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EL DORADO CO. SUPERIOR CT.
FILED SEP 06 2023
BY ________ Deputy

Attorneys for Plaintiff ERIC WEXELMAN, as an individual and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF EL DORADO

ERIC WEXELMAN, as an individual and on behalf of all similarly situated employees, Plaintiffs, vs. J.S. WEST MILLING COMPANY; and DOES 1-50, inclusive, Defendants.	Case No.: 23CV1510 **CLASS ACTION** **COMPLAINT FOR DAMAGES** 1. Violation of Cal. Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2 (Recovery of Unpaid Minimum Wage and Overtime); 2. Violation of Cal. Labor Code §§ 226.7 and 512, IWC Wage Order No. 9 (Meal Period Violations); 3. Violation of Cal. Labor Code § 226.7 and IWC Wage Order No. 9 (Rest Period Violations); 4. Violation of Cal. Labor Code § 226, subds. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements; 5. Violation of Cal. Labor Code § 2802 (Failure to Reimburse for Necessary Business Expenditures); 6. Violation of Cal. Labor Code §§ 201–203 (Failure to Pay Wages Due at Separation of Employment); and 7. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices). **DEMAND FOR JURY TRIAL**

BY FAX

Plaintiff, ERIC WEXELMAN ("Plaintiff"), individually, and on behalf of all others similarly situated, complains and alleges on information and belief as follows:

INTRODUCTION

1. This is a class action brought on behalf of Plaintiff and the class he seeks to represent ("Plaintiff Class" or "Class Members"). Plaintiff Class consists of all non-exempt, hourly-paid employees, currently and/or formerly employed by Defendant J.S. West Milling Company ("Defendant") in the State of California during the Class Period. The term "Class Period" is defined as four (4) years prior to the filing of the initial complaint in this action through judgment. Plaintiff reserves the right to amend this complaint to reflect a different "Class Period" as further discovery is conducted.

2. Plaintiff, individually, and on behalf of Plaintiff Class, seeks relief against Defendant, for Defendant's practices of violating the applicable Industrial Welfare Commission Wage Order, Code of Regulations, and California Labor Codes, including: (1) Violation of Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2 for Recovery of Unpaid Minimum Wage, Overtime, and Double Time, (2) Violation of Labor Code §§ 226.7 and 512 for Meal Period Violations, (3) Violation of Labor Code § 226.7 for Rest Period Violations, (4) Violation of Labor Code § 226 for Failure to Issue Accurate Itemized Wage Statements, (5) Violation of Cal. Labor Code § 2802 for Failure to Reimburse for Necessary Business Expenditures, (6) Violation of Labor Code §§ 201, 202, and 203 for Failure to Pay Wages Due at Separation of Employment, and (7) Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. for Unfair Business Practices. These violations concern current and past employees of Defendant.

3. At all relevant times herein, Defendants have consistently maintained and enforced against Plaintiff Class the unlawful practices and policies set forth herein.

JURISDICTION AND VENUE

4. Venue is proper in this judicial district and the County of El Dorado, pursuant to the California Code of Civil Procedure, sections 395 and 395.5, because the acts that give rise to the causes of action alleged herein occurred in this county.

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5. This Court has personal jurisdiction over Defendant because Defendant resides in, is incorporated in, has its main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California, and more specifically, in the County of El Dorado. (Code Civ. Proc. § 410.10.)

6. The California Superior Court has jurisdiction over this matter because the individual claims are under the seventy-five thousand dollar ($75,000.00) individual jurisdictional threshold and the five million dollar ($5,000,000.00) aggregate jurisdictional threshold for federal court; and upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State of California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, California Rules of Court, and the Business & Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this matter.

ADMINISTRATIVE PREREQUISITE

7. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under the Private Attorneys General Act ("PAGA") only after giving notice to the Labor and Workforce Development Agency ("LWDA") and the employer of the alleged Labor Code violations, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without notice from the LWDA.

8. Prior to filing this complaint, Plaintiff Eric Wexelman gave written notice on September 5, 2023, by electronic filing to the LWDA and by certified mail to Defendant, of the specific provisions alleged to have been violated by Defendant, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. Plaintiff was given an LWDA case number of LWDA-CM-979780-23. Attached herein as Exhibit A is a true and correct copy of Plaintiff's original notice provided to the LWDA on September 5, 2023.

9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(c), "[n]otwithstanding any other provision, a plaintiff may as a matter of right amend an existing complaint to add a

cause of action arising under this part at any time within 60 days of the time periods specified in this part." Accordingly, Plaintiff intends to amend this complaint upon the expiration of the sixty-five (65) day period for the LWDA to provide notice of its intent to investigate Plaintiff's claims.

THE PARTIES

Plaintiff

10. Plaintiff was employed by Defendant from on or about February 8, 2022 until on or about September 7, 2022 at Defendant's Placerville, California location. At all relevant times herein, Plaintiff was employed by Defendant in a non-exempt, hourly position as a propane truck driver, and was entitled to compensation for all hours worked, including overtime compensation, and penalties from Defendant. Plaintiff was employed by Defendant within the four (4) years prior to the commencement of this action.

11. Each of the Plaintiff Class consists of identifiable, current, and/or former similarly situated persons who were employed by Defendant in California during the Class Period.

Defendant

12. Plaintiff is informed and believes, and thereupon alleges, that Defendant J.S. West Milling Company is a California corporation propane supplier service whose facilities are located throughout Northern California, with their principal place of business in Modesto, California, and was the employer of Plaintiff. On information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in California, and at all times herein mentioned has regularly conducted business in the State of California.

13. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief, alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when that information is ascertained.

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14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint venture and/or single business enterprise, integrated enterprise, and/or are agents of one another, are alter egos, joint employers, and conspire with one another to increase profits by engaging in the conduct described in this complaint.

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

FACTUAL ALLEGATIONS

16. Plaintiff and Plaintiff Class are, and at all times relevant herein, have been non-exempt employees within the meaning of the California Labor Code, and the applicable California Wage Order of the Industrial Welfare Commission. Defendant is, and at all times relevant herein, has been an "employer" within the meaning of state law and the applicable California Wage Order of the Industrial Welfare Commission.

17. Defendant owns and operates a propane supplier service with locations throughout Northern California. Plaintiff and Class Members were employees of the business and Plaintiff worked primarily as a propane truck driver from on or about February 8, 2022 until on or about September 7, 2022.

18. During the Class Period, Defendant was required to pay Plaintiff and Class Members overtime compensation for any and all hours in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.

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19. Defendant required Plaintiff and Class Members to arrive to work approximately thirty (30) minutes early and perform preparatory work prior to clocking in for their shift each workday. Specifically, Plaintiff and Class Members were required to input the addresses of all the stops on their delivery route into MapQuest to generate the order of the stops on their route that day. Plaintiff and Class Members were required to perform this task prior to clocking in for the day in order to reach their stops on time and complete enough stops for the day so as to avoid disciplinary action from Defendant.

20. Defendant also required Plaintiff and Class Members to continue working for approximately thirty (30) minutes each workday after clocking out for their shift. Specifically, Plaintiff and Class Members did not receive the following day's schedule until they had clocked out for the day and were then required to call customers on the following day's route to schedule and/or confirm delivery times. Plaintiff and Class Members were not permitted to make these calls while still on the clock as Defendant was adamant they not record overtime hours, regardless of how many hours they actually worked.

21. Plaintiff and Class Members regularly worked eight (8) hours in a workday. Accordingly, the aforementioned unpaid hours are compensable at the applicable overtime wage rate.

22. During the Class Period, Defendant was required to permit Plaintiff and Class Members to take one (1) uninterrupted thirty (30) minute meal period prior to the sixth (6th) hour of work. A second meal period of not less than thirty (30) minutes is required if an employee works more than ten (10) hours in a workday. Defendant was also required to permit Plaintiff and Class Members to take one (1) ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

23. Due to the work requirements and demands of the Defendant, Plaintiff and Class Members were unable to take timely meal periods and the rest periods to which they were entitled. Defendant failed to implement meal and rest break policies and prioritized work responsibilities over providing requisite meal and rest breaks to Plaintiff and Class Members.

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24. Plaintiff and Class Members were instructed by Defendant to take a thirty-minute paid meal period every day and were further instructed by Defendant that they were required to remain within fifty feet of their work truck during their meal period. Thus, Plaintiff and Class Members were not relieved of all duties during their meal period and were not compensated with premium pay as required by law.

25. Plaintiff and Class Members were unable to take meal periods due the workload and demands of Defendant. Plaintiff and Class Members were assigned a delivery route every day and, if they failed to complete enough stops on the route, they were subject to verbal and/or written disciplinary warnings from Defendant. In order to comply with Defendant's demands and requirements, Plaintiff and Class Members were required to forego meal periods and, instead, eat their meal while they were driving.

26. At the end of their shift, Mr. Wexelman and aggrieved employees were required to sign an attestation that they took their meal period and, if they did not sign, they were unable to clock out for the day.

27. Due to the workload and demands of Defendant, and the delivery route requirements mentioned above, Plaintiff and Class Members were precluded from taking rest periods. Defendant failed to authorize and permit rest periods and, in fact, never informed Plaintiff and Class Members that they were entitled to a ten (10) minute rest period for every four hours, or major fraction thereof, worked.

28. When Plaintiff and Class Members were prevented from taking compliant meal and rest periods, Defendant failed to compensate with a premium pay for every missed meal period and failed to compensate with a premium pay on all workdays on which one or more rest periods were missed.

29. During the Class Period, Defendant was required to provide Plaintiff and Class Members with complete and accurate wage statements.

30. As discussed above, Plaintiff and Class Members were not paid for all hours worked. Specifically, they were not compensated for the estimated thirty (30) minutes they spent each day working before their shift or for the estimated thirty (30) minutes they sent each day

working after the conclusion of their shift. Further, Plaintiff and Class Members were not paid premium pay for all meal and rest periods not taken.

31. Accordingly, Plaintiff and Class Members were provided inaccurate wage statements as they omitted the aforementioned hours of work and rates of pay. Therefore, Defendant furnished Plaintiff and Class Members wage statements with an inaccurate number of hours worked, inaccurate gross and net wages, and inaccurate corresponding number of hours worked at each hourly rate.

32. During the Class Period, Defendant was required to reimburse Plaintiff and Class Members for any and all necessary business expenditures.

33. Defendant required Plaintiff and Class Members to wear work uniforms bearing Defendant's name and logo. However, Defendant required Plaintiff and Class Members to wash and maintain said work uniforms on their own time and at their own expense. Plaintiff and Class Members washed their work uniforms separate from their regular everyday clothes as their work uniforms were regularly soiled with grease and oil stains due the nature of their work filling propane tanks.

34. Defendant failed or refused to reimburse Plaintiff and Class Members for the cost of washing their work uniforms or for the time spent doing so.

35. At the time of Plaintiff's and certain Class Members' separation from employment, Defendant was required to compensate Plaintiff and Class Members for all wages earned and owed.

36. Defendant failed to compensate Plaintiff and Class Members for all wages owed at the time their employment ended as Plaintiff and Class Members were not compensated for all hours worked, nor at the proper overtime wage rates for applicable hours and they were owed as much at the time their employment ended. Plaintiff and Class Members were also owed compensation in the form of premium pay for the times they did not receive compliant meal and rest periods as well as reimbursements for necessary business expenditures.

37. Plaintiff and Class Members are owed regular wages, overtime wages, premium payments, reimbursements, and waiting time penalties.

CLASS ALLEGATIONS

38. Plaintiff brings this action on behalf of himself and all other similarly situated persons, as a class action pursuant to California Code of Civil Procedure section 382.

39. Plaintiff's proposed class consists of and is defined as follows: all individuals who worked for Defendant in a California location at a time during the period from four years prior to the filing of the initial complaint through the date of judgment ("Class Period").

40. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend or modify the class description(s) with greater specificity or further division into subclasses or limitation to particular issues.

41. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and because the proposed class is easily ascertained by Defendant's personnel and payroll records.

Numerosity

42. The potential members of the class as defined are so numerous that joinder of all class members is impracticable. While the precise number of the Plaintiff Class is unknown, Plaintiff is informed and believes that Defendant has employed more than three hundred (300) employees during the Class Period.

Commonality

43. There are common questions of law and fact arising out of Defendant's conduct, as described herein, including, but not limited to:

a. Whether Defendant failed to pay all wages, including minimum and overtime wages earned and due to Plaintiff and Class Members;

b. Whether Defendant failed, and continues to fail, to provide compliant meal periods to Plaintiff and Class Members;

c. Whether Defendant failed, and continues to fail, to authorize and permit Plaintiff and Class Members to take rest periods;

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d. Whether Defendant failed, and continues to fail, to provide Plaintiff and Class Members wage statements containing all information required by Labor Code section 226(a);

e. Whether Defendant failed, and continues to fail, to reimburse Plaintiff and Class Members for necessary business expenditures, specifically the cost of, and time spent, washing and maintaining their work uniforms;

f. Whether Defendant failed to pay Plaintiff and Class Members all wages earned during the course of their employment upon separation; and

g. Whether Defendant engaged in unfair or unlawful business practices.

Typicality

44. The claims of the Plaintiff are typical of the claims of the Class, all of whom have incurred and/or will incur damages, as a result of Defendant's common course of conduct and common policies and practices. The claims of Plaintiff are typical because Defendant subjected all of its non-exempt employees to the identical violations of the California Industrial Welfare Commission Wage Orders, California Code of Regulations, California Labor Code, and California Business & Professions Code.

Adequacy of Representation

45. The Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's attorneys are competent, well-versed, and experienced in litigating employment class actions and other complex litigation matters.

Superiority

46. Under the facts and circumstances set forth above, a class action is superior to any other method available for both the fair and efficient adjudication of the rights of each Class Member. Joinder of individual and relatively small claims of Class Members is not practical, and if each employee were required to file an individual lawsuit, the corporate defendant would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Class Member to pursue an

individual remedy would also discourage the assertion of lawful claims by employees fearful of retaliation and permanent damage to their careers at present and/or subsequent employment. Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendant herein further support class certification.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2)

(Plaintiff Against All Defendants)

47. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

48. Pursuant to Labor Code § 1182.12, notwithstanding any other provision of the Labor Code, hourly minimum wage rates are set for all industries according to statute. Labor Code section 1194 requires that employers pay employees no less than minimum wage for each hour worked.

49. Labor Code section 510, subdivision (a), mandates that any work in excess of eight (8) hours in a workday and any work in excess of forty (40) hours in a workweek be compensated at a rate of no less than one and one-half times the regular rate of pay. Also, that any work in excess of twelve (12) hours in a workday be compensated at a rate twice the regular rate of pay.

50. Defendant scheduled Plaintiff and Class Members to regularly work eight (8) hours in a workday and over forty (40) hours each week. However, Defendant required Plaintiff and Class Members to arrive to work thirty (30) minutes early to prepare for their shift without pay. Defendant also required Plaintiff and Class Members to stay thirty (30) minutes after their shift to prepare for the following workday.

51. Pursuant to Labor Code sections 1194, subdivision (a), and 1194.2, an employee receiving less than the legal minimum wage or overtime wage is entitled to recover in a civil action the amount of unpaid wages, attorney fees, costs of suit, and liquidated damages in an amount equal to the unlawfully unpaid wages and interest thereon.

52. Pursuant to Labor Code sections 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum, overtime, and double time wages which they earned and accrued four (4) years prior to filing this complaint, according to proof.

53. Additionally, Plaintiff and Plaintiff Class are entitled to liquidated damages pursuant to Labor Code section 1194.2, attorney fees and costs pursuant to California Labor Code sections 218.5 and 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7 and 512)

(Plaintiff Against All Defendants)

54. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

55. Labor Code sections 226.7 and 512, and the Industrial Welfare Commission (IWC) Wage Orders provide that no employer shall employ any person for a work period of more than five (5) hours without providing an uninterrupted meal period of at least thirty (30) minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided. The IWC Wage Order requires the employer to relieve employees of all duties for meal periods. If an employer fails to relieve employees of all work duties for meal periods, the meal period is considered "on duty" and in order to be legally compliant an employer must establish the criteria for an on-duty meal period.

56. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal periods. Defendants failed to schedule Plaintiff and Class Members in such a manner as to ensure provision of proper meal periods. Further, Defendant failed to relieve Plaintiff and Class Members of all work duties to take their meal periods, requiring them instead to remain within fifty (50) feet of their work truck during their meal period. Moreover, on the days that Plaintiff and Class Members worked in excess of ten (10) hours, they were not provided a second meal

period as required by law.

57. Defendant failed to provide premium compensation of one (1) hour of regular pay to Plaintiff and Class Members for their missed or late meal periods as required by law. As such, Defendant intentionally and improperly denied compliant meal periods to Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512, and the IWC Wage Order.

58. At all relevant times hereto, Plaintiff and Class Members worked more than five (5) hours in a workday. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed or untimely meal period, in an amount according to proof at trial.

59. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of meal period compensation which they are owed beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorney fees and costs incurred by them in this action.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(Plaintiff Against All Defendants)

60. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

61. Labor Code section 226.7 and the IWC Wage Orders require that employers allow all employees a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that at a required rest period is not provided.

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62. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest periods. Defendant failed to schedule Plaintiff and Class Members in such a manner as to ensure provision of proper rest periods and make available rest periods and failed to relieve employees from all work duties thereby preventing employees from taking the requisite rest periods. Defendant had a policy and/or practice of not permitting Plaintiff and Class Members to take any rest periods because Defendant did not want Plaintiff and Class Members to fall behind with their work. Thus, Defendant denied Plaintiff and Class Members their lawfully required rest periods resulting in Plaintiff and Class Members being forced to work during rest periods and forego them altogether.

63. Further, Defendant failed to provide premium compensation of one (1) hour of regular pay to Plaintiff and Class Members for each day a rest period was missed as required by law. As such, Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in violation of Labor Code section 226.7 and the IWC Wage Order.

64. Throughout the Class Period, Plaintiff and Plaintiff Class worked more than three and one-half (3 ½) hours per shift with no rest breaks. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each workday in which a rest period was missed, in an amount according to proof at trial.

65. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of rest period compensation which they are owed beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorney fees and costs incurred by them in this action.

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

(Plaintiff Against All Defendants)

66. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

67. Labor Code section 226, subdivision (a), requires that "at the time of each payment of wages," employers furnish employees with "an accurate itemized statement" that includes, *inter alia*, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

68. Defendant knowingly and intentionally failed to provide Plaintiff and Class Members wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate number of total hours worked, inaccurate net wages earned, and an inaccurate number of hours worked at each hourly rate.

69. As discussed above, Plaintiff and Class Members were required to work through their meal and rest periods, entitling them to premium compensation which was missing from their wage statements. Defendant also failed to include on Plaintiff and Class Members' wage statements the time they were required to perform work duties before and after their shift.

70. Consequently, Plaintiff and Class Members' wage statements reflected an inaccurate number of total hours worked, an inaccurate number of hours worked at each hourly rate, and inaccurate gross and net wages earned.

71. Pursuant to Labor Code section 226, subsection (e)(2)(A)(B), "[a]n employee is deemed to suffer injury…if the employer fails to provide a wage statement [and] an employee is deemed to suffer injury if the employer failed to provide accurate and complete information as required." Labor Code section 226, subdivision (e)(1), provides that employees suffering injury as a result of the employers failure to comply with section 226, subsection (a), are "entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which

a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." Because Defendant furnished inaccurate and incomplete wage statements, and at times refused to furnish wage statements at all, Plaintiff and Class Members are entitled to penalties, attorney fees, and costs pursuant to Labor Code sections 2699, subdivisions (f)(2) and (g)(1), and section 226, subdivision (e)(1), and prejudgment interest.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES

(Labor Code § 2802)

(Plaintiff Against All Defendants)

72. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

73. Labor Code section 2802, subdivision (a) provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

74. Plaintiff and Class Members were required by Defendant to wear work uniforms bearing Defendant's name and logo. However, Plaintiff and Class Members were required wash and maintain their work uniforms on their own time and at their own expense.

75. Because Plaintiff and Class Members were acting in obedience to directions from Defendant when they spent time washing and maintaining their work uniforms, Defendant is required to reimburse Plaintiff and Class Members for the costs thereof.

76. Plaintiff individually, and on behalf of Plaintiff Class, requests reimbursement for necessary business expenditures, as well as attorney fees and costs, any assessment of civil penalties, and prejudgment interest in a sum provided by law pursuant to Labor Code section 2802, subdivisions (b), (c), and (d).

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SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT

(Labor Code §§ 201–203)

(Plaintiff Against All Defendants)

77. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

78. At the time that Plaintiff and any of the Class Members' employment ended, they were entitled to timely compensation of regular, overtime, and double time wages for all hours worked, premium compensation for all missed meal and rest periods, and reimbursement for necessary business expenditures.

79. At the cessation of Plaintiff and certain Class Members' employment, Defendants failed or refused to compensate Plaintiff and certain Class Members for all hours worked, any missed meal or rest periods, and necessary business expenditures.

80. Pursuant to Labor Code section 203, subdivision (a), "[i]f an employer willfully fails to pay … any wages of any employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

81. Plaintiff and members of the Plaintiff Class whose employment was terminated within four (4) years prior to the filing of this complaint are entitled to thirty (30) days of pay at their regular hourly rate as waiting time penalties.

82. Plaintiff individually, and on behalf of the Plaintiff Class, requests compensation for all wages owed, as well as the assessment of any civil penalties in a sum provided by law pursuant to Labor Code sections 201, subdivision (a), and 203, subdivisions (a) and (b).

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SEVENTH CAUSE OF ACTION

UNFAIR/UNLAWFUL BUSINESS PRACTICES

(Business and Professions Code §§ 17200 et seq.)

(Plaintiff Against All Defendants)

83. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

84. Business and Professions Code section 17200 prohibits unfair competition by way of unlawful, unfair, or fraudulent business acts or practices. Business and Professions Code section 17204 allows "a person who has suffered injury in fact and has lost money or property as a result of the unfair competition" to prosecute a civil action for violation of the Business and Professions Code.

85. Pursuant to Labor Code section 90.5, subdivision (a), it is the policy of California to "vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions…and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards."

86. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, and the provisions of the applicable IWC Wage Order.

87. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code sections 17200 *et seq*.

88. As a result of these unlawful, unfair, and fraudulent business practices, Plaintiff, on information and belief, alleges that Defendant is able to unfairly compete with, and gained an unfair advantage over, other comparable companies in the State of California in violation of

Business and Professions Codes 17200 *et seq*.

89. Plaintiff is informed and believes, and thereon alleges, that Defendant performed the unlawful, unfair, and fraudulent business practices with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiff, Class Members, competing propane supplier services in the State of California, and the general public.

90. Plaintiff's success in this action will enforce important rights affecting the public interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf of himself.

91. Business and Professions Code sections 17203 provides that "[t]he court may make such orders or judgments…as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition." Injunctive relief is necessary and appropriate to prevent Defendant from repeating their unlawful, unfair, and fraudulent business acts and practices alleged above.

92. Business and Professions Code section 17203 provides that the Court may "restore to any person in interest any money or property…which may have been acquired by means of such unfair competition." Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods and other losses alleged herein, during the four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to Business and Professions Code section 17205.

93. Business and Professions Code section 17202 provides: "Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

94. Plaintiff requests injunctive relief pursuant to Business and Professions Code section 17203 to enjoin Defendant from continuing the unfair and unlawful business practices alleged herein.

95. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to pay attorney fees from the recovery in this action. Attorney fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and others.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
2. The Court appoint Plaintiff as Class Representative;
3. The Court appoint Mahoney Law Group, APC as class counsel;
4. For compensatory and statutory damages;
5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful and unfair business practices of Defendant;
6. For injunctive relief;
7. For statutory and civil penalties according to proof;
8. For reasonable attorney fees and costs pursuant to Labor Code section 226, subdivision (e), section 218.5, 2802(c), and section 1194; Code of Civil Procedure section 1021.5, and other applicable laws and statutes; and
9. That the Court award such other and further relief as this Court may deem appropriate.

Dated: September 6, 2023

MAHONEY LAW GROUP, APC

Theriault

Katherine J. Odenbreit, Esq.
Laura Theriault, Esq.
Attorneys for Plaintiff ERIC WEXELMAN, individually and on behalf of all similarly situated employees.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all Class Members, hereby demands a jury trial on all causes of action and claims with respect to which they have a right to a jury trial.

Dated: September 6, 2023

MAHONEY LAW GROUP, APC

Katherine J. Odenbreit, Esq.
Laura Theriault, Esq.
Attorneys for Plaintiff ERIC WEXELMAN, individually and on behalf of all similarly situated employees.

EXHIBIT A

MAHONEY
LAW GROUP, APC

Laura Theriault, Esq.
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562.590.8400 Facsimile
ltheriault@mahoney-law.net

September 5, 2023

Via Certified Electronic Mail
LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL # *7019 0700 0001 7488 3515*
Return Receipt Requested
J.S. West Milling Company
501 9th Street
Modesto, CA 95354

VIA CERTIFIED MAIL # *7019 0700 0001 7488 3522*
Return Receipt Requested
Amanda Silva – Agent for Service of Process
501 9th Street
Modesto, CA 95354

Re: Eric Wexelman v. J.S. West Milling Company

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2698 ET SEQ.

To: Labor and Workforce Development Agency; J.S. West Milling Company

From: Eric Wexelman, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Eric Wexelman ("Mr. Wexelman"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other Aggrieved Employees.

Theories of Labor Code Violations and Remedies

J.S. West Milling Company ("J.S. West" or "Employer") is a California corporation. Mr. Wexelman began working for J.S. West on or about February 8, 2022 until on or about September 7, 2022.

Mr. Wexelman alleges that J.S. West violated various sections of the Labor Code, including sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802 by:

a) failing to pay Mr. Wexelman and aggrieved employees all wages owed, including overtime wages,
b) failing to provide Mr. Wexelman and aggrieved employees with compliant meal periods or premium compensation in lieu thereof,
c) failing to provide Mr. Wexelman and aggrieved employees with rest periods or premium compensation in lieu thereof,
d) failing to provide Mr. Wexelman and aggrieved employees with accurate itemized wage statements and failing to maintain accurate payroll records,
e) failing to reimburse Mr. Wexelman and aggrieved employees for necessary business expenditures, and
f) failing to pay all wages earned and owed upon termination or separation of employment.

Mr. Wexelman and the similarly aggrieved employees are identifiable current, and/or former hourly non-exempt employees who worked for J.S. West in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Mr. Wexelman and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."
Labor Code section 510, subdivision (a), provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek … shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

Employer failed to compensate Mr. Wexelman and aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Employer required Mr. Wexelman and aggrieved employees to arrive to work early and perform preparatory work for approximately thirty minutes before clocking in for their shift. Specifically, before clocking in for the day, Mr. Wexelman and aggrieved employees were required to prepare for their workday by entering the addresses for all the stops on their route into MapQuest to get the order of their route. Mr. Wexelman and aggrieved employees could not perform this task after clocking in because it would delay their arrival at certain stops and/or cause them to miss stops which would result in disciplinary action from Employer.

Similarly, Mr. Wexelman and aggrieved employees were required to perform an approximate thirty minutes of additional work after clocking out at the end of their shift. Specifically, as they were clocking out each day, Mr. Wexelman and aggrieved employees received their schedule for the following day and were required to call some of the customers on the next day's schedule to schedule and/or confirm delivery times. Mr. Wexelman and aggrieved employees were not permitted to make these work-related calls before clocking out as Employer was adamant that Mr. Wexelman and aggrieved employees not record any overtime hours, regardless of the volume of their workload.

Accordingly, since Mr. Wexelman and aggrieved employees were not paid at all for the time they spent working prior to the start of their shift, or after the conclusion of their shift, Employer failed to compensate them at the applicable overtime wage rate. Mr. Wexelman and aggrieved employees regularly worked eight (8) hour shifts each day. Thus, the additional unpaid one (1) hour of work is compensable at the overtime rate for days in which Mr. Wexelman and aggrieved employees already worked eight (8) hours.

Employer's failure to pay Mr. Wexelman and aggrieved employees for all hours worked, including applicable overtime rates, as detailed above, is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. Wexelman and aggrieved employees with compliant meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five (5) hours without providing an uninterrupted meal period of at least thirty (30) minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Mr. Wexelman and aggrieved employees were instructed by Employer to take a thirty-minute paid meal period every day and were further instructed by Employer that they were required to remain within fifty (50) feet of their work truck during their meal period. Thus, Mr. Wexelman and aggrieved employees were not relieved of all duties during their meal period and were not compensated with premium pay as required by law.

Notwithstanding Employer's instructions regarding meal periods, Mr. Wexelman and aggrieved employees were unable to take meal periods due the workload and demands of Employer. Mr. Wexelman and aggrieved employees were assigned a delivery route every day and, if they failed to complete enough stops on the route, they were subject to verbal and/or written disciplinary warnings from Employer. At the end of their shift, Mr. Wexelman and aggrieved employees were required to sign an attestation that they took their meal period and, if they did not sign, they were unable to clock out for the day.

When Mr. Wexelman and aggrieved employees were not provided with compliant meal periods, they were not compensated with one hour of pay at their regular rate of pay as required by law.

Employer's conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Wexelman and aggrieved employees with compliant rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four (4) hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Due to the workload and demands of Employer, Mr. Wexelman and aggrieved employees were precluded from taking rest periods. Mr. Wexelman and aggrieved employees were assigned a delivery route every day and, if they failed to complete enough stops on the route, they were subject to verbal and/or written disciplinary warnings from Employer. In order to comply with Employer's requirements, Mr. Wexelman and aggrieved employees were forced to forego their rest periods altogether. Moreover, Employer never informed Mr. Wexelman and aggrieved employees that they were entitled to a ten-minute rest period for every four (4) hours, or major fraction thereof, worked and Employer therefore failed to authorize and/or permit Mr. Wexelman and aggrieved employees to take the rest periods to which they were entitled under the law.

Further, Employer failed to compensate Mr. Wexelman and aggrieved employees with one (1) hour of pay at their regular rate of pay for each workday in which a rest period was not provided as required by law.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as a violation of Labor Code section 226.7.

D. Employer failed to provide Mr. Wexelman and aggrieved employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, and corresponding number of hours worked at each hourly rate. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By virtue of its failure to pay Mr. Wexelman and aggrieved employees for all hours worked and all premium compensation owed, Employer furnished wage statements that were inaccurate and incomplete. Specifically, said wage statements reflected an inaccurate total number of hours worked, inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to reimburse Mr. Wexelman and aggrieved employees for necessary business expenditures

Pursuant to Labor Code section 2802, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Employer required Mr. Wexelman and aggrieved employees to wear work uniforms bearing Employer's name and logo. However, Employer required Mr. Wexelman and aggrieved employees to wash and maintain said work uniforms on their own time and at their own expense. Mr. Wexelman and aggrieved employees washed their work uniforms separate from their regular everyday clothes as their work uniforms were regularly soiled with grease and oil stains due the nature of their work filling propane tanks.

Employer's failure to reimburse Mr. Wexelman and aggrieved employees for all necessary business expenditures, specifically the cost of, and time spent, washing and maintaining their work uniforms, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

F. Employer failed to pay Mr. Wexelman and aggrieved employees all wages earned and owed upon termination or separation of employment

Pursuant to Labor Code section 201, subdivision (a), "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202, subdivision (a) provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

At the time that Mr. Wexelman and certain aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed, including meal and rest premiums, and for reimbursements for work-related expenses as described herein.

Labor Code section 203, subdivision (a), states that "[i]f an employer willfully fails to pay … any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Accordingly, Mr. Wexelman and aggrieved employees are entitled to thirty days of waiting time penalties.

G. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Wexelman becomes aware of additional compensation owed or losses incurred by Mr. Wexelman or by any other aggrieved employee of the Employer, Mr. Wexelman expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Laura Theriault, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: ltheriault@mahoney-law.net

Sincerely,

Theriault

Laura Theriault, Esq.
MAHONEY LAW GROUP, APC