POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 272020 NAME: Harout Messrelian FIRM NAME: Messrelian Law Inc STREET ADDRESS: 500 N. Central Ave., Suite 840 CITY: Glendale STATE: CA ZIP CODE: 91203 TELEPHONE NO.: 818-484-6531 FAX NO.: E-MAIL ADDRESS: hm@messrelianlaw.com ATTORNEY FOR (*Name*): Plaintiff Jessica Gascon	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE STREET ADDRESS: 4050 Main St. MAILING ADDRESS: CITY AND ZIP CODE: Riverside, CA 92501 BRANCH NAME: Riverside Historic Courthouse	
Plaintiff/Petitioner: JESSICA GASCON Defendant/Respondent: OMEGA EXTRUDING CORP. OF CALIFORNIA	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: CVRI2305243

TO *(insert name of party being served):* OMEGA EXTRUDING CORP. OF CALIFORNIA

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: Via email 11/6/2023

HAROUT MESSRELIAN
(TYPE OR PRINT NAME)

▶ [signature]
(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of ***(to be completed by sender before mailing):***

1. [x] A copy of the summons and of the complaint.
2. [x] Other *(specify):*
   Civil Case Cover Sheet; ADR Information Package; Certificate of Counsel; PAGA Case Management Order # 1

(To be completed by recipient):

Date this form is signed: ______________________

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

▶
(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

OMEGA EXTRUDING CORP. OF CALIFORNIA and DOES 1 to 25, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JESSICA GASCON

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), *en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), *en el Centro de Ayuda de las Cortes de California,* (www.sucorte.ca.gov) *o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside Superior Court,
4050 Main St., Riverside, CA 92501, Riverside Historic Courthouse

CASE NUMBER:
(Número del Caso):
CVRI2305243

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Harout Messrelian, Esq., 500 N. Central Ave., Suite 840, Glendale, CA 91203; 818-484-6531

DATE: *(Fecha)* 10/03/2023 Clerk, by *(Secretario)* Courtney Flores, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

SUPERIOR COURT OF CALIFORNIA
EUREKA
COUNTY OF RIVERSIDE

GC68150(g)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Harout Messrelian, Esq. (272020)
Messrelian Law Inc.
500 N. Central Ave., Suite 840
Glendale, CA 91203
TELEPHONE NO: 818-484-6531 FAX NO: 818-956-1983
ATTORNEY FOR (Name): Plaintiff Jessica Gascon

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside
STREET ADDRESS: 4050 Main St.
MAILING ADDRESS:
CITY AND ZIP CODE: Riverside, CA 92501
BRANCH NAME: Riverside Historic Courthouse

CASE NAME:
Gascon v. Omega Extruding Corp. of California

CIVIL CASE COVER SHEET

- [x] Unlimited (Amount demanded exceeds $25,000)
- [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
- [ ] Counter
- [ ] Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CVRI2305243
JUDGE:
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [x] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [x] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [x] Substantial amount of documentary evidence
   d. [x] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [x] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action *(specify)*: 1- Private Attorneys General Act (PAGA)
5. This case [ ] is [x] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: October 3, 2023
Harout Messrelian, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice– Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
    - Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller
    - Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

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Attorneys for Plaintiff,
JESSICA GASCON, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE
(UNLIMITED JURISDICTION)

JESSICA GASCON,

Plaintiff,

vs.

OMEGA EXTRUDING CORP. OF CALIFORNIA and DOES 1 to 25, inclusive,

Defendants.

Case No.: CVRI2305243

COMPLAINT FOR DAMAGES FOR:

1) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");

COMES NOW, Plaintiff, JESSICA GASCON (hereafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Riverside in this judicial district because Defendants OMEGA EXTRUDING CORP. OF CALIFORNIA and DOES 1 to 25, inclusive, (collectively, "OMEGA") do business in the County of Riverside and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Riverside is the subject of this action. Moreover, Plaintiff's damages sought herein exceed $25,000.

2. Plaintiff is a female resident of the County of Riverside, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant OMEGA EXTRUDING CORP. OF CALIFORNIA dba Sigma Stretch Film of California is and was a California corporation, doing business in Riverside County, California, and which employed Plaintiff.

4. The "Aggrieved Employees" are all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA").

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

7. Plaintiff started working for OMEGA on or around October 2019. During her employment tenure, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's latest rate of pay is $19.25 per hour. Plaintiff's employment with OMEGA ended on or around May 2023.

8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees, irrespective of job title or job duties, who worked for OMEGA at any of their California locations during the applicable PAGA period.

10. It is Plaintiff's position that OMEGA has committed numerous labor code violations against Plaintiff and other hourly, non-exempt employees or employees who worked for OMEGA at any and all of their locations in the state of California during the PAGA period.

11. OMEGA did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff and others worked "off the clock" and were not compensated for this time due to an issue with rounding work hours, which is also akin to a minimum wage violation in that Plaintiff and others were not compensated for all hours worked. Consequently, Plaintiff and others were not being paid for all hours worked and were not being paid the minimum wage for all hours worked. On or around 2021, OMEGA programmed its clock-in and clock-out system to round the initial clock in time as well as the clock out time. Throughout her employment, Plaintiff generally worked a 12-hour shift from 6am to 6pm. Plaintiff's clock-in and clock-out records from 2019 through June 2021 indicate that Plaintiff generally clocked in between 5:50am and 6:00am and that Plaintiff clocked out between 6:00am

and 6:10am, all at random times. For instance, there were days Plaintiff would clock in at 5:53am and other days where Plaintiff would clock in at 5:57am. Similarly, there were days wherein Plaintiff would clock out around 6:01pm and days where Plaintiff would clock out at 6:04pm. However, starting in July 2021, every single one of Plaintiff's clock-in times was exactly 6am and every single one of Plaintiff's clock out times was 6pm. OMEGA manipulated its system to round down work hours to the detriment of employees such as Plaintiff.

12. Due to the above , including the "off the clock" work and as a matter of company policy, OMEGA also violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. This is so because OMEGA did not factor in the "off the clock" hours and because it was company policy and practice to NOT pay accurate and correct overtime. Plaintiff generally worked over 8 hours a day, 12 hours per day, and/or over 40 hours per week. Despite the latter, Plaintiff and others were not paid the correct overtime in contravention of California law, whether it was daily overtime (including double time) or weekly overtime. In other words, OMEGA violated Labor Code §510 and Industrial Welfare Commission Wage Order No. 1-2001/4-2001, Section 3(B) because it failed to pay Plaintiff and other similarly situated aggrieved employees the correct amount of overtime under the company's alternative workweek schedule. The company was required to pay, but failed to pay Plaintiff and other similarly situated aggrieved employees one and one-half times their regular rate of pay for any work in excess of the regularly scheduled hours in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week, and double the employee's regular rate of pay for work in excess of 12 hours per day and any work in excess of eight (8) on those days worked beyond the regularly

scheduled number of workdays established by the agreement. Moreover, while OMEGA claimed that it had a "4-10 schedule", it was clearly a 12-hour shift every single day. It follows that OMEGA used an "Alternative Work Week Schedule" to avoid paying overtime between the 8th and 10th hour worked even know the company did not strictly follow the Alternative Workweek arrangement. Furthermore, OMEGA did not include bonuses and other forms of additional compensation, including incentive pay, in calculating the correct regular rate of pay for purposes of then calculating the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff's regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

13. OMEGA violated Labor Code §§ 512 and 226.7 along with the applicable Industrial Welfare Commission Wage Order (no. 1/4) because it failed to provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. OMEGA did not completely relieve Plaintiffs of all duties during said meal periods. OMEGA did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. It was the normal practice and custom of OMEGA not to authorize, permit, and enforce full and complete statutory meal periods. In fact, Plaintiff did not always receive full and complete 30-minute meal breaks as their meal breaks were often short and less than 30 minutes. In addition, Plaintiff and other employees did not always receive uninterrupted meal breaks before the 5th hour wherein they were relieved of all job duties. As such, the environment and culture at OMEGA was not conducive to receiving consistent, timely, uninterrupted, and full (at least 30 minutes) statutory meal breaks under California law. To the extent that OMEGA argues that there

is an "On Duty Meal Period Agreement" in place, their argument would not hold water since the nature of Plaintiff's work does not prevent her from getting a timely, uninterrupted meal period wherein she is relieved of all work duties. To the extent that OMEGA argues that employees receive meal break premium pay for missed meal periods or that the meal periods are actually paid, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment or pay for a missed, short, or interrupted meal period. In addition, having employees stay on the clock while taking a meal period is not lawful because the violation is the fact that employee is not able to take an uninterrupted meal break wherein they are relieved of all duties. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments.

14. Similarly, OMEGA violated Labor Code § 226.7 along with the applicable Industrial Welfare Commission Wage Order (no. 1/4) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. OMEGA did not completely relieve Plaintiff of all duty during said rest periods. OMEGA did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest

periods was not provided. Like the situation involving meal breaks, it was not company policy and not part of the company culture for employees such as Plaintiff and others to take at least two or even three rest breaks per shift wherein they were relieved of all job duties. As such, the culture at OMEGA did not lend itself to the employees receiving statutory breaks wherein they were relieved of all work duties. It was the normal practice and custom of OMEGA not to authorize, permit, and enforce consistent and multiple statutory rest periods every shift. As such, the environment and culture at OMEGA was not conducive to receiving statutory rest breaks under California law, especially due to the workload.

15. Furthermore, during the relevant time period, and due to the violations as alleged above, OMEGA failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including premium payments for missed, short, late, or interrupted meal and rest periods. OMEGA was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, all hours worked, all hourly rates in effect, overtime hours worked, gross wages earned, premium pay for missed meal and rest breaks, all deductions, net wages earned, gross wages earned, all deductions, the correct name and address of the employing entity, the start and end of the pay period, and reimbursement for business expenses, among others. As such, OMEGA did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements during the PAGA period.

16. OMEGA violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees their earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation.

These earned but unpaid wages include compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

17. During the relevant time period, OMEGA also failed to keep accurate and complete payroll records showing the hours worked by Plaintiff and other similarly situated aggrieved employees as well as the correct wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code sections 1174(d).

18. Moreover, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by OMEGA. These costs include, but are not limited to, use of personal cell phones for work purposes as well as uniforms, gloves, and staples/staple gun. Accordingly, OMEGA was in violation of California Labor Code sections 2800 and 2802.

19. Furthermore, OMEGA violated the applicable Industrial Welfare Commission Wage Order (Wage Order 1/4, Section 13(b)) in that there was no proper suitable seating/break area for employees.

FIRST (AND ONLY) CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order Nos. 1-2001/4-2001

(Against All Named Defendants and all DOE Defendants)

20. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

21. Pursuant to law, Plaintiff provided the required written notice to the California Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to

violate.

22. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

23. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant PAGA time period.

26. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

27. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

28. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

29. California Labor Code section 558 establishes a civil penalty as follows: Any

employer or other person action on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid ...; (2) for each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid ...;

30. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, <u>but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages under this particular cause of action</u>.

31. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174d, 1194, 1197, 1197.1, 2800, 2802 via 2698 and 2699, and any other Labor Codes and Wage Orders (including no. 1/4) violated on the facts alleged in this Complaint.

32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved Employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to,

pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and

5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: October 3, 2023

By____________________________
Harout Messrelian, Esq.
Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
www.riverside.courts.ca.gov
Self-represented parties: https://www.riverside.courts.ca.gov/SelfHelp/self-help.php

ALTERNATIVE DISPUTE RESOLUTION (ADR) –
INFORMATION PACKAGE

***** THE PLAINTIFF MUST SERVE THIS INFORMATION PACKAGE ON EACH PARTY WITH THE COMPLAINT. *****

What is ADR?

Alternative Dispute Resolution (ADR) is a way of solving legal disputes without going to trial. The main types are mediation, arbitration, and settlement conferences.

Advantages of ADR:

- Faster: ADR can be done in a 1-day session within months after filing the complaint.
- Less expensive: Parties can save court costs and attorneys' and witness fees.
- More control: Parties choose their ADR process and provider.
- Less stressful: ADR is done informally in private offices, not public courtrooms.

Disadvantages of ADR:

- No public trial: Parties do not get a decision by a judge or jury.
- Costs: Parties may have to pay for both ADR and litigation.

Main Types of ADR:

Mediation: In mediation, the mediator listens to each person's concerns, helps them evaluate the strengths and weaknesses of their case, and works with them to create a settlement agreement that is acceptable to everyone. If the parties do not wish to settle the case, they go to trial.

Mediation may be appropriate when the parties:

- want to work out a solution but need help from a neutral person; or
- have communication problems or strong emotions that interfere with resolution; or
- have a continuing business or personal relationship.

Mediation is not appropriate when the parties:

- want their public "day in court" or a judicial determination on points of law or fact;
- lack equal bargaining power or have a history of physical/emotional abuse.

Arbitration: Arbitration is less formal than trial, but like trial, the parties present evidence and arguments to the person who decides the outcome. In "binding" arbitration the arbitrator's decision is final; there is no right to trial. In "non-binding" arbitration, any party can request a trial after the arbitrator's decision. The court's mandatory Judicial Arbitration program is non-binding.

Arbitration may be appropriate when the parties:

- want to avoid trial, but still want a neutral person to decide the outcome of the case.

Arbitration is not appropriate when the parties:

- do not want to risk going through both arbitration and trial (Judicial Arbitration)
- do not want to give up their right to trial (binding arbitration)

Settlement Conferences: Settlement conferences are similar to mediation, but the settlement officer usually tries to negotiate an agreement by giving strong opinions about the strengths and weaknesses of the case, its monetary value, and the probable outcome at trial. Settlement conferences often involve attorneys more than the parties and often take place close to the trial date.

RIVERSIDE COUNTY SUPERIOR COURT ADR REQUIREMENTS

ADR Information and forms are posted on the ADR website:
https://www.riverside.courts.ca.gov/Divisions/ADR/ADR.php

General Policy:

Parties in most general civil cases are expected to participate in an ADR process before requesting a trial date and to participate in a settlement conference before trial. (Local Rule 3200)

Court-Ordered ADR:

Certain cases valued at under $50,000 may be ordered to judicial arbitration or mediation. This order is usually made at the Case Management Conference. See the "Court-Ordered Mediation Information Sheet" on the ADR website for more information.

Private ADR (for cases not ordered to arbitration or mediation):

Parties schedule and pay for their ADR process without Court involvement. Parties may schedule private ADR at any time; there is no need to wait until the Case Management Conference. See the "Private Mediation Information Sheet" on the ADR website for more information.

BEFORE THE CASE MANAGEMENT CONFERENCE (CMC), ALL PARTIES MUST:

1. Discuss ADR with all parties at least 30 days before the CMC. Discuss:
   - Your preferences for mediation or arbitration.
   - Your schedule for discovery (getting the information you need) to make good decisions about settling the case at mediation or presenting your case at an arbitration.
2. File the attached "Stipulation for ADR" along with the Case Management Statement, if all parties can agree.
3. Be prepared to tell the judge your preference for mediation or arbitration and the date when you could complete it.

(Local Rule 3218)

RIVERSIDE COUNTY ADR PROVIDERS INCLUDE:

- The Court's Civil Mediation Panel (available for both Court-Ordered Mediation and Private Mediation). See https://adr.riverside.courts.ca.gov/Home/CivilMedPanel or ask for the list in the civil clerk's office, attorney window.
- Riverside County ADR providers funded by DRPA (Dispute Resolution Program Act):
  Dispute Resolution Service (DRS) Riverside County Bar Association: (951) 682-1015
  Dispute Resolution Center, Community Action Partnership (CAP): (951) 955-4900
  Chapman University School of Law Mediation Clinic (services only available at the court)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

☐ **BLYTHE** 265 N. Broadway, Blythe, CA 92225
☐ **CORONA** 505 S. Buena Vista, Rm. 201, Corona, CA 92882
☐ **MORENO VALLEY** 13800 Heacock St. #D201, Moreno Valley, CA 92553
☐ **MURRIETA** 30755-D Auld Rd., Murrieta, CA 92563
☐ **PALM SPRINGS** 3255 Tahquitz Canyon Way, Palm Springs, CA 92262
☐ **RIVERSIDE** 4050 Main St., Riverside, CA 92501

RI-ADR001

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar Number and Address*) TELEPHONE NO: FAX NO. (*Optional*): E-MAIL ADDRESS (*Optional*): ATTORNEY FOR (*Name*):	*FOR COURT USE ONLY*
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER: CASE MANAGEMENT CONFERENCE DATE(S):

STIPULATION FOR ALTERNATIVE DISPUTE RESOLUTION (ADR)
(CRC 3.2221; Local Rule, Title 3, Division 2)

Court-Ordered ADR:
Eligibility for Court-Ordered Mediation or Judicial Arbitration will be determined at the Case Management Conference. If eligible, the parties agree to participate in:

☐ Mediation ☐ Judicial Arbitration (non-binding)

Private ADR:
If the case is not eligible for Court-Ordered Mediation or Judicial Arbitration, the parties agree to participate in the following ADR process, which they will arrange and pay for without court involvement:

☐ Mediation ☐ Judicial Arbitration (non-binding)
☐ Binding Arbitration ☐ Other (describe): ______________________

Proposed date to complete ADR: ______________

SUBMIT THIS FORM ALONG WITH THE CASE MANAGEMENT STATEMENT.

(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)
(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)
(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)
(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

☐ **BANNING** 311 E. Ramsey St., Banning, CA 92220
☐ **BLYTHE** 265 N. Broadway, Blythe, CA 92225
☐ **CORONA** 505 S. Buena Vista, Rm. 201, Corona, CA 92882
☐ **MORENO VALLEY** 13800 Heacock St., Ste. D201, Moreno Valley, CA 92553
☐ **MURRIETA** 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563
☐ **PALM SPRINGS** 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262
☒ **RIVERSIDE** 4050 Main St., Riverside, CA 92501

RI-CI032

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar Number and Address*)
Harout Messrelian (272020)
Messrelian Law Inc
500 N Central Ave Suite 840
Glendale, CA 91203
TELEPHONE NO: 818-484-6531 FAX NO. (*Optional*):
E-MAIL ADDRESS (*Optional*): hm@messrelianlaw.com
ATTORNEY FOR (*Name*): Plaintiff Jessica Gascon

FOR COURT USE ONLY

PLAINTIFF/PETITIONER: Jessica Gascon

DEFENDANT/RESPONDENT: Omega Extruding Corp. of California

CASE NUMBER: CVRI2305243

CERTIFICATE OF COUNSEL

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

☒ The action arose in the zip code of: 92507

☐ The action concerns real property located in the zip code of: __________

☐ The Defendant resides in the zip code of: __________

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 3115 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date 10-3-2023

HAROUT MESSRELIAN
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)

► [signature]
(SIGNATURE)

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: Gascon v. Omega Extruding Corp. of California CASE NO.: CVRI2305243 DATE: October 9, 2023	Department 1	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 11 2023
PROCEEDING: PAGA Case Management Order #1		E. Escobedo

Unless and until ordered otherwise, this Case Management Order (CMO) shall govern the management of this case.

A. CASE MANAGEMENT

1. This case has been assigned to Department 1, Judge Harold W. Hopp for all purposes, including case management, law and motion, and trial.
2. The plaintiff shall serve a copy of this CMO on any defendant who has not yet appeared, and shall file proof of service promptly thereafter.
3. Not later than five court days in advance of the first Case Management Conference, the parties shall file a joint statement required by RSC Local Rule 3160 instead of Judicial Council form CM-110 [case management statement]. In addition to the items listed in that rule, the statement shall advise the Court whether any of the parties or their counsel are aware of any other representative or collective action in this or any other jurisdiction that asserts claims similar to those here on behalf of a class or other group of individuals that in any way overlaps with the group of employees on behalf of whom this case has been filed.
4. Not later than five court days before any subsequent Case Management Conference or Status Conference, the parties shall file a joint statement that:
   a. Describes the status of the case, including the parties' discovery plan, the degree to which that plan has been implemented, and mediation efforts; and
   b. Identifies any issues or concerns that either party wishes to discuss with the Court.
5. The Court intends to conduct most Case Management Conference and Status Conferences informally, in chambers. Should an appearance be necessary, the Court will inform all counsel via email and/or telephone.

B. DISCOVERY & MEDIATION

1. Counsel are encouraged to engage in informal discovery rather than relying solely upon formal discovery. The Court does not stay or otherwise limit informal discovery.
2. All formal discovery is stayed until all of the following events occur:
   a. All named parties have appeared in the case; and

b. The parties have met and conferred either in person or by telephone to discuss both (i) the scope and sources of the information needed to conduct a meaningful mediation and (ii) whether the parties will agree to exchange that information informally; and

c. The Court has granted leave to propound formal discovery. Requests for leave to propound formal discovery may be made either by submitting a declaration and proposed order or by making an oral request at status conferences or at informal conferences with the Court in accordance with paragraph 4 below.

3. In the Court's experience, virtually all cases of this sort settle. Therefore:

a. The court expects the parties to engage in private mediation at the earliest practicable time, i.e., as soon as all parties have obtained, through formal or informal means, sufficient information from the opposing party(s) to enable them to engage in meaningful mediation.

b. Initial formal discovery shall be, and initial informal discovery should be, limited to the information that is reasonably necessary to facilitate a meaningful mediation.

4. No discovery motions may be filed without leave of court.

a. If a discovery dispute arises, the parties shall meet and confer either in person or by telephone in a good-faith effort to resolve the dispute. If, despite that effort, the parties are unable to resolve the dispute, then counsel shall contact the clerk of this department to schedule an informal conference at which the court will discuss the dispute with counsel and, if not resolved to the parties' satisfaction, will consider any request for leave to file a formal motion.

b. The conference may be conducted by telephone or in person, as counsel prefer.

c. If the opposing side will not agree to participate in the informal conference, or if the moving party has been unable to obtain a timely date from the clerk of this department, then the moving party shall bring an ex parte application for leave to file a discovery motion.

C. <u>SETTLEMENT AGREEMENTS AND DISMISSALS</u>

1. The Court must review and approve any settlement of any PAGA case. *Cal. Lab. Code* § 2699(l)(2). This includes the settlement of individual claims in exchange for the dismissal of the PAGA claims. The Court considers a "settlement" to include any agreement to dismiss a party from the entire action in exchange for something other than a waiver of costs.

2. In the event of a settlement, the plaintiff shall not file a Notice of Settlement of Entire Case (Form CM-200). Instead, the plaintiff shall move for approval of the proposed settlement agreement.

3. If the proposed dismissal is merely in exchange for a waiver of costs, the plaintiff shall not file a Request for Dismissal (CIV-110). Instead, the plaintiff shall submit to the Court (a) a declaration by counsel establishing that the only consideration to be exchanged for the dismissal is a waiver of costs, (b) the declarations described in section D.6.a., infra, and (c) a proposed order of dismissal that complies with section D.6.b., infra.

D. MOTIONS TO APPROVE SETTLEMENT AGREEMENTS

1. All applications for such approval shall be made by noticed motion, and shall be supported by declaration. In order to aid the Court's review, all declarations filed in support of a motion for approval shall include appropriate headings that identify the specific paragraph of Section D which is being addressed. For example, counsel's discussion of the nature of PAGA violations should be preceded by a heading that identifies D(2)(a), and counsel's discussion of the nature of any unpled individual claims being released by the plaintiff should be preceded by a heading that identifies D(4)(a).
    a. If the settlement is memorialized in a written agreement, the declaration shall authenticate a fully executed copy of that agreement. If there is no written agreement, the declaration shall describe in detail all the terms of the agreement.
    b. The declaration shall state whether the parties utilized the services of any neutral party to mediate this dispute.
    c. The declaration shall provide proof that the settlement agreement was submitted to the Labor and Workforce Development Agency. *Cal. Lab. Code* § 2699(*l*)(2).
2. If the settlement provides for the payment of any PAGA penalties, the declaration shall estimate the maximum penalties for which the defendant could be liable by explaining:
    a. The nature of the alleged violations;
    b. The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period;
    c. The total amount of penalties for which the defendant is potentially liable if all allegations are proven;
    d. The total amount of penalties defendant is likely to be found liable at trial considering the weight of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant;
    e. The likelihood that any violations would be proven to have been knowing and intentional;
    f. Any facts that tend to suggest that the imposition of the total amount of statutory penalties for which the defendant would be likely to be found liable at trial would be unjust, arbitrary and oppressive, or confiscatory;

g. How the amount of the agreed-upon penalties was calculated or otherwise arrived at; and

h. Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.

3. If the settlement provides for the payment of attorney's fees or costs to plaintiff's counsel, the motion shall be supported by a declaration of plaintiff's counsel that provides evidence of the total amount of time spent by counsel, a description of the work performed, the reasonableness of the fees charged and a detailed description of the costs actually incurred. Additionally, if relevant, the request for fees shall also advise the Court whether there is an agreement about how attorney fees will be paid, including fee splitting, and whether the client(s) has been given written notice.

4. If any plaintiff negotiates a settlement of individual claims against any defendant separate from the settlement or dismissal of the representative claims, or if the settlement provides for the payment to any plaintiff of consideration in addition to or instead of PAGA penalties, the declaration shall explain:

a. The nature of any unpled individual claims being released by the plaintiff;

b. The value of each individual claim being released by the plaintiff. In particular, the declaration shall estimate (i) the total amount of damages, lost wages, penalties, attorney's fees and costs, interest, or other relief that the plaintiff would be awarded if the action were entirely successful at trial on that claim, and (ii) the total amount of damages, lost wages, penalties, attorney's fees and costs, interest, or other relief that the plaintiff could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks;

c. The form and value of the consideration to be paid to the plaintiff; and

d. If the consideration to the plaintiff is in the form of one or more monetary payments, the total amount of that monetary consideration, how the monetary consideration was calculated, and to whom it is to be paid.

5. Any request for a "service," "enhancement," or "incentive" payment, or of any consideration in excess of what the plaintiff would receive as an unnamed aggrieved employee shall be supported by a declaration from the proposed recipient in which the declarant:

a. Describes the services performed by the declarant to further the prosecution of the action;

b. Estimates the time incurred by the declarant in performing those services;

c. Describes any risks assumed or benefits received by the declarant in prosecuting the action;

d. Describes any adverse consequences actually suffered by the declarant as a result of prosecuting the action;

e. Describes the nature and amount of any expenses incurred by the declarant to further the prosecution of this action; and

f. Identifies any other PAGA case, pending or closed, in which the declarant is or was the named plaintiff.

6. If the settlement agreement provides for the dismissal of any representative claims:

a. The motion shall explain why the aggrieved employees will not be prejudiced by the requested dismissal. In particular, the plaintiff and plaintiff's counsel shall submit separate declarations stating (i) whether the declarant has ever informed any of the other aggrieved employees – whether formally or informally, orally or in writing, individually or as a group – of the preparation, filing, or pendency of the action, and (ii) if so, the nature and extent of that information, and whether the declarant knows the name and mailing address of the aggrieved employees to whom that information was communicated.

b. Any proposed order of dismissal of any of those claims shall expressly state that the dismissal does not extend to or otherwise affect the ability of an aggrieved employee to bring individual, non-representative claims against the defendant for alleged violations of the Labor Code.

7. Any release of claims for PAGA penalties:

a. Shall bind only the named plaintiff and the State of California.

b. Shall release only the defendant named in the complaint, together with its officers, directors, employees and agents. If any other parties are sought to be released, the motion shall both (i) identify those other parties by name and (ii) explain the facts that justify their inclusion.

c. Shall release only those claims described in the notice sent by the plaintiff to the LWDA, and only to the extent that they are alleged in the complaint.

d. An example of an acceptable release is as follows: "Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee's claim for wages or damages."

8. If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by:

a. A declaration from the plaintiff's attorney, stating whether bids were sought from multiple potential administrators and, if so, the results of that competitive bidding. If the parties did not select the lowest bidder, the declaration shall explain that decision.

b. A declaration from the administrator describing:

i. The administrator's experience;

ii. The fee to be charged by the administrator to perform the services described in the settlement agreement and proposed order;

iii. Whether that fee is (1) fixed, (2) hourly, or (3) hourly with a cap; and

iv. How the fee was calculated.

9. If the settlement does not contemplate the use of an administrator, the motion shall explain who will distribute the settlement proceeds to the LWDA and the aggrieved employees, and when those distributions will be made.

10. The motion shall describe how the value of any uncashed checks will be distributed. The Court believes that either (1) redistributing the value of uncashed checks to those aggrieved employees who have cashed their checks or (2) directing the value of uncashed checks to the State Controller's Office Unclaimed Property Division in the name of the aggrieved employees or (3) selecting the LWDA as a cy pres will better serve the public interest. If one or more of the parties disagree, then the motion shall be supported by a declaration from a party or the party's counsel explaining the factual basis for the disagreement.

11. The order granting the motion shall set a date for the Final Accounting (Nonappearance) Hearing and a deadline for the filing of a report concerning the amount of money distributed and/or uncashed.

Harold W. Hopp
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2305243

Case Name: GASCON vs OMEGA EXTRUDING CORP. OF CALIFORNIA

HAROUT MESSRELIAN
500 N. CENTRAL AVE, SUITE 840
Glendale, CA 91203

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing notice on this date, by depositing said copy as stated above.

Notices Mailed: PAGA Case Management Order #1

Dated: 10/11/2023

JASON B. GALKIN,
Court Executive Officer/Clerk of the Court

by: ______________________
E. Escobedo, Deputy Clerk