

1 R. Rex Parris (SBN 96567)
Kitty K. Szeto (SBN 258136)

2 **PARRIS LAW FIRM**

3 43364 10th Street West
Lancaster, California 93534
Telephone: (661) 949-2595
4 Facsimile: (661) 949-7524

5 Edwin Aiwarzian (SBN 232943)
L A W Y E R S for J U S T I C E, P C
6 410 West Arden Avenue, Suite 203
Glendale, California 91203
7 Tel: (818) 265-1020 / Fax: (818) 265-1021

8 Attorneys for Plaintiff, the Putative Class,
and the Aggrieved Employees
9

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN JOAQUIN**

14 LEONIL TALAROC, individually, and on
15 behalf of other members of the general public
similarly situated;

16 Plaintiff,

17 vs.

18 MUSCO FAMILY OLIVE CO., an unknown
19 business entity; and DOES 1 through 100,
inclusive,

20 Defendants.
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Case No. STK-CV-UOE-2018-6189

Honorable Erin Guy Castillo
Department 10B

**SIXTH AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Business &
Professions Code §§ 17200, et seq.;
and
(2) Violation of California Labor Code
§§ 2698, et seq.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff LEONIL TALAROC (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for restitution, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, County of San Joaquin. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of San Joaquin.

PARTIES

5. Plaintiff LEONIL TALAROC is an individual residing in the State of California, County of San Joaquin, City of Stockton.

6. Defendant MUSCO FAMILY OLIVE CO., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of San Joaquin.

7. At all relevant times, Defendant MUSCO FAMILY OLIVE CO. was the “employer” of Plaintiff within the meaning of all applicable California state laws and statutes.

1 8. At all times herein relevant, Defendants MUSCO FAMILY OLIVE CO. and
2 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
3 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
4 assigns, each of the other, and at all times relevant hereto were acting within the course and
5 scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
6 servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged
7 herein were duly committed with the ratification, knowledge, permission, encouragement,
8 authorization and consent of each defendant designated herein.

9 9. The true names and capacities, whether corporate, associate, individual or
10 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said
11 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
12 information and belief alleges, that each of the defendants designated as a DOE is legally
13 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
14 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
15 Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities
16 when the same have been ascertained.

17 10. Defendants MUSCO FAMILY OLIVE CO. and DOES 1 through 100 will
18 hereinafter collectively be referred to as “Defendants.”

19 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
20 affected the working conditions, wages, working hours, and conditions of employment of
21 Plaintiff and the other class members so as to make each of said defendants employers and
22 employers liable under the statutory provisions set forth herein.

23 **CLASS ACTION ALLEGATIONS**

24 12. Plaintiff brings this action on his own behalf and on behalf of all other members
25 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
26 Procedure section 382.

27 13. The proposed classes are defined as follows:

28 a. For the allegations directed at the hourly production line employees: All

1 current and former hourly-paid or non-exempt production line employees
2 employed by any of the Defendants within the State of California at any
3 time during the period from May 25, 2014 to final judgment.

4 b. For the allegations directed at the hourly employees generally: All
5 current and former hourly-paid or non-exempt individuals employed by
6 any of the Defendants within the State of California at any time during
7 the period from May 25, 2014 to final judgment.

8 14. Plaintiff reserves the right to establish subclasses as appropriate.

9 15. The class is ascertainable and there is a well-defined community of interest in the
10 litigation:

11 a. Numerosity: The class members are so numerous that joinder of all class
12 members is impracticable. The membership of the entire class is unknown
13 to Plaintiff at this time; however, the class is estimated to be greater than
14 fifty (50) individuals and the identity of such membership is readily
15 ascertainable by inspection of Defendants' employment records.

16 b. Typicality: Plaintiff's claims are typical of all other class members' as
17 demonstrated herein. Plaintiff will fairly and adequately protect the
18 interests of the other class members with whom he has a well-defined
19 community of interest.

20 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
21 class member, with whom he has a well-defined community of interest
22 and typicality of claims, as demonstrated herein. Plaintiff has no interest
23 that is antagonistic to the other class members. Plaintiff's attorneys, the
24 proposed class counsel, are versed in the rules governing class action
25 discovery, certification, and settlement. Plaintiff has incurred, and during
26 the pendency of this action will continue to incur, costs and attorneys'
27 fees, that have been, are, and will be necessarily expended for the
28 prosecution of this action for the substantial benefit of each class member.

1 d. Superiority: A class action is superior to other available methods for the
2 fair and efficient adjudication of this litigation because individual joinder
3 of all class members is impractical.

4 e. Public Policy Considerations: Certification of this lawsuit as a class action
5 will advance public policy objectives. Employers of this great state violate
6 employment and labor laws every day. Current employees are often afraid
7 to assert their rights out of fear of direct or indirect retaliation. However,
8 class actions provide the class members who are not named in the
9 complaint anonymity that allows for the vindication of their rights.

10 16. There are common questions of law and fact as to the class members that
11 predominate over questions affecting only individual members. The following common
12 questions of law or fact, among others, exist as to the members of the class:

13 a. Whether Defendants' failure to pay wages, without abatement or
14 reduction, in accordance with the California Labor Code, was willful;

15 b. Whether Defendants had a corporate policy and practice of failing to pay
16 their hourly-paid or non-exempt employees within the State of California
17 for all hours worked and missed (short, late, interrupted, and/or missed
18 altogether) meal periods and rest breaks in violation of California law;

19 c. Whether Defendants required Plaintiff and the other class members to
20 work over eight (8) hours per day and/or over forty (40) hours per week
21 and failed to pay the legally required overtime compensation to Plaintiff
22 and the other class members, including for duties that were required to be
23 performed off-the-clock;

24 d. Whether Defendants deprived Plaintiff and the other class members of
25 meal and/or rest periods or required Plaintiff and the other class members
26 to work during meal and/or rest periods without compensation;

27 e. Whether Defendants required Plaintiff and the other class members to
28 remain on duty during meal and rest periods;

- 1 f. Whether Defendants required Plaintiff and the other class members to
2 “waive” their right to a second meal period for shifts in excess of ten (10)
3 hours;
4 g. Whether Defendants’ time rounding system improperly deprived Plaintiff
5 and the other class members of wages for all hours worked and for meal
6 period premiums;
7 h. Whether Defendants failed to pay minimum wages to Plaintiff and the
8 other class members for all hours worked;
9 i. Whether Defendants failed to pay all wages due to Plaintiff and the other
10 class members within the required time upon their discharge or
11 resignation;
12 j. Whether Defendants failed to timely pay all wages due to Plaintiff and the
13 other class members during their employment;
14 k. Whether Defendants complied with wage reporting as required by the
15 California Labor Code, including, *inter alia*, section 226;
16 l. Whether Defendants kept complete and accurate payroll records as
17 required by the California Labor Code, including, *inter alia*, section
18 1174(d);
19 m. Whether Defendants failed to reimburse Plaintiff and the other class
20 members for necessary business-related expenses and costs, including the
21 use of personal phones;
22 n. Whether Defendants’ conduct was willful or reckless;
23 o. Whether Defendants engaged in unfair business practices in violation of
24 California Business & Professions Code section 17200, et seq.; and
25 p. The appropriate amount of restitution resulting from Defendants’ violation
26 of California law.

27 **GENERAL ALLEGATIONS**

- 28 17. At all relevant times set forth herein, Defendants employed Plaintiff and other

1 persons as hourly-paid or non-exempt employees within the State of California, including the
2 County of San Joaquin.

3 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
4 exempt employee from approximately January 2005 to approximately December 2012 and from
5 approximately July 2013 to approximately January 2015, in the State of California, County of
6 San Joaquin. Plaintiff worked in the positions of Maintenance Helper, Maintenance Mechanic,
7 Label Line Lead, and Electrician at Defendants' plant in Tracy, California. Each of these
8 positions were production line positions. His base rate of pay began at \$11.00 per hour and
9 ended at \$31.62 per hour. Plaintiff's job duties included repairing machinery, performing routine
10 maintenance, ensuring production lines continued to run, operating machinery, assisting
11 maintenance employees, assisting other production employees, complying with health and safety
12 requirements, verifying labels, preparing reports, and responding to business-related phone
13 calls/text messages/radio calls.

14 19. Defendants are the leading supplier of table olives at retail stores in the United
15 States. Defendants' facilities process, package, label, and ship their olives and other related
16 products to customers.

17 20. Defendants had the authority to hire and terminate Plaintiff and the other class
18 members, to set work rules and conditions governing Plaintiff and the other class members'
19 employment, and to supervise their daily employment activities.

20 21. Defendants exercised sufficient authority over the terms and conditions of
21 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
22 and the other class members.

23 22. Defendants directly hired and paid wages and benefits to Plaintiff and the other
24 class members.

25 23. Defendants continue to employ hourly-paid or non-exempt employees within the
26 State of California.

27 24. Defendants hired Plaintiff and the other class members, classified them as hourly-
28 paid or non-exempt employees, and failed to compensate them for all hours worked and missed

1 meal periods and/or rest breaks.

2 25. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
3 forty (40) hours in a week during their employment with Defendants.

4 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
6 employees within the State of California. This pattern and practice involved, *inter alia*, failing
7 to pay them for all regular and/or overtime wages earned and for short, late, interrupted, and/or
8 missed meal periods and rest breaks in violation of California law.

9 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 certain wages for overtime compensation and that they were not receiving accurate overtime
12 compensation for all overtime hours worked.

13 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 failed to provide Plaintiff and the other class members all required rest and meal periods during
15 the relevant time period as required under the Industrial Welfare Commission Wage Orders.

16 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
17 to relieve Plaintiff and other class members of all duties, failed to relinquish control over Plaintiff
18 and the other class members' activities, failed to permit Plaintiff and other class members a
19 reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute
20 uninterrupted meal breaks no later than the end of their fifth hour of work for shifts lasting at least
21 six (6) hours, and/or to take second thirty (30) minute uninterrupted meal breaks no later than the
22 end of their tenth hour of work for shifts lasting more than ten (10) hours.

23 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other class members were entitled to receive
25 all meal periods or payment of one additional hour of pay at Plaintiff and the other class
26 member's regular rate of pay when a meal period was short, late, interrupted, and/or missed, and
27 they did not receive all meal periods or payment of one additional hour of pay at Plaintiff and
28 the other class member's regular rate of pay when a meal period was short, late, interrupted,

1 and/or missed.

2 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
3 to provide, authorize, and permit Plaintiff and other class members to take full, uninterrupted, off-
4 duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
5 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours and/or three full,
6 uninterrupted, off-duty rest periods for every shift lasting ten (10) to fourteen (14) hours, and failed
7 to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each
8 work period.

9 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 all rest periods or payment of one additional hour of pay at Plaintiff and the other class member's
12 regular rate of pay when a rest period was short, late, interrupted, and/or missed, and they did
13 not receive all rest periods or payment of one additional hour of pay at Plaintiff and the other
14 class members' regular rate of pay when a rest period was short, late, interrupted, and/or missed.
15 Plaintiff is informed and believes, and based thereon alleges, that Defendants have had a policy
16 and practice of not paying rest period premiums for rest periods that were short, late, interrupted,
17 or missed.

18 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members who have separated from
20 their employment with Defendants were entitled to receive all wages owed to them upon
21 discharge or resignation, including the earned and unpaid overtime and minimum wages and
22 meal and rest period premiums discussed above, and they did not, in fact, receive all such wages
23 owed to them at the time of their discharge or resignation and have not received all such wages
24 to date.

25 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that Plaintiff and the other class members were entitled to receive
27 all wages owed to them during their employment. Plaintiff and the other class members did not
28 receive payment of all wages, including the earned and unpaid overtime and minimum wages

1 and meal and rest period premiums discussed above, within any time permissible under
2 California Labor Code section 204 and have not received all such wages to date.

3 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to receive
5 complete and accurate wage statements in accordance with California law, but, in fact, they did
6 not receive complete and accurate wage statements from Defendants. The deficiencies included,
7 *inter alia*, the failure to include the accurate total number of hours worked by Plaintiff and the
8 other class members, including work required to be performed off-the-clock, and the total gross
9 wages actually earned, including off-the-clock work and meal and rest period premiums.

10 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Defendants had to keep complete and accurate payroll records
12 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
13 keep complete and accurate payroll records reflecting the accurate number of hours worked and
14 wages owed to Plaintiff and the other class members. The payroll records did not reflect the
15 work required to be performed off-the-clock or the wages earned during off-the-clock work and
16 short/late/interrupted/missed meal and rest periods.

17 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to
19 reimbursement for necessary business-related expenses, including the use of personal cell
20 phones to respond to business-related phone calls and text messages, such as calls regarding
21 scheduling and maintenance from supervisors while off-the-clock in order to ensure coverage so
22 that production could be maintained. Plaintiff and the other class members were required to use
23 their personal phones but were not reimbursed for the associated costs in accordance with
24 California law.

25 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that they had a duty to compensate Plaintiff and the other class
27 members pursuant to California law, and that Defendants had the financial ability to pay such
28 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented

1 to Plaintiff and the other class members that they were properly denied wages, all in order to
2 increase Defendants' profits.

3 39. During the relevant time period, Defendants failed to pay overtime wages to
4 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
5 members were required to work more than eight (8) hours per day and/or forty (40) hours per
6 week without overtime compensation for all overtime hours worked, including work that was
7 required to be performed off-the-clock.

8 40. During the relevant time period, Defendants failed to provide all requisite timely,
9 uninterrupted, off-duty meal and rest periods to Plaintiff and the other class members.

10 41. During the relevant time period, Defendants failed to pay Plaintiff and the other
11 class members at least minimum wages for all hours worked, including work that was required
12 to be performed off-the-clock.

13 42. During the relevant time period, Defendants failed to pay Plaintiff and the other
14 class members all wages owed to them upon discharge or resignation, including earned and
15 unpaid minimum and overtime wages and meal and rest period premiums.

16 43. During the relevant time period, Defendants failed to pay Plaintiff and the other
17 class members all wages within any time permissible under California law, including, inter alia,
18 California Labor Code section 204, including earned and unpaid minimum and overtime wages
19 and meal and rest period premiums.

20 44. During the relevant time period, Defendants failed to provide complete or
21 accurate wage statements to Plaintiff and the other class members, including the failure to
22 include the total hours worked and gross wages earned, including earned and unpaid minimum
23 and overtime wages and meal and rest period premiums.

24 45. During the relevant time period, Defendants failed to keep complete or accurate
25 payroll records for Plaintiff and the other class members, including earned and unpaid minimum
26 and overtime wages and meal and rest period premiums.

27 46. During the relevant time period, Defendants failed to reimburse Plaintiff and the
28 other class members for all necessary business-related expenses and costs, including the use of

1 personal phones to conduct Defendants' business.

2 47. During the relevant time period, Defendants failed to properly compensate
3 Plaintiff and the other class members pursuant to California law in order to increase Defendants'
4 profits.

5 48. California Labor Code section 218 states that nothing in Article 1 of the Labor
6 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due
7 to him [or her] under this article."

8 49. Concerning the hourly production line employees, these deficiencies are
9 predicated on the following facts:

10 a. As a food supplier, Defendants require that employees follow health and
11 safety requirements, including wearing hairnets, beardnets, safety glasses,
12 and bump caps, and properly washing their hands before entering the
13 production floor. This resulted in off-the-clock work and the failure to
14 pay minimum wage and overtime. Plaintiff and the other production line
15 employees were required to don and doff their sanitary and protective
16 equipment before clocking in for shifts and after clocking out for shifts to
17 meet health and safety requirements.

18 b. In order to maintain continuous operation during shifts, Plaintiff and the
19 other class members were required to continue working until relief could
20 be provided for their position, regardless of how many hours they had
21 worked, resulting in meal periods and rest breaks being missed or provided
22 untimely.

23 c. When they were provided relief to take a meal period or rest break,
24 Plaintiff and other production line employees were required to perform
25 work during these breaks, including, but not limited to, remaining on-duty
26 by making themselves available to respond to, and actually responding to,
27 work-related phone calls, texts messages, and radio calls, and responding
28 to emergencies in order to keep Defendants' production running as

1 required by Defendants. Plaintiff and the other production line employees
2 did not agree in writing to an on-duty meal period, nor does the nature of
3 the work performed by Plaintiff and the other production line employees
4 prevent them from being relieved of all duties during their meal periods.
5 Thus, Defendants routinely failed to provide off-duty, uninterrupted meal
6 periods to Plaintiff and the other production line employees as a matter of
7 practice in order to maintain productivity.

8 d. Despite requiring Plaintiff and the other production line to use their
9 personal cell phones as a method of communication, Defendants do not
10 reimburse them for being required to use their personal cell phones.

11 50. Concerning the hourly employees generally, these deficiencies are predicated on
12 the following facts:

13 a. Defendants required Plaintiff and the hourly employees to “waive” their
14 second meal period for shifts in excess of ten (10) hours in writing. Such
15 mandatory waivers were not voluntary. After obtaining these “waivers,”
16 Defendants did not provide second meal periods to Plaintiff and the other
17 hourly employees whose shifts exceeded ten (10) hours as required by
18 California law. Plaintiff was never provided the opportunity to take a
19 second meal period for his frequent shifts in excess of ten (10) hours, even
20 when those shifts extended beyond twelve (12) hours making the meal
21 period unwaivable, such as on July 22 and 23, 2014 and October 22, 2014.
22 Plaintiff’s time records show that Plaintiff never recorded a second meal
23 period in a day during the relevant time period, despite frequently working
24 more than ten (10) hours in a day. As a result of Defendants’ policy and
25 practice of not providing second meal periods, Plaintiff and the other class
26 members were denied their right to receive a second off-duty,
27 uninterrupted meal period for shifts in excess of ten (10) hours.

28 b. Defendants utilized a time rounding system that paid employees based on

1 their rounded times, rather than actual hours worked, which consistently
2 benefits Defendants and fails to pay Plaintiff and the other hourly
3 employees minimum wage and overtime. This time rounding applied not
4 only to determine the total number of hours worked in a day, but also to
5 determine whether to provide a meal period premium. This time rounding
6 system therefore resulted in Defendants failing to pay required meal
7 period premiums for shifts where Plaintiff and the other class members
8 worked more than five hours before being provided a meal period.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

11 **(Against MUSCO FAMILY OLIVE CO. and DOES 1 through 100)**

12 51. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 50, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 52. Defendants' conduct, as alleged in this Complaint, has been, and continues to be,
16 unfair, unlawful and harmful to Plaintiff and the other class members, and Defendants'
17 competitors. Accordingly, Plaintiff and the other class members seek to enforce important rights
18 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

19 53. Defendants' activities as alleged herein are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business & Professions
21 Code section 17200, et seq.

22 54. A violation of California Business & Professions Code section 17200, et seq. may
23 be predicated on the violation of any state or federal law. In this instant case, Defendants'
24 policies and practices of requiring employees, including Plaintiff and the other class members,
25 to work overtime without paying them proper compensation violate California Labor Code
26 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
27 including Plaintiff and the other class members, to work through their meal and rest periods
28 without paying them proper compensation violate California Labor Code sections 226.7 and

1 512(a). Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff
2 and the other class members violate California Labor Code sections 201, 202, and 204.
3 Defendants also violated California Labor Code sections 226(a), 1174(d), and 2802.

4 **Failure to Pay Overtime**

5 55. Defendants' failure to pay overtime in violation of the Wage Orders and
6 California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or
7 unfair activity prohibited by California Business & Professions Code section 17200, et seq.

8 **Failing to Provide Meal Periods**

9 56. Defendants' failure to provide legally required meal periods in violation of the
10 Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes
11 unlawful and/or unfair activity prohibited by California Business & Professions Code section
12 17200, et seq.

13 **Failure to Provide Rest Periods**

14 57. Defendants' failure to provide legally required rest periods in violation of the
15 Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful
16 and/or unfair activity prohibited by California Business & Professions Code section 17200, et
17 seq.

18 **Failure to Pay Minimum Wages**

19 58. Defendants' failure to pay minimum wages in violation of the Wage Orders and
20 California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful
21 and/or unfair activity prohibited by California Business & Professions Code section 17200, et
22 seq.

23 **Failure to Timely Pay Wages Upon Termination**

24 59. Defendants' failure to timely pay wages upon termination in violation of
25 California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair
26 activity prohibited by California Business & Professions Code section 17200, et seq.

27 **Failure to Timely Pay Wages During Employment**

28 60. Defendants' failure to timely pay wages during employment in violation of

1 California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity
2 prohibited by California Business & Professions Code section 17200, et seq.

3 **Failure to Provide Compliant Wage Statements**

4 61. Defendants' failure to provide compliant wage statements in violation of
5 California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair
6 activity prohibited by California Business & Professions Code section 17200, et seq.

7 **Failure to Keep Complete or Accurate Payroll Records**

8 62. Defendants' failure to keep complete or accurate payroll records in violation of
9 California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair
10 activity prohibited by California Business & Professions Code section 17200, et seq.

11 **Failure to Reimburse Necessary Business Expenses**

12 63. Defendants' failure to reimburse all necessary business-related expenses and
13 costs in violation of California Labor Code section 2802, as alleged above, constitutes unlawful
14 and/or unfair activity prohibited by California Business & Professions Code section 17200, et
15 seq.

16 64. As a result of the herein described violations of California law, Defendants
17 unlawfully gained an unfair advantage over other businesses.

18 65. Plaintiff and the other class members have been personally injured and continue
19 to be injured by Defendants' unlawful business acts and practices as alleged herein, including,
20 but not necessarily limited to, the loss of money and/or property.

21 66. Pursuant to California Business & Professions Code section 17200, et seq.,
22 Plaintiff and the other class members are entitled to restitution of the wages and other monies
23 wrongfully withheld and retained by Defendants pursuant to California Labor Code sections 510
24 and 1198.

25 67. Pursuant to California Business & Professions Code section 17200, et seq.,
26 Plaintiff and the other class members are entitled to restitution of the wages withheld and retained
27 by Defendants during a period that commences from May 25, 2014; an award of attorneys' fees
28 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an

award of costs.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against MUSCO FAMILY OLIVE CO. and DOES 1 through 100)

68. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 67, and each and every part thereof with the same force and effect as though fully set forth herein.

69. At all times herein set forth, the Private Attorney General Act of 2004 (“PAGA”) was applicable to Plaintiffs’ employment by Defendants.

70. PAGA expressly establishes that any provision of the California Labor Code which 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 a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

71. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

72. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved employee,” who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

73. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

74. Plaintiff and the other non-exempt or hourly-paid production line employees and hourly employees generally are “aggrieved employees” as defined by California Labor Code

1 section 2699, subdivision (c) in that they are all current or former employees of Defendants, and
2 one or more of the alleged violations was committed against them.

3 75. Plaintiff was employed by Defendants and the alleged violations were committed
4 against him during his time of employment and he is therefore, an aggrieved employee. Plaintiff
5 is an “aggrieved employee” as defined by California Labor Code section 2699, subdivision (c).

6 76. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
7 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
8 requirements have been met:

9 a. The aggrieved employee shall give written notice by certified mail
10 (hereinafter “Employee’s Notice”) to the LWDA and the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated, including the facts and theories to support the alleged violations.

13 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
14 employer and the aggrieved employee by certified mail that it does not
15 intend to investigate the alleged violation within sixty (60) calendar days of
16 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
17 Notice, or if the LWDA Notice is not provided within thirty-three (65)
18 calendar days of the postmark date of the Employee’s Notice, the aggrieved
19 employee may commence a civil action pursuant to California Labor Code
20 section 2699 to recover civil penalties in addition to any other penalties to
21 which the employee may be entitled.

22 77. On July 3, 2023, Plaintiff provided written notice by certified mail to the LWDA
23 and to Defendants of the specific provisions of the California Labor Code alleged to have been
24 violated, including the facts and theories to support the alleged violations. A true and correct copy
25 of the notice is attached hereto as Exhibit “A.” Plaintiff has not received any response from the
26 LWDA.

27 78. Plaintiff satisfied the administrative prerequisites under California Labor Code
28 section 2699.3, subdivision (a), to recover civil penalties against Defendants in addition to other

remedies, for the following violations.

Failure to Pay Overtime

79. Defendants' failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes a violation of California Labor Code section 2699.3, et seq.

Failing to Provide Meal Periods

80. Defendants' failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes a violation of California Labor Code section 2699.3, et seq.

Failure to Provide Rest Periods

81. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes a violation of California Labor Code section 2699.3, et seq.

Failure to Pay Minimum Wages

82. Defendants' failure to pay minimum wages in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes a violation of California Labor Code section 2699.3, et seq.

Failure to Timely Pay Wages Upon Termination

83. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes a violation of California Labor Code section 2699.3, et seq.

Failure to Timely Pay Wages During Employment

84. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes a violation of California Labor Code section 2699.3, et seq.

Failure to Provide Compliant Wage Statements

85. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes a violation of California

1 Labor Code section 2699.3, et seq.

2 **Failure to Keep Complete or Accurate Payroll Records**

3 86. Defendants' failure to keep complete or accurate payroll records in violation of
4 California Labor Code section 1174(d), as alleged above, constitutes a violation of California
5 Labor Code section 2699.3, et seq.

6 **Failure to Reimburse Necessary Business Expenses**

7 87. Defendants' failure to reimburse all necessary business-related expenses and
8 costs in violation of California Labor Code section 2802, as alleged above, constitutes a violation
9 of California Labor Code section 2699.3, et seq.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, individually, and on behalf of other members of the general public similarly
12 situated, requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
15 public similarly situated, prays for relief and judgment against Defendants, jointly and severally,
16 as follows:

17 **Class Certification**

- 18 1. That this action be certified as a class action;
19 2. That Plaintiff be appointed as the representative of the Class;
20 3. That counsel for Plaintiff be appointed as Class Counsel; and
21 4. That Defendants provide to Class Counsel immediately the names and most
22 current/last known contact information (address, e-mail and telephone numbers) of all class
23 members.

24 **As to the First Cause of Action**

- 25 5. That the Court declare, adjudge and decree that Defendants violated California
26 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
27 other class members all overtime compensation due to them, failing to provide all meal and rest
28 periods to Plaintiff and the other class members, failing to pay at least minimum wages to

1 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
2 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
3 California Labor Code sections 226(a), 1174(d), and 2802.

4 6. For restitution of unpaid wages to Plaintiff and all the other class members and
5 all pre-judgment interest from the day such amounts were due and payable;

6 7. For the appointment of a receiver to receive, manage and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violation of California Business and Professions Code sections 17200,
9 et seq.;

10 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5;

12 9. For injunctive relief to ensure compliance with this section, pursuant to California
13 Business and Professions Code sections 17200, et seq.; and

14 10. For such other and further relief as the court may deem just and proper.

15 **As to the Second Cause of Action**

16 11. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
17 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each
18 of them, unpaid wages and/or untimely wages according to proof, interest, attorneys' fees and
19 costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against
20 Defendants, and each of them, including but not limited to:

21 a. Penalties under California Labor Code section 2699 in the amount of a
22 hundred dollars (\$100) for each aggrieved employee per pay period for the
23 initial violation, and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation;

25 b. Penalties under California Code of Regulations Title 8 section 11070 in the
26 amount of fifty dollars (\$50) for each aggrieved employee per pay period
27 for the initial violation, and one hundred dollars (\$100) for each aggrieved
28 employee per pay period for each subsequent violation;

1 c. Penalties under California Labor Code section 210 in addition to, and
2 entirely independent and apart from, any other penalty provided in the
3 California Labor Code in the amount of a hundred dollars (\$100) for each
4 aggrieved employee per pay period for the initial violation, and two
5 hundred dollars (\$200) for each aggrieved employee per pay period for
6 each subsequent violation; and

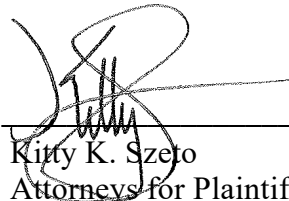
7 d. Any and all additional penalties and sums as provided by the California
8 Labor Code and/or other statutes.

9 12. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
10 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to
11 the Labor and Workforce Development Agency for the enforcement of labor laws and education
12 of employers and employees about their rights and responsibilities and twenty-five percent
13 (25%) to the aggrieved employees; and

14 13. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
15 costs pursuant to California Labor Code sections 2699, 218.5, and 210 and any other applicable
16 statute.

17 Dated: July 3, 2023

PARRIS LAW FIRM

18
19 By: 

20 Kirtly K. Szeto
21 Attorneys for Plaintiff, the Putative Class,
22 and the Aggrieved Employees
23
24
25
26
27
28



43364 10th Street West, Lancaster, CA 93534
Tel: 661 949 2595 Fax: 661 949 7524
www.parrislawyers.com

July 3, 2023

VIA ONLINE & BY CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

Re: *Talaroc v. Musco Family Olive Co.*, San Joaquin Superior Court
Case No. STK-CV-UOE-2018-6189

Dear Representative:

The Parris Law Firm and Lawyers *for* Justice, PC represent Leonil Talaroc in the above-entitled wage-and-hour class action lawsuit (“Action”) against Musco Family Olive Co. (“Musco”). Mr. Talaroc intends to file an amended complaint in the Action to seek penalties against Musco on behalf of the State of California and all other aggrieved employees under the Private Attorneys General Act of 2004 (“PAGA”) based on the factual and legal allegations alleged in this letter. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Musco is a corporation organized and existing under the laws of the State of California and conducts business throughout the State of California. Its corporate offices are located at 17950 Via Nicolo Road, Tracy, California 95377. Musco is represented in the Action by the attorneys at Medina McKelvey LLP located at 925 Highland Pointe Drive, Suite 300, Roseville, California 95678. A copy of this letter will be emailed and mailed to Musco’s attorneys by certified mail in satisfaction of the requirement under California Labor Code section 2699.3(a)(1)(A).

Musco is the leading supplier of table olives at retail stores in the United States. Musco’s facilities in California process, package, label, and ship their olives and other related products to customers.

To facilitate its operations, Musco employs hourly-paid or non-exempt employees in California. Musco employed Mr. Talaroc as an hourly-paid, non-exempt employee in the State of California, County of San Joaquin. Mr. Talaroc worked in the positions of Maintenance Helper, Maintenance Mechanic, Label Line Lead, and Electrician at Musco’s plant in Tracy, California. Each of these positions were production line positions. His base rate of pay began at \$11.00 per hour and ended at \$31.62 per hour. Mr. Talaroc’s job duties included repairing machinery, performing routine maintenance, ensuring production lines continued to run, operating machinery, assisting maintenance employees, assisting other production employees, complying with health and safety requirements, verifying labels, preparing reports, and responding to business-related phone calls/text messages/radio calls.

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PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

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Patricia K. Oliver | Ryan K. Kahl | Jonathan W. Douglass | Eric N. Wilson | Rutger R. Parris | Ryan A. Crist | Lusine V. Coppock
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Of Counsel – Bruce L. Schechter | Daniel Eli

GENERAL ALLEGATIONS

Musco hired Mr. Talaroc and the aggrieved employees, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed meal periods and/or rest breaks.

Mr. Talaroc and the aggrieved employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Musco.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned and for short, late, interrupted, and/or missed meal periods and rest breaks in violation of California law.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco failed to provide Mr. Talaroc and the aggrieved employees all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco failed to relieve Mr. Talaroc and the aggrieved employees of all duties, failed to relinquish control over Mr. Talaroc and the aggrieved employees' activities, failed to permit Mr. Talaroc and the aggrieved employees a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal breaks no later than the end of their tenth hour of work for shifts lasting more than ten (10) hours.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees were entitled to receive all meal periods or payment of one additional hour of pay at Mr. Talaroc and the aggrieved employees' regular rate of pay when a meal period was short, late, interrupted, and/or missed, and they did not receive all meal periods or payment of one additional hour of pay at Mr. Talaroc and the aggrieved employees' regular rate of pay when a meal period was short, late, interrupted, and/or missed.

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Mr. Talaroc is informed and believes, and based thereon alleges, that Musco failed to provide, authorize, and permit Mr. Talaroc and the aggrieved employees to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours and/or three full, uninterrupted, off-duty rest periods for every shift lasting ten (10) to fourteen (14) hours, and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees were entitled to receive all rest periods or payment of one additional hour of pay at Mr. Talaroc and the aggrieved employees' regular rate of pay when a rest period was short, late, interrupted, and/or missed, and they did not receive all rest periods or payment of one additional hour of pay at Mr. Talaroc and the aggrieved employees' regular rate of pay when a rest period was short, late, interrupted, and/or missed. Mr. Talaroc is informed and believes, and based thereon alleges, that Musco have had a policy and practice of not paying rest period premiums for rest periods that were short, late, interrupted, or missed.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees who have separated from their employment with Musco were entitled to receive all wages owed to them upon discharge or resignation, including the earned and unpaid overtime and minimum wages and meal and rest period premiums discussed above, and they did not, in fact, receive all such wages owed to them at the time of their discharge or resignation and have not received all such wages to date.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees were entitled to receive all wages owed to them during their employment. Mr. Talaroc and the aggrieved employees did not receive payment of all wages, including the earned and unpaid overtime and minimum wages and meal and rest period premiums discussed above, within any time permissible under California Labor Code section 204 and have not received all such wages to date.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and accurate wage statements from Musco. The deficiencies included, *inter alia*, the failure to include the accurate total number of hours worked by Mr. Talaroc and the aggrieved employees, including work required to be performed off-the-clock, and the total gross wages actually earned, including off-the-clock work and meal and rest period premiums.

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Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Musco had to keep complete and accurate payroll records for Mr. Talaroc and the aggrieved employees in accordance with California law, but, in fact, did not keep complete and accurate payroll records reflecting the accurate number of hours worked and wages owed to Mr. Talaroc and the aggrieved employees. The payroll records did not reflect the work required to be performed off-the-clock or the wages earned during off-the-clock work and short/late/interrupted/missed meal and rest periods.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that Mr. Talaroc and the aggrieved employees were entitled to reimbursement for necessary business-related expenses, including the use of personal cell phones to respond to business-related phone calls and text messages, such as calls regarding scheduling and maintenance from supervisors while off-the-clock in order to ensure coverage so that production could be maintained. Mr. Talaroc and the aggrieved employees were required to use their personal phones but were not reimbursed for the associated costs in accordance with California law.

Mr. Talaroc is informed and believes, and based thereon alleges, that Musco knew or should have known that they had a duty to compensate Mr. Talaroc and the aggrieved employees pursuant to California law, and that Musco had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Mr. Talaroc and the aggrieved employees that they were properly denied wages, all in order to increase Musco's profits.

During the relevant time period, Musco failed to pay overtime wages to Mr. Talaroc and the aggrieved employees for all overtime hours worked. Mr. Talaroc and the aggrieved employees were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation for all overtime hours worked, including work that was required to be performed off-the-clock.

During the relevant time period, Musco failed to provide all requisite timely, uninterrupted, off-duty meal and rest periods to Mr. Talaroc and the aggrieved employees.

During the relevant time period, Musco failed to pay Mr. Talaroc and the aggrieved employees at least minimum wages for all hours worked, including work that was required to be performed off-the-clock.

During the relevant time period, Musco failed to pay Mr. Talaroc and the aggrieved employees all wages owed to them upon discharge or resignation, including earned and unpaid minimum and overtime wages and meal and rest period premiums.

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During the relevant time period, Musco failed to pay Mr. Talaroc and the aggrieved employees all wages within any time permissible under California law, including, inter alia, California Labor Code section 204, including earned and unpaid minimum and overtime wages and meal and rest period premiums.

During the relevant time period, Musco failed to provide complete or accurate wage statements to Mr. Talaroc and the aggrieved employees, including the failure to include the total hours worked and gross wages earned, including earned and unpaid minimum and overtime wages and meal and rest period premiums.

During the relevant time period, Musco failed to keep complete or accurate payroll records for Mr. Talaroc and the aggrieved employees, including earned and unpaid minimum and overtime wages and meal and rest period premiums.

During the relevant time period, Musco failed to reimburse Mr. Talaroc and the aggrieved employees for all necessary business-related expenses and costs, including the use of personal phones to conduct Musco's business.

During the relevant time period, Musco failed to properly compensate Mr. Talaroc and the aggrieved employees pursuant to California law in order to increase Musco's profits.

California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

Concerning the aggrieved employees, these deficiencies are predicated on the following facts:

- a. As a food supplier, Musco require that employees follow health and safety requirements, including wearing hairnets, beardnets, safety glasses, and bump caps, and properly washing their hands before entering the production floor. This resulted in off-the-clock work and the failure to pay minimum wage and overtime. Mr. Talaroc and the aggrieved employees were required to don and doff their sanitary and protective equipment before clocking in for shifts and after clocking out for shifts to meet health and safety requirements.
- b. In order to maintain continuous operation during shifts, Mr. Talaroc and the aggrieved employees were required to continue working until relief could be provided for their position, regardless of how many hours they had worked, resulting in meal periods and rest breaks being missed or provided untimely.

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- c. When they were provided relief to take a meal period or rest break, Mr. Talaroc and the aggrieved employees were required to perform work during these breaks, including, but not limited to, remaining on-duty by making themselves available to respond to, and actually responding to, work-related phone calls, texts messages, and radio calls, and responding to emergencies in order to keep Musco's production running as required by Musco. Mr. Talaroc and the aggrieved employees did not agree in writing to an on-duty meal period, nor does the nature of the work performed by Mr. Talaroc and the aggrieved employees prevent them from being relieved of all duties during their meal periods. Thus, Musco routinely failed to provide off-duty, uninterrupted meal periods to Mr. Talaroc and the aggrieved employees as a matter of practice in order to maintain productivity.
- d. Despite requiring Mr. Talaroc and the aggrieved employees to use their personal cell phones as a method of communication, Musco do not reimburse them for being required to use their personal cell phones.
- e. Musco required Mr. Talaroc and the aggrieved employees to "waive" their second meal period for shifts in excess of ten (10) hours in writing. Such mandatory waivers were not voluntary. After obtaining these "waivers," Musco did not provide second meal periods to Mr. Talaroc and the aggrieved employees whose shifts exceeded ten (10) hours as required by California law. Mr. Talaroc was never provided the opportunity to take a second meal period for his frequent shifts in excess of ten (10) hours, even when those shifts extended beyond twelve (12) hours making the meal period unwaivable, such as on July 22 and 23, 2014 and October 22, 2014. Mr. Talaroc's time records show that Mr. Talaroc never recorded a second meal period in a day during the relevant time period, despite frequently working more than ten (10) hours in a day. As a result of Musco's policy and practice of not providing second meal periods, Mr. Talaroc and the aggrieved employees were denied their right to receive a second off-duty, uninterrupted meal period for shifts in excess of ten (10) hours.
- f. Musco utilized a time rounding system that paid employees based on their rounded times, rather than actual hours worked, which consistently benefits Musco and fails to pay Mr. Talaroc and the aggrieved employees minimum wage and overtime. This time rounding applied not only to determine the total number of hours worked in a day, but also to determine whether to provide a meal period premium. This time rounding system therefore resulted in Musco failing to pay required meal period premiums

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

for shifts where Mr. Talaroc and the aggrieved employees worked more than five hours before being provided a meal period.

Musco has violated and/or continues to violate California Labor Code section 2698, *et seq.* Musco's policies and practices of requiring employees, including Mr. Talaroc and the other aggrieved employees, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Musco's policies and practices of requiring employees, including Mr. Talaroc and the other aggrieved employees, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Musco's policies and practices of failing to timely pay wages to Mr. Talaroc and the other aggrieved employees violate California Labor Code sections 201, 202, and 204. Musco also violated California Labor Code sections 226(a), 1174(d), and 2802.

Failure to Pay Overtime

Musco's failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

Failing to Provide Meal Periods

Musco's failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

Failure to Provide Rest Periods

Musco's failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

Failure to Pay Minimum Wages

Musco's failure to pay minimum wages in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

Failure to Timely Pay Wages Upon Termination

Musco's failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

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Failure to Timely Pay Wages During Employment

Musco's failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

Failure to Provide Compliant Wage Statements

Musco's failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

Failure to Keep Complete or Accurate Payroll Records

Musco's failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

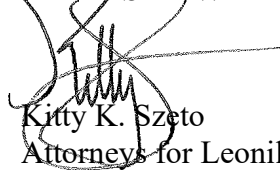
Failure to Reimburse Necessary Business Expenses

Musco's failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code section 2802, as alleged above, constitutes a violation of California Labor Code section 2698, *et seq.*

* * *

In light of the above, Mr. Talaroc seeks, on behalf of the State of California and all aggrieved employees, all applicable penalties related to the above-mentioned 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.

PARRIS LAW FIRM



Kitty K. Szeto
Attorneys for Leonil Talaroc

cc: Musco Family Olive Co. (via U.S. Certified Mail)
Timothy B. Nelson, Esq. (tim@medinamckelvey.com)
MEDINA MCKELVEY LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

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PROOF OF SERVICE

1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 43364 10th Street West, Lancaster, California 93534.

On September 7, 2023, I served the foregoing document described as **SIXTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** as follows:

Alexander M. Medina, Esq.
alex@medinamckelvey.com

*Counsel for Defendant Musco Family
Olive Co.*

Timothy B. Nelson, Esq.
tim@medinamckelvey.com

Doug Leach, Esq.
doug@medinamckelvey.com

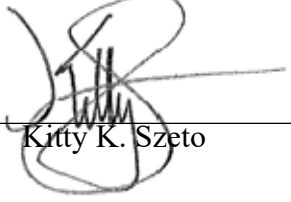
Samantha Shapiro
samantha@medinamckelvey.com

MEDINA MCKELVEY LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678
Telephone: (916) 960-2211
Facsimile: (916) 742-5488

[X] **BY ELECTRONIC SERVICE as follows:** Based on an agreement of the parties to accept personal service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.

Executed on September 7, 2023, at Lancaster, California.

[X] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Kitty K. Szeto