AARON N. COLBY (State Bar No. 247339)
aaron@colbylegal.com
ZOE YUZNA (State Bar No. 268496)
zoe@colbylegal.com
COLBY LAW FIRM, PC
13263 Ventura Boulevard, Suite 203
Studio City, California 91604
Telephone: (818) 253-1599
Fax: (818) 475-1981

Attorneys for Plaintiff
FERNANDO JACQUES

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Superior Court of California
County of Fresno
By: Alexandria Payne, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

FERNANDO JACQUES, an individual and as a representative of aggrieved employees pursuant to the Private Attorneys General Act (PAGA),

Plaintiff,

vs.

MAXCO SUPPLY, INC., a corporation; and DOES 1 through 10 inclusive,

Defendant.

Case No. 24CECG01797

PLAINTIFF'S COMPLAINT FOR:

1. PRIVATE ATTORNEY'S GENERAL ACT (LABOR CODE SECTION 2698)

Plaintiff Fernando Jacques ("Plaintiff") alleges and complains against Defendants Maxco Supply, Inc. and Does 1 through 10 (collectively, "Defendant") as follows:

PARTIES | JURISDICTION | VENUE

1. Plaintiff, at all times relevant hereto, is and has been a resident of the State of California.

2. Defendant Maxco Supply, Inc. operates a packaging designs and manufacturing company specializing in providing packaging solutions to the agricultural industry at 605 S. Zediker Avenue, Parlier, California 93648 (the "worksite").

3. Defendant conducts business in the State of California.

4. Under California Code of Civil Procedure section 395(a), venue is proper in this County because Defendant resides in this County and/or Plaintiff's alleged injuries herein occurred in this County.

5. The true names and capacities of the defendants named herein as Does 1 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff believes that all of the Doe defendants are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined. Defendant and Doe Defendants are collectively referred to as "Defendant," "Defendants" or "Defendant Employers."

6. Plaintiff believes that, at all times relevant herein, each defendant designated, including Does 1 through 10, was the agent, managing agent, principal, owner, partner, joint venturer, representative, manager, servant, employee, and/or co-conspirator of each of the other defendants, and was at all times mentioned herein acting within the course and scope of said agency and employment, and that all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

7. Defendant, and each of them, acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code section 12940(i). Defendant, and each of them, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

ALTER EGO | AGENCY | JOINT EMPLOYER

8. There exists such a unity of interest and ownership between Defendant Employers that the individuality and separateness of Defendant Employers have ceased to exist. At all times relevant hereto, Defendant Employers, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant Employers, and each of them, and in doing the things alleged herein, were acting at least in part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint venture and with the permission and consent of each of the other Defendant Employers. Whenever and wherever reference is made in this complaint to any act or failure to act by a defendant or co-defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

9. Plaintiff believes Defendant Employers were both Plaintiff's joint employer and are liable under the joint employer and single enterprise theories. *See Laird v. Capital Cities* (1998) 68 Cal.App.4th 727, 737-38 (four factors to prove single enterprise are "interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. … Although courts consider the four factors together, they often deem centralized control of labor relations the most important."); *see also Vernon v. State of California* (2004) 116 Cal.App.4th 114, 128 (separate entities can also be deemed a "joint employer" by having the right to control the employment relationship, as evaluated by focusing on "an examination of defendant's role with respect to the right to hire, fire, transfer, promote, discipline, set the terms, conditions and privileges of employment, train and pay the plaintiff.").

10. Defendant Employers were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code sections 12926 (d), 12940 (a),(h),(1), (h)(3)(A), (i), and, 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court. Defendant Employers were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and the applicable Industrial Welfare Commission Order, and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code sections 558 and/or 558.1, and liable to Plaintiff on that basis. Defendant Employers are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Defendant Employers.

Plaintiff performed services for each and every one of Defendant Employers, and to the mutual benefit of all Defendant Employers, and all Defendant Employers shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendant Employers' business was and is conducted.

11. Labor Code section 558.1 provides that an employer or "other person acting on behalf of an employer" who violates certain California wage and hour laws "may be held liable as the employer for such violation." Labor Code section 558.1 defines "other person acting on behalf of an employer" as a "natural person who is an owner, director, officer, or managing agent" of the employer. Labor Code section 558.1(b). *See* Labor Code section 558(a) (authorizing civil penalties against "any employer or other person acting on behalf of an employer" who causes overtime pay violations to occur."); *see Atempa v. Pedrazzani,* 27 Cal.App.5th 809, 823-824 (2018); Labor Code section 1197.1 ("Any employer or other person acting either individually or as an officer, agent, or employee of another person" for failure to pay minimum wages."); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089 (2005) ("aggrieved employees may … maintain civil actions to recover such penalties"); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089, fn. 10 (2005) (alter ego doctrine may be used in wage claim actions to impose liability on controlling directors and shareholders); *see* Government Code section 12925(d) (defining "Person" as one *or more* individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries).

12. Despite the formation of purported corporate existence, Defendant Employers are, in reality, one and the same, including, but not limited to because: (a) Defendant Employers are completely dominated and controlled by one another, who personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden and currently hide behind Defendant Employers to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose; (b) Defendant Employers derive actual and significant monetary benefits by and through one another's unlawful conduct, and by using one another as the funding source for their own personal expenditures; (c) Defendant Employers, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose; (d) Defendant Employers does not comply with all requisite corporate

formalities to maintain a legal and separate corporate existence; (e) the business affairs of Defendant Employers are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendant Employers are, and at all times relevant hereto were, used by one another as a mere shell and conduit for the conduct of certain of Defendant Employers' affairs, and are, and were, the alter ego of one another. The recognition of the separate existence of each of the Defendant Employers would not promote justice, in that it would permit Defendant Employers to insulate themselves from liability to Plaintiff for violations of the law. The corporate existence of Defendant Employers should each be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein. Accordingly, Defendant Employers constitute the alter ego of one another, and the fiction of their separate corporate existence must be disregarded.

ADMINISTRATIVE EXHAUSTION

13. Plaintiff exhausted administrative requirements for Plaintiff's claims.

14. On February 11, 2024, Plaintiff's counsel gave written notice by online filing with the California Labor & Workforce Development Agency ("LWDA") and by sending via certified mail to Defendants a letter specifying the California Labor Code provisions Defendants violated, including the facts and theories supporting the alleged violations. More than sixty-five (65) days have passed since Plaintiff's counsel submitted the letter to the LWDA and certified-mailed the letter to Defendants, and the LWDA has not provided notice of intent to investigate the alleged violations, nor have Defendants provided notice of intent or any efforts to cure. Accordingly, the statutory period for any investigation or response has concluded and Plaintiff may commence this lawsuit pursuant to Labor Code section 2699, as provided by subsection 2699.3.

FACTUAL ALLEGATIONS

15. **Defendant.** Defendant Maxco Supply, Inc. operates a packaging designs and manufacturing company specializing in providing packaging solutions to the agricultural industry at 605 S. Zediker Avenue, Parlier, California 93648 (the "worksite").

16. **Plaintiff's Hire & Job Details.** On or about July 21, 2022, Defendant hired Plaintiff Fernando Jacques as an employee in the job position of Box Machine Erector to work at the worksite.

17. Defendant classified Plaintiff as a “non-exempt” employee. Defendant paid Plaintiff $17 per hour on hire, even though they originally had promised him more.

18. Plaintiff’s job duties included building box making machines.

19. Plaintiff’s work schedule was typically Monday through Friday from 6:00am to 3:30pm and sometimes later and on weekends.

20. Plaintiff reported to Assembly Department Manager ***Lee Morgan***.

21. During the interview process, Plaintiff was promised an hourly rate of $19 per hour, based on the job advertisement being for $17 to $24 an hour and Plaintiff’s experience level. In late July 2022, Plaintiff complained to Lee Morgan about his pay being $17 instead of $19 per hour. Nothing was done.

22. **Defendant Requires Plaintiff To Use His Personal Mobile Device.** In late July 2022, Lee Morgan instructed Plaintiff to use his personal mobile device to take a video whenever he runs his machine, to use the video for troubleshooting purposes.

23. **Plaintiff Complains About Failure To Reimburse Expenses.** On or about August 4, 2023, Plaintiff complained to Lee Morgan about having to use personal tools and his personal cell phone for work without reimbursement. Plaintiff is aware of two other employees who complained about unpaid reimbursements and were then fired for minor infractions.

24. **Wrongful Termination.** On August 7, 2023, Defendant wrongfully terminated Plaintiff.

25. **Off-The-Clock Work.** Defendant failed to pay Plaintiff for all time worked. The off-the-clock work included, among other things according to proof: working during breaks, such as carrying on with work during a meal or rest break; reviewing or responding to emails or texts from a mobile device or after hours.

26. **Overtime Work.** Defendant failed to pay Plaintiff for work in excess of eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, and for work in excess of twelve (12) hours in a day overtime compensation at a rate of two (2) times the regular rate of pay.

27. **Meal Break Violations.** Defendant failed to provide Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by law, according to proof. For instance, among other

things according to proof: Plaintiff did not get meal breaks at all; Plaintiff was forced to work throughout Plaintiff's meal breaks; Plaintiff was "on-call" during meal breaks; Defendant automatically deducted unpaid meal break time from Plaintiff's time worked even though Plaintiff performed work during such time; Defendant rounded Plaintiff's clock in and out times for the start and end of meal breaks; Plaintiff's meal breaks were not timely; Plaintiff's meal breaks were interrupted; Plaintiff's meal breaks were less than the full 30 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during meal breaks.

28. **Rest Break Violations.** Defendant failed to authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked or a major fraction thereof, according to proof. For instance, among other things according to proof: Plaintiff did not get rest breaks at all; Plaintiff was forced to work throughout Plaintiff's rest breaks; Plaintiff was "on-call" during rest breaks; Plaintiff's rest breaks were not timely; Plaintiff's rest breaks were interrupted; Plaintiff's rest breaks were less than the full 10 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during rest breaks.

29. **Unreimbursed Expenses.** Defendant failed to fully reimburse Plaintiff's reasonable business expenses incurred, according to proof, including personal mobile device usage costs.

30. **Wage Statements.** Defendant knowingly and intentionally failed to provide Plaintiff with uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: accurate totals of the hours worked; number of hours worked at each hourly rate; net wages earned; and/or gross wages earned.

31. **Final Pay.** Defendant failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: minimum wages; overtime wages; meal and rest period premium wages; and/or all wages owed for the final day of work.

FIRST CAUSE OF ACTION

PAGA REPRESENTATIVE ACTION FOR PENALTIES PURSUANT TO LABOR CODE SECTION 2698

32. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

33. Under the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code

sections 2698-2699.5, private parties may recover civil penalties for violations of the Labor Code. These penalties are in addition to any other relief available under the Labor Code. As set forth above, Defendant has committed numerous violations of the Labor Code against Plaintiff, including but not limited to:

- **Labor Code §§ 201, 201.5, 202, 203**. Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- **Labor Code § 204**. Failure to pay all earned wages within the time prescribed in Labor Code §§ 204(a) and 204(b).
- **Labor Code § 206**. Failure to pay all undisputedly owed wages.
- **Labor Code § 210**. Failure to pay wages as required by Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 227.3, and/or 1197.5.
- **Labor Code § 212**. Failure to include the name and address of established place of business in the state on pay checks to cash or deposit pay checks.
- **Labor Code § 213**. Unauthorized payment of final wages via direct deposit.
- **Labor Code § 221**. Failure to not collect and receive owed wages.
- **Labor Code § 226**. Failure to provide timely and accurate wage statements.
- **Labor Code § 226.3**. Failure to comply with Labor Code § 226(a).
- **Labor Code § 226.7**. Failure to provide rest periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the rest periods.
- **Labor Code §§ 226.7 and 512**. Failure to provide meal periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the meal periods.
- **Labor Code § 256**. Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- **Labor Code §§ 510 and 1194**. Failure to pay overtime and double time compensation.
- **Labor Code §§ 510, 1194, 1194.2, and 1197**. Failure to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
- **Labor Code § 558**. Violation of a section of the chapter of the Labor Code starting with Labor Code § 500, *et seq*., or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.

- **Labor Code § 558.1**. Violation any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, and violating Labor Code §§ 203, 226, 226.7, 1193.1, and/or 1194.
- **Labor Code § 1174**. Failure to maintain compliant employee and payroll records.
- **Labor Code § 1197.1**. Failure to pay minimum wage.
- **Labor Code § 1199**. Violation of an order of the Industrial Welfare Commission.
- **Labor Code § 1198**. Violation of the following sections of orders of the Industrial Welfare Commission for conditions of labor prohibited by such:
    - **Wage Order 1-2001 (or other applicable Wage Order), Section 3**, requiring an employer to pay overtime and double time compensation.
    - **Wage Order 1-2001 (or other applicable Wage Order), Section 4**, requiring an employer to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
    - **Wage Order 1-2001 (or other applicable Wage Order), Section 7**, requiring an employer to maintain accurate information with respect to each employee; provide employees with thorough and accurate itemized wage statements; and, provide clocks within a reasonable distance from employees' work areas.
    - **Wage Order 1-2001 (or other applicable Wage Order), Section 11**, requiring an employer to provide its employees with adequate meal periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods.
    - **Wage Order 1-2001 (or other applicable Wage Order), Section 12**, requiring an employer to provide its employees with adequate rest periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods.

Labor Code § 2802. Failure to reimburse necessary business expenses.

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34. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code section 2699(c), and a proper representative to bring a civil action on behalf of Plaintiff and other current and former employees of Defendant pursuant to the procedures specified in California Labor Code section 2699.3, because Plaintiff is employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

35. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice on December 1, 2023 by online filing to the California Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. More than 65 days have passed since Plaintiff provided written notice to the LWDA. The LWDA has not provided notice that it intends to investigate PLAINTIFF'S claims.

36. Pursuant to California Labor Code section 2699.3, Plaintiff served Defendant with the aforementioned LWDA notice via certified mail on December 1, 2023. More than 33 days have passed since that date. Defendant has not provided Plaintiff with notice that it cured any of the violations alleged therein.

37. Per the tolling provision in Labor Code section 2699.3(g), the period of liability under Plaintiff's PAGA claim extends one year and sixty-five days before the filing of this complaint (the "PAGA Liability Period").

38. Accordingly, Plaintiff has complied with all of the requirements set forth in California Labor Code section 2699.3 to commence a representative action under PAGA.

39. Pursuant to PAGA, Plaintiff seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code sections 2699(a) and 2699(f), which provides for $100 for each initial violation and $200 for each subsequent violation per employee pay period. In addition, pursuant to PAGA, Plaintiff seeks to recover civil penalties, including but not limited to penalties under Labor Code sections 210, 225.5, 226.3, 558, 1174.5, 1197.1, and 1199 from Defendant in a representative action for the violations set forth above. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

JURY TRIAL DEMANDED

Plaintiff demands a jury to the extent a jury is permitted for PAGA claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

a. For penalties where provided by law;

b. For punitive damages where allowed by law;

c. For prejudgment interest pursuant to California Labor Code section 218.6, California Civil Code section 3287 and/or California Civil Code section 3288 and/or any other provision of law providing for prejudgment interest;

d. For attorneys' fees where allowed by law;

e. For costs of suit incurred herein; and

f. For such other and further relief as deemed just and proper.

DATED: April 25, 2024

COLBY LAW FIRM, PC

By:____
AARON N. COLBY
ZOE YUZNA

Attorneys for Plaintiff
FERNANDO JACQUES