

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 01 2022

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VINCENT MIGUEL ALCALA, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)

VINCENT MIGUEL ALCALA, as an "aggrieved
employee" on behalf of himself and other
similarly situated "aggrieved employees" under
the Labor Code Private Attorneys General Act of
2004,

Plaintiff,

vs.

VITCO DISTRIBUTORS, INC., dba Vitco Foods
and Vitco Food Services, a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No. CIV SB 2204311

COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.

JURY TRIAL DEMANDED

\$435 SC 2022-20314-MW
\$1000 SC 2022-20316-MW



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BY FAX

1 Plaintiff, Vincent Miguel Alcala (hereafter "Plaintiff" or "Alcala"), on behalf of himself,
2 the State of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 9-2001 (hereafter "the
6 Wage Order"), against Defendants Vitco Distributors, Inc. dba Vitco Foods and Vitco Food
7 Services, a California corporation, and DOES 1-50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
10 and other related relief. These claims are based on Defendants' failures to:

- 11 (A) Provide all meal periods;
- 12 (B) Authorize and permit all rest breaks;
- 13 (C) Pay premium wages for unprovided meal periods;
- 14 (D) Pay premium wages for unprovided rest breaks;
- 15 (E) Issue only accurate and complete itemized wage statements;
- 16 (F) Timely pay wages during employment;
- 17 (G) Timely pay wages upon termination of employment; and
- 18 (H) Maintain accurate employment records.

19 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
20 representative action.

21 **II. THE PARTIES**

22 3. Plaintiff Vincent Miguel Alcala is resident of California. On approximately
23 November 4, 2020, Defendants began to employ Plaintiff in Ontario (San Bernardino County)
24 in the position of order selector. Defendants continuously employed him in that capacity until
25 on or about March 30, 2021 when his employment ended.

26 4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
27 California Code of Regulations § 11090 and an "aggrieved employee" within the meaning of
28 Labor Code § 2699(c).

5. Defendant Vitco Distributors, Inc. is a corporation organized and existing under
the laws of California and also a citizen of California based on Plaintiff's information and belief.



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1 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 7. The “Aggrieved Employees” are all individuals the Defendants have employed or
8 otherwise contracted with in California as non-exempt, hourly workers, including order selectors,
9 individuals performing work comparable to the aforementioned, and individuals in similar
10 positions during the period beginning one year before the Plaintiff’s notice of October 15, 2021
11 to the California Labor and Workforce Development Agency and ending on the date judgment is
12 entered.

13 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
15 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
16 and scope of such agency or employment, and with the approval and ratification of each of the
17 other Defendants.

18 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
19 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
20 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
21 Employees in accordance with applicable California labor laws as alleged herein.

22 10. Plaintiff is informed and believes and thereon alleges that each and every one of
23 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
24 each acting as agents and/or employees, and/or under the direction and control of each of the other
25 defendants, and that said acts and failures to act were within the course and scope of said agency,
26 employment, and/or direction and control.

III. FACTUAL ALLEGATIONS

11. IWC Wage Order 9-2001 (“the Wage Order”) applies to “all persons employed in
the transportation industry whether paid on a time, piece rate, commission, or other basis” Wage
Order, § 1. The Wage Order defines “Transportation Industry” to mean “any industry, business,
or establishment operated for the purpose of conveying persons or property from one place to



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1 another whether by rail, highway, air, or water, and all operations and services in connection
2 therewith; and also includes storing or warehousing of goods or property, and the repairing,
3 parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times
4 during the applicable limitations period, Defendants, Plaintiff, and all of the Aggrieved
5 Employees were covered by the Wage Order because the Defendants operated, and Plaintiff and
6 all of the Aggrieved Employees worked for, one or more establishments operated as warehouses.
7 Accordingly, Plaintiff and all of the other Aggrieved Employees are entitled to the protections the
8 Wage Order provides.

9 12. On approximately November 4, 2020, the Defendants began to employ Alcala in
10 Ontario (San Bernardino County) in the position of order selector. The Defendants continuously
11 employed him in that capacity until on or about March 30, 2021 when his employment ended.

12 13. At all relevant times, the Defendants issued wages to Alcala and all of the other
13 Aggrieved Employees on a Biweekly (26 / year) basis and paid them by the hour. At all relevant
14 times, the Defendants classified Alcala and all of the other Aggrieved Employees as non-exempt
15 employees entitled to the protections of the Labor Code and the Wage Order.

16 14. At all relevant times, the Defendants failed to provide Alcala and all of the other
17 Aggrieved Employees with all timely 30-minute, off-duty meal periods. Defendants required
18 Alcala and the Aggrieved Employees to work in excess of 10 hours per day. Defendants would
19 not relieve Alcala and the Aggrieved Employees of duty for meal periods, including second meal
20 periods on days exceeding ten hours. The Defendants also failed to pay premium wages for days
21 on which it failed to provide Alcala and all of the other Aggrieved Employees with meal periods
22 as required by law.

23 15. At all relevant times, the Defendants failed to authorize and permit Alcala and all
24 of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours
25 worked or major portion thereof. Defendants required Alcala and the Aggrieved Employees to
26 work in excess of 10 hours per day. Defendants would not relieve Alcala and the Aggrieved
27 Employees of duty for rest breaks, including third rest breaks on days exceeding ten hours. The
28 Defendants also failed to pay premium wages for days on which it failed to authorize and permit
Alcala and all of the other Aggrieved Employees to take rest breaks as required by law.

16. At all relevant times, the Defendants failed to issue to Alcala and all of the other
Aggrieved Employees complete and accurate wage statements that state all hours worked at the



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1 correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to
2 state on the wage statements they issued to Alcala and all of the other Aggrieved Employees the
3 unpaid wages discussed above. The wage statements fail to state all meal period premium wages
4 earned, all rest break premium wages earned, and related information.

5 17. At all relevant times, the Defendants also failed to timely pay Alcala and all of the
6 other Aggrieved Employees all earned wages as described above during and at the conclusion of
7 employment.

8 18. At all relevant times, the Defendants failed to maintain accurate employee records
9 of Alcala and all of the other Aggrieved Employees.

10 19. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
11 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 12 A. Not provided with all off duty meal periods;
- 13 B. Not authorized and permitted to take all rest break periods;
- 14 C. Not paid one hour's pay for each workday in which Defendants failed to
15 authorize and permit them to take one or more timely rest periods;
- 16 D. Not paid one hour's pay for each workday in which Defendants failed to
17 provide them with one or more timely meal periods;
- 18 E. Not provided with accurate and complete wage statements; and
- 19 F. Not timely paid all earned and unpaid wages during their employment with
20 Defendants and at the time such employment ended.

21 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

22 **CIVIL PENALTIES**

23 **(Lab. Code §§ 2698, et seq.)**

24 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
25 **Defendants)**

26 20. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 21. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
28 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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1 **A. FAILURE TO PROVIDE MEAL PERIODS**

2 22. In relevant part, California Labor Code § 1198 states:

3 The maximum hours of work and the standard conditions of labor fixed by the
4 commission shall be the maximum hours of work and the standard conditions of
5 labor for employees. The employment of any employee for longer hours than those
6 fixed by the order or under conditions of labor prohibited by the order is unlawful.

7 23. In relevant part, In relevant part, California Labor Code § 512 states:

8 An employer shall not employ an employee for a work period of
9 more than five hours per day without providing the employee with
10 a meal period of not less than 30 minutes, except that if the total
11 work period per day of the employee is no more than six hours, the
12 meal period may be waived by mutual consent of both the
13 employer and employee.

14 An employer shall not employ an employee for a work period of
15 more than 10 hours per day without providing the employee with
16 a second meal period of not less than 30 minutes, except that if the
17 total hours worked is no more than 12 hours, the second meal
18 period may be waived by mutual consent of the employer and the
19 employee only if the first meal period was not waived.

20 24. In relevant part, Section 11 of the Wage Order states:

21 Meal Periods:

22 (A) No employer shall employ any person for a work period of more
23 than five (5) hours without a meal period of not less than 30
24 minutes, except that when a work period of not more than six (6)
25 hours will complete the day's work the meal period may be waived
26 by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of
more than ten (10) hours per day without providing the employee
with a second meal period of not less than 30 minutes, except that
if the total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal
period, the meal period shall be considered an "on duty" meal
period and counted as time worked. An "on duty" meal period shall



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1 be permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and when by written
3 agreement between the parties an on-the-job paid meal period is
4 agreed to. The written agreement shall state that the employee
5 may, in writing, revoke the agreement at any time.

6 (D) If an employer fails to provide an employee a meal period in
7 accordance with the applicable provisions of this Order, the
8 employer shall pay the employee one (1) hour of pay at the
9 employee's regular rate of compensation for each workday that the
10 meal period is not provided.

11 (E) In all places of employment where employees are required to eat
12 on the premises, a suitable place for that purpose shall be
13 designated.

14 25. In relevant part, California Labor Code § 226.7 states:

15 (b) An employer shall not require an employee to work during
16 a meal or rest period mandated pursuant to an applicable
17 statute, or applicable regulation, standard, or order of the
18 Industrial Welfare Commission, the Occupational Safety
19 and Health Standards Board, or the Division of
20 Occupational Safety and Health.

21 (c) If an employer fails to provide an employee a meal period
22 or rest period in accordance with a state law, including, but
23 not limited to, an applicable statute or applicable
24 regulation, standard, or order of the Industrial Welfare
25 Commission, the Occupational Safety and Health
26 Standards Board, or the Division of Occupational Safety
27 and Health, the employer shall pay the employee one
28 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

29 26. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
30 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
31 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
32 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

33 27. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
34 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
35 major fraction thereof.



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28. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

29. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. Defendants required Alcala and the Aggrieved Employees to work in excess of 10 hours per day. Defendants would not relieve Alcala and the Aggrieved Employees of duty for meal periods, including second meal periods on days exceeding ten hours. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods.

30. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.

B. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

31. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

32. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the



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1 employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday
that the rest period is not provided.

3 33. In relevant part, California Labor Code § 226.7 states:

4 (b) An employer shall not require an employee to work during
5 a meal or rest period mandated pursuant to an applicable
6 statute, or applicable regulation, standard, or order of the
7 Industrial Welfare Commission, the Occupational Safety
8 and Health Standards Board, or the Division of
Occupational Safety and Health.

9 (c) If an employer fails to provide an employee a meal period
10 or rest period in accordance with a state law, including, but
11 not limited to, an applicable statute or applicable
12 regulation, standard, or order of the Industrial Welfare
13 Commission, the Occupational Safety and Health
14 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

15 34. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
16 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
17 period of work, or major fraction thereof.

18 35. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
19 Employees to take all 10-minute rest periods free from any work duties in accordance with the
20 Wage Order.

21 36. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
22 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
23 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
24 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

25 37. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
26 Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or
major fraction thereof. Defendants required Alcala and the Aggrieved Employees to work in
excess of 10 hours per day. Defendants would not relieve Alcala and the Aggrieved Employees
of duty for rest breaks, including third rest breaks on days exceeding ten hours. Defendants did



1 not seek an exemption from the rest period protections of the Wage Order from the California
2 Divisions of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the
3 Aggrieved Employees premium wages on workdays they failed to provide them with 10-minute
4 rest periods every four hours worked or major fraction thereof.

5 38. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
8 Employees to take all rest breaks required by California law.

9 **C. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
10 **STATEMENTS**

11 39. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
12 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
13 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
14 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
15 each hourly rate by the employee.

16 40. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
17 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
18 the employer fails to provide accurate and complete information as required by California Labor
19 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
20 alone one or more of the following:

21 A. The amount of the gross wages or net wages paid to the employee during
22 the pay period or any of the other information required to be provided on the itemized wage
23 statement pursuant to California Labor Code § 226(a);

24 B. Which deductions the employer made from gross wages to determine the
25 net wages paid to the employee during the pay period;

26 C. The name and address of the employer and, if the employer is a farm labor
27 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
28 and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or his
social security number or an employee identification number other than a social security number;
and



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E. The number of piece-rate units earned and the piece rate.

41. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

42. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, all meal period premium wages earned, and all rest break premium wages earned.

43. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

44. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

D. UNTIMELY WAGES DURING EMPLOYMENT

45. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any



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employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 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. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

46. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.



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1 **E. UNTIMELY FINAL WAGES**

2 47. Labor Code § 201 provides that all earned and unpaid wages of an employee who
3 is discharged are due and payable immediately at the time of discharge.

4 48. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 49. By failing to pay earned minimum and premium wages to Plaintiff and the
9 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
10 violation of Labor Code § 201 or § 202.

11 50. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
13 willful in that, at all relevant times, Defendants have deliberately maintained policies and
14 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
15 relevant times, they have had the ability to comply with those legal requirements.

16 **F. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

17 51. Labor Code § 1174 states:

18 Every person employing labor in this state shall:

19 ...

20 (c) Keep a record showing the names and addresses of all employees
21 employed and the ages of all minors.

22 (d) Keep, at a central location in the state or at the plants or establishments
23 at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate
25 units earned by and any applicable piece rate paid to, employees
26 employed at the respective plants or establishments. These records shall
be kept in accordance with rules established for this purpose by the
commission, but in any case shall be kept on file for not less than three
years. An employer shall not prohibit an employee from maintaining a
personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

27 52. Labor Code § 1174.5 states:



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Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

53. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

54. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

55. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

56. Accordingly, Alcala seeks an award of civil penalties against the Defendants on



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1 behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each
2 aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code
3 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
4 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
5 pay period (penalties set by Labor Code section 2699(f)(2)).

6 **G. CIVIL PENALTIES SOUGHT**

7 57. Defendants paid wages to employees on regular intervals. Defendants failed to pay
8 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
9 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
10 all wages earned and all hours worked.

11 58. During the applicable time period, Defendants violated California Labor Code
12 §§ 201, 202, 203, 204, 226, 226.7, 512, 1198, and related Labor Code statutes.

13 59. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
14 behalf of themselves and other current or former employees, to bring a civil action to recover civil
15 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

16 60. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
17 Employees are entitled to recover civil penalties for each of the Defendants' violations of
18 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1198, and related Labor Code
19 statutes during the applicable limitations period in the following amounts:

20 A. For violations of California Labor Code § 204, one hundred dollars
21 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
22 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
23 (penalty amounts established by California Labor Code § 210).

24 B. For violations of California Labor Code § 226, two hundred fifty dollars
25 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
26 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

27 C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for
28 each aggrieved employee for each initial violation for pay period for which the employee was
underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period
for which the employee was underpaid (penalty amounts established by California Labor Code
§ 558).



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D. For violations of California Labor Code §§ 201, 202, 203, 226.7, and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

61. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated October 15, 2021, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to the LWDA dated October 15, 2021 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff's letter.

62. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

63. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: March 1, 2022

THE SPIVAK LAW FIRM

By: 

DAVID G. SPIVAK,
MAYA CHEAITANI,
Attorney for Plaintiff, VINCENT
MIGUEL ALCALA, and all others
similarly situated



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EXHIBIT A



S P I V A K L A W

***SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

October 15, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Vincent Miguel Alcala / Vitco Foods

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Vincent Miguel Alcala (hereafter “Alcala” or “Complainant”) provides notice that Vitco Distributors, Inc., a California corporation dba Vitco Foods and Vitco Food Services, and related entities (collectively “the Vitco Employers” or “the Employers”) violated his rights and those of all other individuals the Vitco Employers have employed or otherwise contracted with in California as non-exempt, hourly workers, including order selectors, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, and 1198. On behalf of himself and all other Aggrieved Employees, Alcala hereby provides this notice to the Labor & Workforce Development Agency and the Vitco Employers and their agents and representatives.

At all relevant times, the Vitco Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Alcala and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately November 4, 2020, the Vitco Employers began to employ Alcalá in Ontario (San Bernardino County) in the position of order selector. The Vitco Employers continuously employed him in that capacity until on or about March 30, 2021 when his employment ended.

At all relevant times, the Vitco Employers issued wages to Alcalá and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Vitco Employers classified Alcalá and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Vitco Employers failed to provide Alcalá and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Vitco Employers required Alcalá and the Aggrieved Employees to work in excess of 10 hours per day. The Vitco Employers would not relieve Alcalá and the Aggrieved Employees of duty for meal periods, including second meal periods on days exceeding ten hours. The Vitco Employers also failed to pay premium wages for days on which it failed to provide Alcalá and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Vitco Employers failed to authorize and permit Alcalá and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Vitco Employers required Alcalá and the Aggrieved Employees to work in excess of 10 hours per day. The Vitco Employers would not relieve Alcalá and the Aggrieved Employees of duty for rest breaks, including third rest breaks on days exceeding ten hours. The Vitco Employers also failed to pay premium wages for days on which it failed to authorize and permit Alcalá and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Vitco Employers failed to issue to Alcala and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Vitco Employers knowingly and intentionally failed to state on the wage statements they issued to Alcala and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, and all rest break premium wages earned.

The Vitco Employers also failed to timely pay Alcala and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Vitco Employers failed to maintain accurate employee records of Alcala and all of the other Aggrieved Employees.

For the reasons stated herein, Alcala alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Vitco Employers failed to provide Alcala and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Vitco Employers failed to authorize and permit Alcala and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Vitco Employers failed to compensate Alcala and all of the other Aggrieved Employees at one hour's pay for each day in which the Vitco Employers failed to provide them with one or more meal periods as required by law;
- (d) The Vitco Employers failed to compensate Alcala and all of the other Aggrieved Employees at one hour's pay for each day in which

the Vitco Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (e) The Vitco Employers knowingly and intentionally failed to provide Alcala and all of the other Aggrieved Employees with accurate and complete wage statements;
- (f) The Vitco Employers willfully failed to timely pay Alcala and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Vitco Employers and when their employment ended; and
- (g) The Vitco Employers failed to maintain accurate employment records pertaining to Alcala and all of the other Aggrieved Employees.

Accordingly, Alcala now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Vitco Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Vitco "Employers, Alcala, and all of the Aggrieved Employees were covered by the Wage Order because the Vitco Employers operated, and Alcala, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses. Accordingly, Alcala and all

of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Vitco Employers failed to provide Alcala and all of the other Aggrieved Employees with all timely meal periods. The Vitco Employers denied Alcala and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Vitco Employers required Alcala and the Aggrieved Employees to work in excess of 10 hours per day. The Vitco Employers would not relieve Alcala and the Aggrieved Employees of duty for meal periods, including second meal periods on days exceeding ten hours. Furthermore, the Vitco Employers failed to pay premium wages for days on which they failed to provide Alcala and all of the other Aggrieved Employees with timely meal periods. Accordingly, Alcala now seeks civil penalties for these Labor Code violations that the Vitco Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each

subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the

middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Vitco Employers failed to authorize and permit Alcala and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Vitco Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Vitco Employers required Alcala and the Aggrieved Employees to work in excess of 10 hours per day. The Vitco Employers would not relieve Alcala and the Aggrieved Employees of duty for rest breaks, including third rest breaks on days exceeding ten hours. Moreover, the Vitco Employers failed to pay Alcala and all of the other Aggrieved Employees premium wages on workdays the Vitco Employers failed to provide Alcala and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Alcala now seeks civil penalties for these Labor Code violations that the Vitco Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Vitco Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Vitco Employers failed to state in the wage statements they issued to Alcala and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for

work they performed off-the-clock after clocking-out (as described above). The Vitco Employers knowingly and intentionally failed to state on the wage statements they issued to Alcala and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, and all rest break premium wages earned. Accordingly, Alcala seeks civil penalties for the Labor Code violations that the Vitco Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Vitco Employers failed to compensate Alcala and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Vitco Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Alcala now seeks civil penalties for the Labor Code violations that the Vitco Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each

subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Vitco Employers failed to pay Alcalá and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Alcalá, including unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Alcalá and all of the other Aggrieved Employees as set forth above at the end of employment, the Vitco Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Alcalá seeks civil penalties from the Vitco Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the

respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Vitco Employers failed to compensate Alcala and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, and all rest break premium wages earned. As a result, the Vitco Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Alcala and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Alcala seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Vincent Miguel Alcala will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Vincent Miguel Alcala

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