 93103

FPR II, LLC d.b.a. Leadpoint Business Services
5310 E. High Street Suite 300
Phoenix, AZ 85054

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Juan Manso Gontez’s (“Employee”) employment with Employee’s former employers: Marborg Industries (“Marborg”) and FPR II, LLC d.b.a. Leadpoint Business Services (“Leadpoint”, and collectively with Marborg, “Defendants” or “Employer”). Employee was employed by Defendants as a non-exempt employee of Defendants from on or about February 2021 to on or about December 15, 2021. Employee’s duties included, but were not limited to, supervising employees and providing quality assurance for production. In connection with the alleged claims for failure to comply with Labor Code section 6409.6, Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Defendants, and each of them, as well as their parents, subsidiaries and affiliates. On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track

and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not

made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employee

and other aggrieved employees and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above, including, without limitation, for failure to pay at the proper regular rate of pay, among other things. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.* Employee is further informed and believes that the sick pay was not provided at the proper regular of pay as required under California law due to failure to properly calculate the regular rate. Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. Employee is additionally informed and believes that the notice requirement of Labor Code section 246 *et seq.* involves a mandatory payroll or workplace injury reporting. As such, Employer would be liable for civil penalties for violation of

the paid sick leave regulations under Labor Code sections 558 and 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month." Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to give sufficient, adequate and proper notice to employees of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. Employee is informed and believes that numerous employees contracted COVID-19 during the relevant time periods, but that Employer failed to provide notice to employees. Employee is additionally informed and believes that Employer does not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

Specifically, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to provide written notice to Employee and other aggrieved employees, or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Furthermore, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to provide Employee and other aggrieved employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not

limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Additionally, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to notify Employee and other aggrieved employees who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Moreover, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19-related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.

/s/ Sarah H. Cohen

Sarah H. Cohen

California Labor and Workforce Development Agency

October 18, 2022

Page 7

cc: Marborg Industries (via U.S. Certified Mail, Return Receipt Requested);
FPR II, LLC d.b.a. Leadpoint Business Services (via U.S. Certified Mail, Return Receipt Requested).

EXHIBIT 2

December 19, 2022

AMENDED PAGA NOTICE FILED ELECTRONICALLY

Re: *Amended Notice Letter of Juan Manso Gontez on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.3*

Employers: Marborg Industries
728 E. Yanonali St.
Santa Barbara, CA 93103

FPR II, LLC d.b.a. Leadpoint Business Services
5310 E. High Street Suite 300
Phoenix, AZ 85054

MarBorg Recovery Management, LLC
PO Box 4127
Santa Barbara, CA 93140

To Whom It May Concern:

This *Amended* letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this *Amended* PAGA Notice was submitted online to the Department of Industrial Relations.

This *Amended* PAGA Notice concerns Juan Manso Gontez’s (“Employee”) employment with Employee’s former employers: Marborg Industries (“Marborg”), MarBorg Recovery Management, LLC (Marbog Recovery) and FPR II, LLC d.b.a. Leadpoint Business Services (“Leadpoint”, and collectively with Marborg, Marbog Recovery “Defendants” or “Employer”). Employee was employed by Defendants as a non-exempt employee of Defendants from on or about February 2021 to on or about December 15, 2021. Employee’s duties included, but were not limited to, supervising employees and providing quality assurance for production. In connection with the alleged claims for failure to comply with Labor Code section 6409.6, Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Defendants, and each of them, as well as their parents, subsidiaries and affiliates. On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal

periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned;

total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employee and other aggrieved employees and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above, including, without limitation, for failure to pay at the proper regular rate of pay, among other things. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.* Employee is further informed and believes that the sick pay was not provided at the proper regular of pay as required under California law due to failure to properly calculate the regular rate. Employee is further informed and believes

that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. Employee is additionally informed and believes that the notice requirement of Labor Code section 246 *et seq.* involves a mandatory payroll or workplace injury reporting. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month." Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to give sufficient, adequate and proper notice to employees of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. Employee is informed and believes that numerous employees contracted COVID-19 during the relevant time periods, but that Employer failed to provide notice to employees. Employee is additionally informed and believes that Employer does not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

Specifically, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to provide written notice to Employee and other aggrieved employees, or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Furthermore, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential

exposure to COVID-19 to provide Employee and other aggrieved employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Additionally, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing within one business day after Employer or a representative of Employer received a notice of potential exposure to COVID-19 to notify Employee and other aggrieved employees who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

Moreover, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19-related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 6409.6 and 6432.

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Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this *Amended* notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

/s/ Sarah H. Cohen

BIBIYAN LAW GROUP, P.C.

Sarah H. Cohen

cc: Marborg Industries (via U.S. Certified Mail, Return Receipt Requested); FPR II, LLC d.b.a. Leadpoint Business Services (via U.S. Certified Mail, Return Receipt Requested); MarBorg Recovery Management, LLC (via U.S. Certified Mail, Return Receipt Requested)