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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

FEB 03 2021

STEPHANIE CAMERON, CLERK
BY: NICOLE RENTERIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

MATTHEW RAMIREZ and ADAM
VILLASENOR, on behalf of the State of
California, as private attorney generals,

Plaintiffs,

vs.

PREGIS INNOVATIVE PACKAGING LLC,
a Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

Case No. 285887 -

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

BY FAX
CASE MANAGEMENT CONFERENCE

Hearing Date: 01/10/2021
Time: 8:30
Department: 7

1 Plaintiffs Matthew Ramirez and Adam Villasenor (“PLAINTIFFS”), on behalf of the
2 people of the State of California and as “aggrieved employees” acting as private attorney
3 generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFFS bring this action against Defendant PREGIS INNOVATIVE
8 PACKAGING LLC (“DEFENDANT”) seeking only to recover PAGA civil penalties for
9 themselves, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFFS do not seek to recover anything other than penalties as
11 permitted by California Labor Code § 2699. To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on
16 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
17 sole nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 THE PARTIES

24 4. Defendant Pregis Innovative Packaging LLC (“DEFENDANT”) is a limited
25 liability company and at all relevant times mentioned herein conducted and continues to conduct
26 substantial and regular business throughout California.
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1 5. DEFENDANT produces protective packaging products. DEFENDANT's
2 products include foam, inflatable, paper, and bubble packaging products for consumer and
3 industrial markets.

4 6. Plaintiff Ramirez was employed by DEFENDANT in California from October of
5 2014 to June of 2020 and was at all times classified by DEFENDANT as a non-exempt
6 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
7 payment of minimum and overtime wages due for all time worked.

8 7. Plaintiff Villasenor was employed by DEFENDANT in California from
9 November of 2005 to July of 2020 and was at all times classified by DEFENDANT as a non-
10 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
11 periods and payment of minimum and overtime wages due for all time worked.

12 8. PLAINTIFFS, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, bring this Representative Action on behalf of the State of California with respect to
15 themselves and all individuals who are or previously were employed by DEFENDANT in
16 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
17 the time period of August 20, 2019 until a date as determined by the Court (the "PAGA
18 PERIOD").

19 9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
20 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
21 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
22 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
23 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
24 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s)
25 and thereby gives rise to civil penalties as a result of such conduct.¹ Based upon the foregoing,
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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the
2 meaning of Labor Code § 2699, *et seq.*

3 10. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
5 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
6 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
7 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
9 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
10 inclusive, are responsible in some manner for one or more of the events and happenings that
11 proximately caused the injuries and damages hereinafter alleged.

12 11. The agents, servants and/or employees of the Defendants and each of them acting
13 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
14 agent, servant and/or employee of the Defendants, and personally participated in the conduct
15 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
17 all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED
18 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
19 agents, servants and/or employees.

20 21 THE CONDUCT

22 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
23 PLAINTIFFS and other AGGRIEVED EMPLOYEES for the actual amount of time these
24 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
25 is required to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time worked,
26 meaning the time during which an employee was subject to the control of an employer,
27 including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT required PLAINTIFFS and AGGRIEVED EMPLOYEES to work off the clock
2 without paying them for all the time they were under DEFENDANT's control.

3 13. Specifically, during the PAGA PERIOD, DEFENDANT engaged in the practice
4 of requiring PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work off the clock
5 during what should have been these employees' off-duty meal periods. Additionally,
6 DEFENDANT engaged in the practice of requiring PLAINTIFFS and AGGRIEVED
7 EMPLOYEES to perform work off the clocking that DEFENDANT, as a condition of
8 employment, required these employees to wait in line and submit to mandatory temperature
9 checks for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for
10 the workday. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited
11 minimum wage, overtime wage compensation, and off-duty meal breaks by working without
12 their time being correctly recorded and without compensation at the applicable rates. Further,
13 PLAINTIFFS and other AGGRIEVED EMPLOYEES from time to time were not paid wages
14 for all time worked, including overtime wages, such that in the aggregate employees were
15 underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time
16 worked by its employees. DEFENDANT's policy and practice not to pay PLAINTIFFS and
17 other AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's
18 business records.

19 14. In addition, State and federal law provides that employees must be paid overtime
20 at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other AGGRIEVED
21 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
22 elements of an employee's performance.

23 15. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES'
24 compensation was DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
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1 various performance goals set by DEFENDANT. However, when calculating the regular rate
2 of pay in order to pay overtime to PLAINTIFFS and other AGGRIEVED EMPLOYEES,
3 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
4 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
5 the incentive program to potential and new employees as part of the compensation package. As
6 a matter of law, the incentive compensation received by PLAINTIFFS and other AGGRIEVED
7 EMPLOYEES must be included in the "regular rate of pay." DEFENDANT also underpaid sick
8 pay wages to PLAINTIFFS and other AGGRIEVED EMPLOYEES by failing to pay such
9 wages at the regular rate of pay. Specifically, PLAINTIFFS and other non-exempt employees
10 regularly earn non-discretionary remuneration, including but not limited to, incentives, shift
11 differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT
12 underpaid sick pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES at their base rates
13 of pay. The failure to do so has resulted in an underpayment of overtime compensation to
14 PLAINTIFFS and other AGGRIEVED EMPLOYEES by DEFENDANT.

15 16. As a result of their rigorous work schedules, PLAINTIFFS and other
16 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
17 and were not fully relieved of duty for meal periods. PLAINTIFFS and other AGGRIEVED
18 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
19 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
20 DEFENDANT failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second
21 off-duty meal period from time to time in which these employees are required by DEFENDANT
22 to work ten (10) hours of work from time to time. PLAINTIFFS and the other AGGRIEVED
23 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance
24 with DEFENDANT's corporate policy and practice.

25 17. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
26 EMPLOYEES were also from time to time required to work in excess of four (4) hours without
27 being provided ten (10) minute rest periods. Further, these employees are denied their first rest
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1 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
2 a first and second rest period of at least ten (10) minutes for some shifts worked of between six
3 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
4 some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other
5 AGGRIEVED EMPLOYEES are also not provided with one hour wages in lieu thereof. As
6 a result of their rigorous work schedules, PLAINTIFFS and other AGGRIEVED EMPLOYEES
7 are periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
8 managers. Additionally, the applicable California Wage Order requires employers to provide
9 employees with off-duty rest periods, which the California Supreme Court defined as time
10 during which an employee is relieved from all work related duties and free from employer
11 control. In so doing, the Court held that the requirement under California law that employers
12 authorize and permit all employees to take rest period means that employers must relieve
13 employees of all duties and relinquish control over how employees spend their time which
14 includes control over the locations where employees may take their rest period. Employers
15 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
16 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFFS and other
17 AGGRIEVED EMPLOYEES from unconstrained walks.

18 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
19 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
20 incurred by the PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence
21 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
22 2802, employers are required to indemnify employees for all expenses incurred in the course
23 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
25 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
26 directions of the employer, even though unlawful, unless the employee, at the time of obeying
27 the directions, believed them to be unlawful."

1 19. In the course of their employment PLAINTIFFS and other AGGRIEVED
2 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
3 cellular phones as a result of and in furtherance of their job duties as employees for
4 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
5 associated with the use of their personal cellular phones for DEFENDANT's benefit.
6 Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by
7 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
8 the course of their employment with DEFENDANT, PLAINTIFFS and other AGGRIEVED
9 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
10 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
11 of DEFENDANT.

12 20. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
13 employees with an accurate itemized wage statement in writing showing, among other things,
14 gross wages earned and all applicable hourly rates in effect during the pay period and the
15 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
16 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
17 gross and net wages earned. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on
18 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
19 the pay period and the total hours worked, and the applicable pay period in which the wages
20 were earned pursuant to California Labor Code Section 226(a). The wage statements
21 DEFENDANT provided to PLAINTIFFS and other AGGRIEVED EMPLOYEES failed to
22 identify such information. More specifically, the wage statements failed to identify the accurate
23 total hours worked each pay period. When the hours shown on the wage statements were added
24 up, they did not equal the actual total hours worked during the pay period. Aside, from the
25 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an
26 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
27 As a result, from time to time DEFENDANT provided PLAINTIFFS and the other
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1 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

2 21. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
6 AJDAR 12157 (Certified for Publication 12/19/18).

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8 **JURISDICTION AND VENUE**

9 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFFS worked for DEFENDANT in this County and
13 resides in this County, and DEFENDANT (i) currently maintains and at all relevant times
14 maintained offices and facilities in this County and/or conducts substantial business in this
15 County, and (ii) committed the wrongful conduct herein alleged in this County against
16 PLAINTIFF and the AGGRIEVED EMPLOYEES.

17 **FIRST CAUSE OF ACTION**

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

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

20 **(By PLAINTIFFS and Against All Defendants)**

21 24. PLAINTIFFS incorporate by reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

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

6 26. PLAINTIFFS, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, bring this Representative Action on behalf of the State of California with respect to
9 themselves and all individuals who are or previously were employed by DEFENDANT in
10 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
11 the time period of August 20, 2019 until a date as determined by the Court (the "PAGA
12 PERIOD").

13 27. On August 20, 2020, PLAINTIFFS gave written notice by electronic mail to the
14 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
15 employer of the specific provisions of this code alleged to have been violated as required by
16 Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations
17 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
18 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
19 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

20 28. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
23 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
24 to pay minimum wages, (e) failed to reimburse employees for required expenses, and (f) failed
25 to provide wages when due, all in violation of the applicable Labor Code sections listed in
26 Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
27 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
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1 Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives rise to
2 civil penalties as a result of such conduct.² PLAINTIFFS hereby seek recovery of only civil
3 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
4 representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
5 and the other AGGRIEVED EMPLOYEES.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

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

15
16 Dated: February 2, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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18 By: 

19 Norman B. Blumenthal

20 Attorneys for Plaintiff
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27 ²Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).