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VIA ONLINE FILING

Labor and Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, CA 95814

PAGAfiling@dir.ca.gov

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Merced Cruz v. Capital Provisions, Inc.*

Dear Representative:

This office represents Merced Cruz ("**Mr. Cruz**") with respect to his claims under the California Labor Code against Capital Provisions, Inc. ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Cruz from approximately January 15, 2024 to approximately November 1, 2024, as an hourly, non-exempt employee. During his employment with Employer, Mr. Cruz was employed as a Warehouse Worker for most of his employment period and then as a Driver for about the last four months of his employment. While employed as a Warehouse Worker, Mr. Cruz was paid at an hourly rate of \$19.00. Mr. Cruz was offered to transition to the position of Driver about 6 months into his employment for an hourly rate of \$30.00, but once he became a Driver he was only paid at an hourly rate of \$25.00. Mr. Cruz was employed at Employer's location at 9268 Hall Road, Downey, CA 90241 and, as a Driver, he would deliver vending merchandise throughout Southern California. Employer is a vending machine merchandise distributing company.

Throughout his employment with Employers, Mr. Cruz customarily worked shifts of over 12 hours. Mr. Cruz was instructed by Employers to take a single break. This break was frequently provided only after the 5th hour of work and per Employer's policy, was provided in lieu of his first and second meal period. Further, it was Employer's policy and practice that work tasks be completed and prioritized over taking breaks. For instance, Mr. Cruz was unable to take his meal period while working in the warehouse unless another employee was able to cover his position; however, such coverage was frequently not provided or available. Additionally, Mr. Cruz was not provided with rest periods. Employer did not ensure that timely, uninterrupted meal periods were taken and did not coordinate coverage to relieve employees for their breaks. Additionally, Mr. Cruz and similarly situated employees were not provided with pay when working during interrupted breaks, and while on-call during breaks.

Mr. Cruz intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("**PAGA**"). Mr. Cruz is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code section 2699.3.



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As detailed below, Employer violated several of California's wage and hour laws during Mr. Cruz's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 6300, *et seq.*, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including *inter alia*, IWC Wage Order Nos. 1 and 9. The claims made on behalf of Mr. Cruz and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Cruz and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

Employer regularly required Mr. Cruz and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Cruz and Aggrieved Employees to respond to Employer and work-related requests and perform work while clocked out for purported meal breaks. Mr. Cruz and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work was typically in addition to Mr. Cruz's and Aggrieved Employees' already 8+ hour shifts, resulting in a failure to pay overtime compensation.

As a result of the foregoing practices, Employer has failed to pay Mr. Cruz and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order Nos. 1 and 9 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Cruz and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1 and 9; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Cruz and Aggrieved Employees with legally compliant 30-minute meal periods. Mr. Cruz and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Cruz and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Cruz and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Cruz and Aggrieved Employees did take a meal period, their meal periods were



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not provided in a code-compliant manner and were frequently interrupted and/or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Cruz and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Cruz and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Cruz and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Cruz and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Cruz and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone communications and in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Cruz and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Cruz and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order Nos. 1 and 9 and California Labor Code sections 226.7, 512(a) and 1198.

Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1 and 9; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Cruz and Aggrieved Employees take legally compliant 10-minute rest periods. Employer required Mr. Cruz and Aggrieved Employees to work through rest periods. Mr. Cruz and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Cruz and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Cruz and other Aggrieved Employees from taking timely and complete rest periods



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because, amongst other reasons: (1) Employer did not have legally compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Cruz and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Cruz and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Cruz and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Cruz and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, which did not allow them to take rest periods at all; and (7) Employer's policy and culture prevented Mr. Cruz and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Cruz and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order Nos. 1 and 9 and California Labor Code sections 226.7, and 1198.

Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1 and 9; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Cruz and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Cruz and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).



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Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Cruz and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order Nos. 1 and 9 and California Labor Code sections 1198.5 and 1174(d).

Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1 and 9; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order Nos. 1 and 9 require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Cruz and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, the purchase of work mandated shoes and personal cell phone use for work related time recording and communications.

Accordingly, Employer violated IWC Order Nos. 1 and 9 and California Labor Code sections 2800 and 2802.

Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1 and 9; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Cruz and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Cruz and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Cruz and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Mr. Cruz and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.



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Mr. Cruz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Cruz may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Jeffrey Jimenez

Notice provided to Employer via Certified Mail (9414711206208825342421)

Capital Provisions, Inc.
Attn: Michael P. Lovett – Agent for Service of Process
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Downey, CA 90241