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Attorneys for Plaintiff MODESTO ADAME,
as an Aggrieved Employee, and on behalf of all other
Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MODESTO ADAME, as an Aggrieved
Employee, and on behalf of all other
Aggrieved Employees under the Labor Code
Private Attorneys' General Act of 2004,

Plaintiff

v.

BERGER TRANSFER & STORAGE, INC., a
Minnesota corporation; ALLIED VAN
LINES, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Electronically Filed

Superior Court of California

County of San Bernardino

Rancho Cucamonga District

9/2/2026 2:51 PM

By: Makeda Joyeux, DEPUTY

CASE NO.: CIVRS2607993

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 226.8, 558, 1174.5,
1197.1 and 2699**

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

1 Plaintiff MODESTO ADAME (“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 General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Berger Transfer &
7 Storage, Inc., a Minnesota corporation, and any of its respective subsidiaries or affiliated companies
8 within the State of California (“Berger Transfer & Storage”), and Allied Van Lines, Inc., a Delaware
9 corporation, and any of its respective subsidiaries or affiliated companies within the State of
10 California (“Allied Van Lines”) (hereinafter, Berger Transfer & Storage and Allied Van Lines
11 collectively, with DOES 1 through 100, as further defined below, “Defendants”) as a proxy of the
12 Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of
13 Plaintiff and all Aggrieved Employees that worked for Defendants during the PAGA Period.
14 Specifically, in connection with any alleged claims for failure to comply with Labor Code sections
15 200, 204, 210, 221, 223, 226, 226.3, 432, 1198, 1198.5, including restraints on competition,
16 whistleblowing and freedom of speech and applicable Wage Orders, Plaintiff seeks to represent all
17 current and former employees that worked for Defendants during the PAGA Period. On all other
18 claims mentioned herein, Plaintiff seeks to represent only non-exempt current and former employees
19 that worked for Defendants during the PAGA Period. Collectively, these employees are herein
20 referred to as “Aggrieved Employees.” The “PAGA Period” refers to one year preceding the date
21 notice was submitted to the LWDA, continuing past the date of notice to the LWDA until judgement
22 is entered.

23 **PARTIES**

24 2. Plaintiff MODESTO ADAME is a resident of the State of California. At all relevant
25 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 employed Plaintiff as a non-exempt employee. Plaintiff worked as a driver with duties that included,
27 but were not limited to, helping customers move their belongings from one destination to another.
28 Plaintiff is informed and believes, and based thereon alleges, that Plaintiff MODESTO ADAME

1 worked for Defendants from approximately January of 2016 through approximately October 25,
2 2025.

3 3. Plaintiff is informed and believes and based thereon alleges that defendant Berger
4 Transfer & Storage is, and at all times relevant hereto was, a corporation existing under and by
5 virtue of the laws of the State of Minnesota and doing business in the County of San Bernardino,
6 State of California. At all relevant times herein, Berger Transfer & Storage employed Plaintiff and
7 Aggrieved Employees within the State of California.

8 4. Plaintiff is informed and believes and based thereon alleges that defendant Allied
9 Van Lines is, and at all times relevant hereto was, a corporation existing under and by virtue of the
10 laws of the State of Delaware and doing business in the County of San Bernardino, State of
11 California. At all relevant times herein, Allied Van Lines employed Plaintiff and Aggrieved
12 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 Berger Transfer & Storage, Allied Van Lines, and any of their
26 parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through
27 100 identified herein.

28 7. Plaintiff is informed and believes and based thereon alleges that all the times

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

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

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

16 **JURISDICTION**

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

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

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. 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 June 12, 2026, 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, 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.

17. 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 conference process pursuant to section 2699.3(f).

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

1 19. In the event that Defendants, or either of them, is/are determined to have, prior to
2 this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Plaintiff
3 and/or Plaintiff's counsel, adequately taken all reasonable steps to be in compliance with all
4 provisions identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to
5 section 2699(g)(1)-(3).

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

10 21. In the event, the LWDA and/or a court issued a finding or determination to the
11 Defendants, or either of them, that within five (5) years preceding the date of the PAGA Notice the
12 policies or practices which gave rise to the violations alleged herein were unlawful, Defendants, or
13 any of them, would be subject to heightened penalties pursuant to Labor Code sections
14 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3) and **not** eligible for reduced penalties under either
15 Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the serving
16 of the PAGA Notice. Regardless, Plaintiff alleges Defendants' conduct giving rise to the violations
17 as detailed herein was and is malicious, fraudulent. Thus, Defendants, or any of them, are further
18 subject to increased penalties under Labor Code section 2699(f)(2)(B)(ii) and lack eligibility for
19 reduced penalties under either Labor Code sections 2699(g) or 2699(h).

20 **FACTUAL ALLEGATIONS**

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

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

3 24. Upon information and belief, Defendants failed to accurately track and/or pay for all
4 minutes actually worked by Plaintiff and Aggrieved Employees at the proper rates of pay.
5 Defendants also engaged, suffered, or permitted Aggrieved Employees to work off the clock,
6 including, without limitation, by failing to track Plaintiff's and Aggrieved Employee's time
7 altogether and failing to pay for all hours worked due to the fact Plaintiff and Aggrieved Employees
8 were misclassified as independent contractors. For example, Defendant did not track Plaintiff's
9 time, but instead told him a specific amount of compensation he would receive before each trip.
10 Defendants paid Plaintiff part of the compensation prior to each trip, but when Plaintiff requested
11 the remainder of the compensation, Defendants told him that there was no amount remaining
12 because it was used to cover expenses such as crew members' compensation and gas.

13 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 violated, without limitation, Labor Code sections 223, 510, 551, 552, 1197, 1182.12, and applicable
15 Wage Orders based on its continued failure to pay minimum and overtime wages for all hours
16 worked. Thus, Plaintiff and other Aggrieved Employees are entitled to actual and liquidated
17 damages under, without limitation, Labor Code sections, 1194, 1194.2, and 1198. Plaintiff is further
18 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
19 violations and was malicious, fraudulent, or oppressive. Defendants would also be liable for civil
20 penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558, 1197.1,
21 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further
22 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

23 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
24 each of them, had and have a policy or practice of compelling Plaintiff and other Aggrieved
25 Employees during the PAGA Period to work every day in excess of five (5) and ten (10) hours per
26 day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or
27 compensation in lieu thereof. By way of example, Defendants regularly denied Plaintiff and
28 Aggrieved Employees lawful meal periods by, without limitation, failing to provide meal periods

1 all together due to the fact Plaintiff and Aggrieved Employees were misclassified as independent
2 contractors. . Plaintiff and other Aggrieved Employees personally suffered these violations.
3 Consequently, Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 violated Labor Code sections 512 and 1198 each day for each Aggrieved Employee during the
5 PAGA Period, and thus each Aggrieved Employee was owed one hour of premium pay at their
6 regular rate of pay for each day worked during the PAGA Period under Labor Code section 226.7.
7 However, Plaintiff is informed and believes that those premium payments under Labor Code section
8 226.7 were not made for these non-compliant meal periods, either at all or at the proper regular rate
9 of pay. Defendants would thus be liable for civil penalties pursuant to Labor Code sections 210 (for
10 failure to timely pay these wages), 558, 1198 and 2699 for both failing to authorize the taking of
11 compliant meal periods and for failing to provide premium pay under Labor Code section 226.7, or
12 injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed and believes,
13 and based thereon alleges, that Defendants' conduct that gave rise to such violations and was
14 malicious, fraudulent, or oppressive. As such, Defendants are further liable for civil penalties
15 pursuant to Labor Code section 2699(f)(2)(B)(ii).

16 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 maintain policies or practices of compelling Plaintiff and other Aggrieved Employees every day to,
18 including, without limitation, work over four-hour periods (or major fractions thereof) without
19 authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, timely,
20 and complete ten-minute rest periods in which the employees are completely relieved of all of their
21 duties. By way of example, Defendants regularly denied Plaintiff and Aggrieved Employees lawful
22 rest periods by, without limitation, failing to provide rest periods all together due to the fact that
23 Plaintiff and Aggrieved Employees were misclassified as independent contractors. Plaintiff and
24 other Aggrieved Employees personally suffered these violations. Consequently, Plaintiff is
25 informed and believes, and based thereon alleges, that Defendants violated the applicable Wage
26 Order(s) each day for each Aggrieved Employee during the PAGA Period, and that, thus each
27 Aggrieved Employee was owed one hour of premium pay at their regular rate of pay for each day
28 worked during the PAGA Period under Labor Code section 226.7. However, Plaintiff is informed

1 and believes that those premium payments under Labor Code section 226.7 were not made, either,
2 for these non-compliant rest periods, either at all or at the proper regular rate of pay, in violation of
3 Labor Code sections 226.7 and 1198. Defendants would thus be liable for civil penalties pursuant
4 to Labor Code sections 210 (for failure to timely pay these wages), 558, 1198 and 2699 for both
5 failing to authorize the taking of compliant rest periods and for failing to provide premium pay under
6 Labor Code section 226.7, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is
7 further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise
8 to such violations and was malicious, fraudulent, or oppressive. As such, Defendants are further
9 liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

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

1 under Labor Code section 226 for each pay period worked during the PAGA Period. Plaintiff is
2 informed and believes that those penalties under Labor Code section 226 were not paid for these
3 violations of Labor Code section 226. Defendants would thus be liable for civil penalties pursuant
4 to Labor Code sections 226.3, 558, 1198, and 2699, or injunctive relief under sections 2699(e)(1)
5 and 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
6 conduct above gave rise to such violations and was malicious, fraudulent, or oppressive. Thus,
7 Defendants would further be liable for civil penalties pursuant to Labor Code section
8 2699(f)(2)(B)(ii).

9 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants also
10 willfully or intentionally failed and refused, and continue to fail and refuse, to timely pay
11 compensation to Plaintiff and other terminated or resigned employees, including but not limited to,
12 failing to pay all overtime wages owed, as set forth above, among other things. Consequently,
13 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor Code
14 sections 201, 202 203, and 1198 each pay period for each Aggrieved Employee during the PAGA
15 Period, and thus Plaintiff and each Aggrieved Employee personally suffered these violations and
16 was owed penalties under Labor Code section 203 for each pay period worked during the PAGA
17 Period. However, Plaintiff is informed and believes that those penalties under Labor Code section
18 203 were not made for these violations of Labor Code sections 201, 202, and 203. Defendants would
19 thus be liable for civil penalties pursuant to Labor Code sections 558, 1198 and 2699, or injunctive
20 relief under sections 2699(e)(1) and 2699(j). Plaintiff is further informed and believes, and based
21 thereon alleges, that Defendants' conduct above gave rise to such violations and was malicious,
22 fraudulent, or oppressive. As such, Defendants would further be liable for civil penalties pursuant
23 to Labor Code section 2699(f)(2)(B)(ii).

24 30. Plaintiff is informed and believes, and based thereon alleges that Defendants also
25 failed and refused, and continue to fail and refuse, to reimburse employees, including, without
26 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for their costs incurred
27 for driving personal vehicles (*i.e.*, mileage, gas, and maintenance), purchasing uniforms, providing
28 uniform and other deposits, separately laundering mandatory uniforms, paying workers to assist

1 with their job duties, use of personal cellular phone for work purposes, compelling or coercing
2 Plaintiff and Aggrieved Employees, to patronize in the purchase of a value or things, including,
3 without limitation, the Defendant's product(s) such as a company truck, in direct consequence of
4 the discharge of their duties, or of their obedience to the directions of Defendants, as required by
5 Labor Code sections 1198, 2800, 2802, and other statutory and common law offenses. As a result,
6 Plaintiff and other Aggrieved Employees have personally suffered these violations and Defendants
7 are liable to reimburse Plaintiff and other Aggrieved Employees for these costs incurred in
8 furtherance of work duties. Defendants would thus be liable for civil penalties pursuant to Labor
9 Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
10 Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above
11 gave rise to such violations and was malicious, fraudulent, or oppressive. As such, Defendants
12 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

13 31. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
14 have a policy or practice of failing to pay Aggrieved Employees their wages in accordance with
15 Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days,
16 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during
17 which the labor was performed, and labor performed between the 16th and the last day, inclusive of
18 any calendar month, shall be paid for between the 1st and 10th day of the following month." Plaintiff
19 is informed and believes and based thereon alleges that Defendants did not and do not pay Plaintiff
20 and other Aggrieved Employees all wages owed every day and every workweek in accordance with
21 Labor Code sections 204 and 1198. Plaintiff is informed and believes, and based thereon alleges,
22 that Defendants violated Labor Code section 204 and that Plaintiff and other Aggrieved Employees
23 have personally suffered these violations. As such, Defendants would be liable for civil penalties
24 pursuant to Labor Code sections 210, 558, 1198 and 2699, or injunctive relief under sections
25 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based thereon alleges, that
26 Defendants' conduct above gave rise to such violations and was malicious, fraudulent, or
27 oppressive. Therefore, Defendants would further be liable for civil penalties pursuant to Labor Code
28 section 2699(f)(2)(B)(ii).

1 32. In addition to the above, Plaintiff is informed and believes, and based thereon alleges
2 that Defendants failed and continue to fail to keep adequate or accurate time records including wage
3 statements and similar payroll documents under Labor Code section 226, documents signed to
4 obtain or hold employment under Labor Code section 432, personnel records under Labor Code
5 section 1198.5, time records under Labor Code section 1174, making it difficult for Plaintiff and
6 other Aggrieved Employees to calculate their unpaid wages and/or premium payments. Defendants
7 also failed to provide these documents to Plaintiff and other Aggrieved Employees upon request
8 April 27, 2026, in violation of these Labor Code sections. Plaintiff and the Aggrieved Employees
9 personally suffered these violations, which in turn would entitle Plaintiff and other Aggrieved
10 Employees to penalties prescribed by Labor Code sections 226 and 1198.5. Defendants would also
11 be liable for civil penalties pursuant to Labor Code sections 558, 1174.5, and 2699. Plaintiff further
12 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
13 violations and was malicious, fraudulent, or oppressive. Defendants would further be liable for civil
14 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

15 33. Plaintiff is further informed and believes, and based thereon alleges that Defendants
16 failed and refused, and continue to fail and refuse, to comply with the notice requirements of Labor
17 Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing
18 to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay
19 applicable to their employment; any allowances claimed as part of the minimum wage; the regular
20 payday designated by Defendants; the name of the employer, including any "doing business as"
21 names used by the employer; the physical address of the employer's main office and the telephone
22 number of the employer; the name, address and telephone number of the workers' compensation
23 insurance carrier; information regarding paid sick leave; and other pertinent information required to
24 be disclosed by Defendants under Labor Code section 2810.5. Plaintiff is informed and believes that
25 Defendants' failure to provide such information, including rates of pay that are in effect, has
26 permitted Defendants to pay employees at rates of pay that were not agreed upon and violate
27 minimum wage and overtime wage laws in California. Plaintiff is informed and believes that
28 Defendants violated Labor Code sections 1198 and 2810.5. Plaintiff and other Aggrieved

1 Employees personally suffered these violations. Plaintiff is further informed and believes, and based
2 thereon alleges, that Defendants' conduct above gave rise to such violations and was malicious,
3 fraudulent, or oppressive. Among other relief, employees may collect from Defendants in
4 connection with these violations' civil penalties pursuant to Labor Code sections 558, 1198 and
5 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable
6 for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

7 34. Although notice is not required under Labor Code section 2699.3 to recover penalties
8 under Labor Code section 226.8, Plaintiff is informed and believes, and based thereon alleges that
9 Defendants willfully misclassified Plaintiff and Aggrieved Employees as independent contractors
10 and charged willfully misclassified independent contractors a fee, or made deductions from
11 compensation for purposes that include, without limitation, goods, materials space, rental, services,
12 government licenses, repairs, equipment maintenance, or fines arising from the individual's
13 employment where these acts would have violated the law if the individual were not misclassified.
14 As such, including the Labor Code sections described hereabove, Plaintiff is informed and believes,
15 and based thereon alleges, that Defendants violated, without limitation, Labor Code section 226.8.
16 Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above
17 gave rise to such violations and was malicious, fraudulent, or oppressive. Defendants would also be
18 liable for injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable
19 for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

20 35. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
21 Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which
22 violate the California Labor Code as described above, including on behalf of Plaintiff and other
23 Aggrieved Employees pursuant to PAGA.

24 **FIRST AND ONLY CAUSE OF ACTION**

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

26 36. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
27 preceding paragraphs as though fully set forth hereat.

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

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer; and other such information as required by Labor Code section 226, subdivision (a).

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

Violation of Labor Code § 558

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

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and

1 each of them, violated, or caused to be violated, the Labor Code sections and Wage Orders
2 regulating wages, hours and days of work described herein, including but not limited to Labor Code
3 sections 201-204, 223, 226.7, 510, 511, 512, 551, 552, 1182.12, 1194, 1197, 1198, and 2802.

4 46. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
6 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
7 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
8 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

9 Violation of Labor Code § 1174.5

10 47. At all times mentioned herein, Labor Code section 1174, subdivision (b) has
11 required every person employing labor in California to "[a]llow any member of the commission or
12 the employees of the Division of Labor Standards Enforcement free access to the place of business
13 or employment of the person to secure any information or make any investigation that they are
14 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
15 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
16 or papers of the person."

17 48. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
18 every person employing labor in California to "[k]eep a record showing the names and addresses of
19 all employees employed and the ages of all minors."

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

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

51. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed 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.

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

Violation of Labor Code § 1197.1

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

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the

1 employee is underpaid regardless of whether the initial violation is
2 intentionally committed. This amount shall be in addition to an amount
3 sufficient to recover underpaid wages, liquidated damages pursuant to Section
4 1194.2, and any applicable penalties imposed pursuant to Section 203.

5 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
6 Section 203, recovered pursuant to this section shall be paid to the affected
7 employee.”

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

12 55. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
14 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of one
15 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
16 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
17 subsequent violation.

18 Violation of Labor Code § 226.8

19 56. Pursuant to Labor Code section 226.8, subdivision (a): “It is unlawful for any person
20 or employer to engage in any of the following activities:

- 21 (1) Willful misclassification of an individual as an independent contractor; and
22 (2) Charging an individual who has been willfully misclassified as an independent
23 contractor a fee, or making any deductions from compensation for any
24 purpose, including for goods, materials, space, rental, services, government
25 licenses, repairs, equipment maintenance, or fines arising from the
26 individual’s employment where any of the acts described in this paragraph
27 would have violated the law if the individual had not been misclassified.

28 57. On April 30, 2018, the California Supreme Court issued its decision in *Dynamex*

1 *Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018), which adopted the “ABC”
2 test for determining whether a worker is an independent contractor or an employee.

3 58. In September of 2019, the California legislature enacted Assembly Bill 5 (“AB5”),
4 which codified the *Dynamex* decision’s use of the ABC test and further expanded the scope of its
5 application. Under the tests adopted in *Dynamex* and AB5, SHIPT’s drivers undoubtedly would
6 have been classified as employees in California. On October 29, 2019, Proposition 22 was filed, and
7 on November 3, 2020, was approved by a majority of California voters at California Business and
8 Professions Code section 7448, *et seq.*

9 59. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
10 Aggrieved Employees were misclassified as independent contractors under the ABC Test because,
11 among other things, Plaintiff and Aggrieved Employees are not free from the control and direction
12 of Defendants in connection with the performance of the work; and/or the work they perform is not
13 outside the usual course of Defendants’ business; and/or they are not customarily engaged in an
14 independently established trade, occupation or business of the same nature as that involved in the
15 work performed.

16 60. As a direct and proximate result of the herein-described Labor Code violations,
17 pursuant to Labor Code section 226.8, Plaintiff and other Aggrieved Employees are entitled to
18 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
19 thousand dollars (\$5,000) to fifteen thousand dollars (\$15,000) for each violation, in addition to any
20 other penalties or fines permitted by law pursuant to Labor Code section 226.8, subsection (b).
21 Moreover, because there was a pattern and/or practice of these violations, Plaintiff and Aggrieved
22 Employees shall be entitled to no less than ten thousand dollars (\$10,000) and up to twenty-five
23 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted
24 by law, under Labor Code section 226.8(c).

25 Civil Penalties Under Labor Code § 2699

26 61. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
27 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
28 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or

1 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an Aggrieved Employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

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

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

13 **PRAYER**

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

- 16 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558,
17 1174.5, 1197.1, and 2699;
18 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
19 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
20 C. For equitable, including, without limitation, injunctive relief;
21 C. Pre-judgment and post-judgment interest;
22 D. For costs of suit incurred herein; and

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E. Such other and further relief as the Court deems just and proper.

Dated: September 2, 2026

BIBIYAN LAW GROUP, P.C.

BY: /s/ Sarah H. Cohen
SARAH H. COHEN
Attorneys for Plaintiff MODESTO ADAME
and on behalf of all other Aggrieved
Employees