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Kern County Superior Court
By Alexandra Valles, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

GINO PEREZ, as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and
other non-party Aggrieved
Employees,

Plaintiff,

vs.

WESTERN MILLING, LLC, a
California limited liability company;
VISERION MILLING, LLC, a
Delaware limited liability company;
VISERION INTERNATIONAL,
LLC, a Delaware limited liability
company; VISERION
COMMODITIES LLC, a Colorado
limited liability company; and DOES
1 through 10, inclusive,

Defendants.

Case No.: BCV-24-104495

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Gino Perez, as an aggrieved employee pursuant to the Private Attorneys
2 General Act (“PAGA”), on behalf of the State of California and other non-party Aggrieved
3 Employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This is an enforcement action under the Labor Code Private Attorneys General
6 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
7 and any other available relief on behalf of Plaintiff, the State of California, and other current
8 and former employees who worked for Defendants in California as a non-exempt, hourly paid
9 employee and received at least one wage statement and against whom one or more violations
10 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
11 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
12 Order were committed, as set forth in this complaint, at any time between one year prior to the
13 filing of the pre-filing written notice to the Labor and Workforce Development Agency
14 (“LWDA”) in this case on October 25, 2024, until judgment (“non-party Aggrieved
15 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
16 \$75,000.

17 2. This Court has jurisdiction over this action pursuant to the California
18 Constitution, Article VI, section 10. The statute under which this action is brought does not
19 specify any other basis for jurisdiction.

20 3. This Court has jurisdiction over all Defendants because, on information and
21 belief, Defendants are either citizens of California, have sufficient minimum contacts in
22 California, or otherwise intentionally avail themselves of the California market so as to render
23 the exercise of jurisdiction over them by the California courts consistent with traditional
24 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
25 in this action given that the State of California, as the real party in interest in this action, is not
26 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
27 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
28 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction

1 in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the
2 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

3 4. Venue is proper in this Court because Defendants employ persons in this
4 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
5 and occurrences related to this action occurred in this county.

6 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
7 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
8 attorneys general their current or former employers for various civil penalties for violations of
9 various provisions in the California Labor Code.

10 **THE PARTIES**

11 6. Plaintiff Gino Perez is a resident of Bakersfield, in Kern County, California.
12 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
13 April 2024 to July 2024. Plaintiff worked for Defendants as a Maintenance Mechanic at
14 Defendants' location in McFarland, California. During his employment, Plaintiff typically
15 worked twelve (12) hours per day and five (5) days per week. At the time his employment
16 ended, Plaintiff was compensated approximately \$25.50 per hour. His job duties included,
17 without limitation, doing electrical and fabrication work, and repairing grain augers.

18 7. On information and belief, Defendants required some employees, including
19 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
20 employment. On further information and belief, Defendants' arbitration agreement was and is
21 both procedurally and substantively unconscionable. Specifically, Defendants presented
22 employees with a "Mutual Agreement to Arbitrate Employment Disputes" ("Arbitration
23 Agreement") during the onboarding process or during their employment, which had to be
24 reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of
25 several documents presented to new employees for signature during the orientation process,
26 including an Employee Attendance Point System policy, Meal Period Violation Point Policy,
27 Vacation Payout and Approved Unpaid Vacation Policy, Employee Locker Agreement, and
28 Employee Handbook Acknowledgment And Agreement, among other documents. Also,

1 employees did not have a meaningful opportunity to negotiate the terms of the Arbitration
2 Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or
3 leave-it basis at the time they were hired or during their employment. Further, Defendants did
4 not set forth in the Arbitration Agreement or otherwise provide employees with the rules
5 which will govern the arbitration, instead forcing employees to seek this information out on
6 their own.

7 8. WESTERN MILLING, LLC was and is, upon information and belief, a
8 California limited liability company, and at all times hereinafter mentioned, an employer
9 whose employees are engaged throughout this county and the State of California.

10 9. VIZERION MILLING, LLC was and is, upon information and belief, a
11 Delaware limited liability company, and at all times hereinafter mentioned, an employer
12 whose employees are engaged throughout this county and the State of California.

13 10. VIZERION INTERNATIONAL, LLC was and is, upon information and belief,
14 a Delaware limited liability company, and at all times hereinafter mentioned, an employer
15 whose employees are engaged throughout this county and the State of California.

16 11. VIZERION COMMODITIES LLC was and is, upon information and belief, a
17 Colorado limited liability company, and at all times hereinafter mentioned, an employer
18 whose employees are engaged throughout this county and the State of California.

19 12. Plaintiff is unaware of the true names or capacities of the Defendants sued
20 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
21 amend the complaint and serve such fictitiously named Defendants once their names and
22 capacities become known.

23 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of WESTERN MILLING, LLC; VIZERION
25 MILLING, LLC; VIZERION INTERNATIONAL, LLC; and/or VIZERION COMMODITIES
26 LLC at all relevant times.

27 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, WESTERN

1 MILLING, LLC; VISION MILLING, LLC; VISION INTERNATIONAL, LLC;
2 VISION COMMODITIES LLC; and/or DOES 1 through 10 (collectively, “Defendants” or
3 “WESTERN MILLING”), each acting as the agent, employee, alter ego, and/or joint venturer
4 of, or working in concert with, each of the other co-Defendants and was acting within the
5 course and scope of such agency, employment, joint venture, or concerted activity with legal
6 authority to act on the others’ behalf. The acts of any and all Defendants were in accordance
7 with, and represent, the official policy of Defendants.

8 15. At all relevant times, Defendants, and each of them, ratified each and every act
9 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
10 and abetted the acts and omissions of each and all the other Defendants in proximately causing
11 the damages herein alleged.

12 16. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 17. Under California law, Defendants are jointly and severally liable as employers
16 for the violations alleged herein because they have each exercised sufficient control over the
17 wages, hours, working conditions, and employment status of Plaintiff and other non-party
18 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
19 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
20 of employment, determined their rate of pay, and maintained their employment records.
21 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
22 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
23 common-law employment relationship. As joint employers of Plaintiff and other non-party
24 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
25 available to Plaintiff and other non-party Aggrieved Employees under the law.

26 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
27 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
28 non-party Aggrieved Employees because Defendants have:

- 1 (a) jointly exercised meaningful control over the work performed by
2 Plaintiff and other non-party Aggrieved Employees;
- 3 (b) jointly exercised meaningful control over Plaintiff's and other non-party
4 Aggrieved Employees' wages, hours, and working conditions, including
5 the quantity, quality standards, speed, scheduling, and operative details
6 of the tasks performed by Plaintiff and other non-party Aggrieved
7 Employees;
- 8 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
9 perform work which is an integral part of Defendants' businesses; and
- 10 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
11 Employees as a matter of economic reality in that Plaintiff and other
12 non-party Aggrieved Employees were dependent on Defendants, who
13 shared the power to set the wages of Plaintiff and other non-party
14 Aggrieved Employees and determined their working conditions, and
15 who jointly reaped the benefits from the underpayment of their wages
16 and noncompliance with other statutory provisions governing their
17 employment.

18 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
19 there has existed a unity of interest and ownership between Defendants such that any
20 individuality and separateness between the entities has ceased.

21 20. WESTERN MILLING, LLC; VISION MILLING, LLC; VISION
22 INTERNATIONAL, LLC; VISION COMMODITIES LLC; and/or DOES 1 through 10 are
23 therefore alter egos of each other.

24 21. Adherence to the fiction of the separate existence of Defendants would permit
25 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
26 from liability for the wrongful acts committed by them under the name WESTERN
27 MILLING.

28 22. Plaintiff further alleges, upon information and belief, that the Defendants

WESTERN MILLING, LLC; VIZERION MILLING, LLC; VIZERION INTERNATIONAL, LLC; and VIZERION COMMODITIES LLC are alter egos of each other for the following reasons:

- (a) According to their most recent “Statement of Information” forms filed with the California Secretary of State, VIZERION MILLING, LLC is listed as the Manager or Member of WESTERN MILLING, LLC;
- (b) On the Colorado Secretary of State’s website (<https://www.coloradosos.gov/biz/>), VIZERION INTERNATIONAL, LLC and VIZERION COMMODITIES LLC have the same principal and/or mailing address, “385 Broadway, Boulder, CO 80302”;
- (c) On the Colorado Secretary of State’s website and the Delaware Secretary of State’s website (<https://icis.corp.delaware.gov/eCorp/>), VIZERION MILLING, LLC; VIZERION INTERNAIONAL, LLC; and VIZERION COMMODITIES LLC share the same agent for service of process, National Registered Agent[s], Inc.; and
- (d) On information and belief, WESTERN MILLING, LLC; VIZERION MILLING, LLC; VIZERION INTERNATIONAL, LLC; and VIZERION COMMODITIES LLC utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

23. Defendants operate commercial feed mills that produce animal and plant feed. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Boulder, Colorado and Goshen, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

24. In particular, Plaintiff and other non-party Aggrieved Employees, on

1 information and belief, received the same standardized documents and/or written policies.
2 Upon information and belief, the usage of standardized documents and/or written policies,
3 including new-hire documents, indicate that Defendants dictated policies at the corporate level
4 and implemented them company-wide, regardless of their employees' assigned locations or
5 positions. Upon information and belief, Defendants set forth uniform policies and procedures
6 in several documents provided at an employee's time of hire.

7 25. Upon information and belief, Defendants maintain a centralized Payroll
8 department at their corporate headquarters in Boulder, Colorado and Goshen, California,
9 which processes payroll for all non-exempt, hourly paid employees working for Defendants at
10 their various locations and jobsites in California, including Plaintiff and other non-party
11 Aggrieved Employees. Based upon information and belief, Defendants issue the same
12 formatted wage statements to all non-exempt, hourly paid employees in California,
13 irrespective of their work locations. Upon information and belief, Defendants process payroll
14 for departing employees in the same manner throughout the State of California, regardless of
15 the manner in which each employee's employment ends.

16 26. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

18 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
20 and advisors knowledgeable about California labor and wage law, employment and personnel
21 practices, and about the requirements of California law.

22 28. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
23 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
24 were not recorded.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive certain wages for overtime compensation and that they were not receiving certain
28 wages for overtime compensation.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive at least minimum wages for compensation and that they were not receiving at least
4 minimum wages for work that was required to be done off-the-clock. In violation of the
5 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
6 least minimum wages for work done off-the-clock.

7 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
10 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
11 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
12 other non-party Aggrieved Employees were not provided with all meal periods or payment of
13 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
14 uninterrupted, thirty (30) minute meal period.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
18 payment of one (1) additional hour of pay at their regular rates of pay when they were not
19 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
20 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
21 provided with payment of one (1) additional hour of pay at their regular rates of pay when
22 they were not authorized and permitted to take a compliant rest period.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive complete and accurate wage statements in accordance with California law. In
26 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
27 were not provided complete and accurate wage statements.

28 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of wages during their employment. In violation of the California Labor Code,
7 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
8 including, but not limited to, overtime wages, minimum wages, meal and rest period
9 premiums, and/or reporting time pay, within permissible time periods.

10 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 timely payment of all wages earned upon termination of employment. In violation of the
13 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
14 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
15 meal and rest period premiums, and/or reporting time pay, within permissible time periods.

16 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 be paid reporting time pay when they reported to work for their usual or scheduled shift but
19 were put to work for less than half of the usual or scheduled shift. In violation of the
20 California Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved
21 Employees reporting time pay due.

22 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they had a duty to maintain, for Plaintiff and other non-party
24 Aggrieved Employees, a temperature in work areas that provided reasonable comfort
25 consistent with industry-wide standards for the nature of the process and the work performed,
26 and to take all feasible means to reduce excessive heat or humidity to a degree providing
27 reasonable comfort, but failed to do so.

28 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive reimbursement for all business-related expenses and costs they incurred during the
3 course and scope of their employment and that they did not receive reimbursement of
4 applicable business-related expenses and costs incurred.

5 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to compensate
7 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
8 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
9 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
10 that they were properly denied wages, all in order to increase Defendants' profits.

11 41. At all times herein set forth, PAGA provides that any provision of law under
12 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
13 assessed and collected by the LWDA for violations of the California Labor Code and
14 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
15 civil action brought on behalf of themselves and other current or former employees pursuant
16 to procedures outlined in California Labor Code section 2699.3.

17 42. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
18 "any person who was employed by the alleged violator and personally suffered each of the
19 violations alleged each of the violations alleged."

20 43. Plaintiff and other current and former employees of Defendants are "aggrieved
21 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
22 current or former employees and each of the alleged violations were committed against them.

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

- 26 (a) The aggrieved employee shall give written notice by online filing
27 (hereinafter "Employee's Notice") to the LWDA and by certified mail
28 to the employer of the specific provisions of the California Labor Code

1 alleged to have been violated, including the facts and theories to support
2 the alleged violations.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
7 employer and the aggrieved employee by certified mail that it does not
8 intend to investigate the alleged violation within sixty (60) calendar
9 days of the postmark date of the Employee's Notice. Upon receipt of
10 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
11 five (65) calendar days of the postmark date of the Employee's Notice,
12 the aggrieved employee may commence a civil action pursuant to
13 California Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

15 45. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
16 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
17 provision other than those listed in Section 2699.5 after the following requirements have been
18 met:

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing to the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice. The employer shall

1 give written notice by certified mail within that period of time to the
2 aggrieved employee or representative and the agency if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the employee may commence a
6 civil action pursuant to Section 2699.

7 46. On October 25, 2024, Plaintiff provided written notice by online filing to the
8 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-1058450-24. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

15 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff
16 sent the written notice described above, and the LWDA has not responded that it intends to
17 investigate Plaintiff's claims, and Defendants have not cured the violations.

18 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
19 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
21 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

22 49. Labor Code section 558(a) provides "[a]ny employer or other person acting on
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was
27 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid" Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

50. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth above.

51. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

52. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

53. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

54. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover

1 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
2 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
3 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
4 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
5 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, and 2802.

6 55. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
9 Wage Order for Defendants' failure to compensate Plaintiff and other
10 non-party Aggrieved Employees with all required overtime pay, as set
11 forth below;
- 12 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
13 the applicable IWC Wage Order for Defendants' failure to compensate
14 Plaintiff and other non-party Aggrieved Employees with at least
15 minimum wages for all hours worked, as set forth below;
- 16 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
18 and other non-party Aggrieved Employees with meal periods, as set
19 forth below;
- 20 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
21 applicable IWC Wage Order for Defendants' failure to authorize and
22 permit Plaintiff and other non-party Aggrieved Employees to take rest
23 periods, as set forth below;
- 24 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
25 IWC Wage Order for failure to provide accurate and complete wage
26 statements to Plaintiff and other non-party Aggrieved Employees, as set
27 forth below;
- 28 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable

IWC Wage Order for failure to maintain payroll records, as set forth below;

- (g) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (i) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort, as set forth below; and
- (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

56. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

57. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay

1 either time-and-one-half or two-times that person's regular rate of pay, depending on the
2 number of hours worked by the person on a daily or weekly basis.

3 58. Specifically, the applicable IWC Wage Order provides that Defendants are and
4 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
5 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
6 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
7 (40) hours in a workweek.

8 59. The applicable IWC Wage Order further provides that Defendants are and were
9 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
10 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
11 An employee's regular rate of pay includes all remuneration for employment paid to, or on
12 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

13 60. California Labor Code section 510 codifies the right to overtime compensation
14 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
15 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
16 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
17 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
18 in a day on the seventh (7th) day of work.

19 61. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
21 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
22 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
23 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
24 not recorded.

25 62. First, during the relevant time period, Defendants had, and continue to have, a
26 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
27 Employees to perform tasks off-the-clock after their scheduled shifts and on their days off.
28 For example, at the beginning of his employment, Plaintiff was required to attend training

1 sessions and orientation meetings for a total of about 2-3 hours while off the clock. As a
2 further example, after clocking out at the end of his shifts, Defendants sometimes required
3 Plaintiff to continue performing work-related tasks such as attaching bolts to machinery.
4 Also, Plaintiff was required to review and approve his timesheets off-the-clock on a weekly
5 basis. Moreover, Defendants' managers contacted Plaintiff on his personal cellular phone
6 about 3-4 times per week about work-related matters when he was not scheduled to work.
7 Thus, Defendants failed to track the time Plaintiff and other non-party Aggrieved Employees
8 spent working after their scheduled shifts and on their days off, and Plaintiff and other non-
9 party Aggrieved Employees received no compensation for this time.

10 63. Second, Defendants had, and continue to have, company-wide policies and/or
11 practices of understaffing their locations while assigning heavy workloads. Defendants'
12 policies and/or practices resulted in a failure to provide Plaintiff and other non-party
13 Aggrieved Employees with adequate meal period coverage, and thus, Plaintiff and other non-
14 party Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods
15 during shifts when they were entitled to receive a meal period. Defendants also had a practice
16 of failing to schedule meal periods, which further caused Plaintiff and other non-party
17 Aggrieved Employees to not be relieved of their duties for compliant meal periods.
18 Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for the
19 time they spent working off the clock during unpaid meal periods.

20 64. Third, Defendants had, and continue to have, a policy and/or practice of
21 requiring that Plaintiff and other non-party Aggrieved Employees carry their personal mobile
22 devices, including, but not limited, their cellular phones, and respond to requests at all times,
23 including during meal periods. For example, Plaintiff would regularly have his meal periods
24 interrupted because he was required to answer calls from Defendants' management. Thus,
25 Plaintiff and other non-party Aggrieved Employees worked through meal periods and/or had
26 them interrupted to handle their assigned workloads and responsibilities, and Defendants did
27 not pay Plaintiff and other non-party Aggrieved Employees for the time they continued to
28 perform tasks during meal periods.

1 65. Defendants knew or should have known that as a result of these company-wide
2 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
3 their assigned duties off-the-clock outside of their shifts and during meal periods, and were
4 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
5 other non-party Aggrieved Employees worked shifts of eight (8) hours or more a day or forty
6 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
7 pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime
8 wages for all of the overtime hours they actually worked.

9 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 the balance of overtime compensation as required by California law, violates the provisions of
11 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
13 558 and/or 2699(a), (f), and (k).

14 **FAILURE TO PAY MINIMUM WAGES**

15 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

16 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
17 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment
18 of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in
19 IWC Wage Order No. 8-2001 as "the time during which an employee is subject to the control
20 of an employer, and includes all the time the employee is suffered or permitted to work,
21 whether or not required to do so." Cal. Code Regs. tit. 8, § 11080(2)(G) (defining "Hours
22 Worked").

23 68. As set forth above, during the relevant time period, Defendants had a company-
24 wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to
25 perform various work-related tasks while off-the-clock, including attending training sessions
26 and orientation meetings, completing maintenance and repair tasks, reviewing timesheets, and
27 responding to phone calls from managers. Thus, Defendants failed to track the time Plaintiff
28 and other non-party Aggrieved Employees spent working off-the-clock, and Plaintiff and

1 other non-party Aggrieved Employees received no compensation for this time.

2 69. Additionally, as also stated, due to Defendants' policies and/or practices of
3 understaffing their locations while assigning heavy workloads, failing to schedule meal
4 periods, and requiring employees to respond to phone calls during meal periods, Plaintiff and
5 other non-party Aggrieved Employees were impeded from taking all uninterrupted meal
6 periods to which they were entitled and were required to work off-the-clock during meal
7 periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties
8 during unpaid meal periods.

9 70. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
10 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
11 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
12 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
13 1194, 1197, and 1198.

14 71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
16 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

18 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

19 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

20 72. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
22 non-party Aggrieved Employees' employment by Defendants.

23 73. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is
27 not more than six (6) hours, the meal period may be waived by mutual consent of both the
28 employer and the employee. Under California law, first meal periods must start after no more

1 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

2 74. At all relevant times herein set forth, California Labor Code sections 226.7,
3 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
4 meal period mandated by an applicable order of the IWC.

5 75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
6 and the applicable IWC Wage Order also require employers to provide a second meal period
7 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
8 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
9 total hours worked is no more than twelve (12) hours, the second meal period may be waived
10 by mutual consent of the employer and the employee only if the first meal period was not
11 waived.

12 76. First, during the relevant time period, as stated, Defendants had, and continue
13 to have, company-wide policies and/or practices of understaffing while assigning heavy
14 workloads, which has resulted in a lack of meal period coverage and prevented Plaintiff and
15 other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to
16 which they were entitled. Further, as stated, Defendants had a company-wide practice and/or
17 policy of failing to schedule meal periods, which further caused Plaintiff and other non-party
18 Aggrieved Employees to not be relieved of their duties for compliant meal periods.
19 Moreover, as stated, Defendants had a company-wide policy and/or practice of requiring that
20 Plaintiff and other non-party Aggrieved Employees carry their personal mobile devices and to
21 respond to requests at all times, including during meal periods.

22 77. As a result, Plaintiff and other non-party Aggrieved Employees had to work
23 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
24 extended periods of time before taking meal periods. For example, Plaintiff's meal periods
25 were regularly interrupted by managers contacting him about work-related matters.
26 Additionally, Plaintiff sometimes had to take his meal periods late, after the fifth hour of his
27 shift, due to lack of coverage and heavy workload.

28 78. Second, because Defendants frowned upon employees accruing meal period

1 premiums, Defendants' management pressured employees to record compliant meal periods,
2 upon threat of discipline, even when they had not received compliant meal periods, in order to
3 strictly limit the meal period premiums that Defendants would otherwise owe. For example,
4 Plaintiff was required to clock out for his meal period to record that he had received compliant
5 meal periods on shifts when he had not, in fact, received these timely meal periods.

6 79. Third, Defendants did not always provide Plaintiff and other non-party
7 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
8 of 10 hours in one day. During his employment, Plaintiff regularly worked shifts in excess of
9 ten (10) or more hours per day but was not always provided a second 30-minute meal period.
10 Additionally, when he was able to take a second meal period, Plaintiff's second meal periods
11 were often interrupted to speak with managers. Plaintiff and other non-party Aggrieved
12 Employees did not sign valid meal period waivers on days that they were entitled to meal
13 periods and were not relieved of all duties.

14 80. At all times herein mentioned, Defendants knew or should have known that, as
15 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
16 from being relieved of all duties and required to perform some of their assigned duties during
17 meal periods. Defendants further knew or should have known that Defendants did not pay
18 Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods
19 were late, interrupted, shortened, or missed.

20 81. Moreover, Defendants engaged in a company-wide practice and/or policy of
21 not paying meal period premiums owed when compliant meal periods are not provided.
22 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
23 have not received premium pay for all missed, late, and interrupted meal periods.

24 82. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
26 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 558 and/or 2699(a), (f), and (k).

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2 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

3 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

4 83. At all relevant times herein set forth, the applicable IWC Wage Order and
5 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
6 non-party Aggrieved Employees' employment by Defendants.

7 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3 ½) hours.

13 85. At all relevant times, California Labor Code section 226.7 provides that no
14 employer shall require an employee to work during any rest period mandated by an applicable
15 order of the California IWC. To comply with its obligation to authorize and permit rest
16 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
17 employer must "relinquish any control over how employees spend their break time, and
18 relieve their employees of all duties—including the obligation that an employee remain on
19 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
20 *Inc.*, 2 Cal. 5th 257, 273 (2016).

21 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
22 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
23 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
24 required rest period was not authorized and permitted.

25 87. During the relevant time period, Defendants regularly failed to authorize and
26 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
27 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
28 Defendants' company-wide practices, including understaffing and assigning heavy workloads,

1 and their requirement that employees carry and respond to their personal mobile devices at all
2 times, including during rest periods, prevented Plaintiff and other non-party Aggrieved
3 Employees from being relieved of all duties to take rest periods. Additionally, Defendants
4 failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate
5 rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not
6 being authorized and permitted to take rest periods.

7 88. Furthermore, upon information and belief, during the relevant time period,
8 Defendants maintained and implemented a company-wide on-premises rest period policy,
9 which effectively required that Plaintiff and other non-party Aggrieved Employees remain on
10 the premises during their rest periods. Because Plaintiff and other non-party Aggrieved
11 Employees were restricted from leaving the premises during rest periods, they were denied the
12 ability to use their rest periods freely for their own purposes, such as running personal errands.
13 Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
14 Employees during rest periods.

15 89. As a result of Defendants' practices and policies, Plaintiff and other non-party
16 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
17 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
18 were entitled. For example, about 2-3 times per week, Plaintiff had to forgo his rest periods
19 due to the heavy workload. Plaintiff regularly had to forgo his third rest breaks for shifts over
20 10 hours for the same reason. When Plaintiff was able to take his rest periods, they were
21 regularly interrupted by managers calling Plaintiff on his personal cellular phone to discuss
22 work-related matters.

23 90. Defendants have also engaged in a company-wide practice and/or policy of not
24 paying rest period premiums owed when compliant rest periods are not authorized and
25 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
26 Employees have not received premium pay for all missed rest periods.

27 91. Defendants' conduct violates the applicable IWC Wage Order and California
28 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved

1 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
2 558 and/or 2699(a), (f), and (k).

3 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

4 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

5 92. At all relevant times herein, California Labor Code section 226(a) provides that
6 every employer shall furnish each of his or her employees an accurate and complete itemized
7 wage statement in writing, including, but not limited to, the name and address of the legal
8 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
9 applicable rates of pay.

10 93. During the relevant time period, Defendants have knowingly and intentionally
11 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
12 inaccurate wage statements. For example, Defendants issued uniform wage statements to
13 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
14 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
15 the pay period, including rates of pay for overtime wages, and the corresponding number of
16 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
17 226(a)(2), 226(a)(5), and 226(a)(9).

18 94. Because Defendants did not record the time Plaintiff and other non-party
19 Aggrieved Employees spent working off-the-clock and deducted time from their records for
20 meal periods that were interrupted and/or missed (and therefore time for which they should
21 have been paid), Defendants did not list the correct amount of gross wages and net wages
22 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
23 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
24 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
25 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
26 pay in effect during the pay period and the corresponding accurate number of hours worked at
27 each hourly rate, in violation of section 226(a)(9).

28 95. The wage statement deficiencies also include, among other things, failing to list

1 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
2 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
3 for which aggrieved employees were paid; failing to list the name of the employee and only
4 the last four digits of his or her social security number or an employee identification number
5 other than a social security number; failing to list the name and address of the legal entity that
6 is the employer; and/or failing to state all hours worked as a result of not recording or stating
7 hours worked off-the-clock.

8 96. California Labor Code section 1174(d) provides that “[e]very person employing
9 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
10 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants or
14 establishments” Labor Code section 1174.5 provides that employers are subject to a
15 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
16 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants
17 willfully failed to maintain accurate payroll records for Plaintiff and other non-party
18 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
19 result of failing to record the off-the-clock hours that they worked.

20 97. California Labor Code section 1198 provides that the maximum hours of work
21 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
22 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
23 employment of any employees for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
25 Wage Order, employers are required to keep accurate time records showing when the
26 employee begins and ends each work period and meal period. During the relevant time
27 period, Defendants engaged in company-wide practices and/or policies of failing to record
28 actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of

1 work period and meal period start and end times for Plaintiff and other non-party Aggrieved
2 Employees, in violation of section 1198. Furthermore, in light of Defendants' failure to
3 provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal
4 periods to which they were entitled, Defendants kept no records of meal start and end times
5 for second meal periods.

6 98. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
7 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
8 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

9 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

10 **VIOLATION OF LABOR CODE SECTION 204**

11 99. At all relevant times herein set forth, California Labor Code section 204
12 requires that all wages earned by any person in any employment between the 1st and the 15th
13 days, inclusive, of any calendar month, other than those wages due upon termination of an
14 employee, are due and payable between the 16th and the 26th day of the month during which
15 the labor was performed. Labor Code section 204 further provides that all wages earned by
16 any person in any employment between the 16th and the last day, inclusive, of any calendar
17 month, other than those wages due upon termination of an employee, are due and payable
18 between the 1st and the 10th day of the following month.

19 100. At all relevant times herein, California Labor Code section 204 also requires
20 that all wages earned for labor in excess of the normal work period shall be paid no later than
21 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
22 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
23 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven (7) calendar days following the close of the payroll period.

25 101. During the relevant time period, Defendants willfully failed to pay Plaintiff and
26 other non-party Aggrieved Employees all wages due to them including, but not limited to,
27 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay,
28 within any time period specified by California Labor Code section 204.

102. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (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.

104. On information and belief, Defendants have a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff was terminated from his employment on or around July 18, 2024; however, he received his final paycheck on or around July 19, 2024. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of California Labor Code section 201.

105. In addition, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

106. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

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FAILURE TO PAY REPORTING TIME PAY
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS TITLE 8, SECTION 11080 SUBDIVISION 5(A)

107. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

108. California Code of Regulations, Title 8, section 11080(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

109. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5)(A), because Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

110. Defendants had a company-wide practice of sending Plaintiff and other non-party Aggrieved Employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Plaintiff and other non-party Aggrieved Employees for half of their usual or scheduled shift. For example, at least once

1 during his employment, Defendants’ managers sent Plaintiff home before he had an
2 opportunity to work at least half of his scheduled shift, but on information and belief, Plaintiff
3 was only paid for the time he had worked. Although Plaintiff and other non-party Aggrieved
4 Employees would report to work based on the schedule that Defendants provided to them,
5 Defendants would send them home before they worked at least half of their usual or scheduled
6 shifts. When this occurred, Defendants did not pay Plaintiff and other non-party Aggrieved
7 Employees for at least half of their scheduled day’s work or the minimum reporting time pay.

8 111. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
9 properly compensated with reporting time pay in violation of California Labor Code section
10 1198 and California Code of Regulations, Title 8, section 11080(5)(A). Plaintiff and other
11 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
12 Labor Code sections 2699(a), (f), and (k).

13 **FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING REASONABLE**
14 **COMFORT**
15 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
16 **REGULATIONS TITLE 8, SECTION 11080 SUBDIVISION 15**

17 112. At all relevant times, California Labor Code section 1198 dictates that no
18 employer may employ an employee under conditions of labor that are prohibited by the
19 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the
20 standard conditions of labor fixed by the commission shall be the . . . standard conditions of
21 labor for employees. The employment of any employee . . . under conditions of labor prohibited
22 by the order is unlawful.”

23 113. California Code of Regulations, Title 8, sections 11080(15)(A) and (B) provide
24 that “[t]he temperature maintained in each work area shall provide reasonable comfort
25 consistent with industrywide standards for the nature of the process and the work
26 performed If excessive heat or humidity is created by the work process, the employer shall
27 take all feasible means to reduce such excessive heat or humidity to a degree providing
28 reasonable comfort.” California law requires an employer to endeavor to provide a safe and

1 healthy workplace (Cal. Code Regs. tit. 8, § 3203).

2 114. Upon information and belief, Defendants violated California Labor Code section
3 1198 and California Code of Regulations, Title 8, section 11080(15), because Defendants failed
4 to maintain a temperature in work areas that provided reasonable comfort consistent with
5 industry-wide standards for the nature of the process and the work performed and failed to take
6 all feasible means to reduce excessive heat or humidity to a degree providing reasonable
7 comfort.

8 115. During the relevant time period, Plaintiff and other non-party Aggrieved
9 Employees were subjected to excessive heat resulting in temperatures equaling or exceeding 82
10 degrees Fahrenheit. Defendants failed to provide Plaintiff and other non-party Aggrieved
11 Employees with reasonable comfort by maintaining the indoor temperature within the range of
12 industry standards by providing adequate air conditioning, in violation of California Labor Code
13 section 1198 and IWC Wage Order No. 8-2001, subdivision 15. For example, Plaintiff and
14 other non-party Aggrieved Employees who were present in Defendants' facilities were not
15 provided sufficient air conditioning or fans, and would be required to work indoors at 82
16 degrees Fahrenheit or more.

17 116. Accordingly, Defendants failed to maintain in their work areas, a temperature
18 providing reasonable comfort for their employees, including Plaintiff and other non-party
19 Aggrieved Employees, in violation of California Labor Code section 1198 and California Code
20 of Regulations, Title 8, section 11080(15). Plaintiff and other non-party Aggrieved Employees
21 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
22 (k).

23 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

24 **VIOLATION OF LABOR CODE SECTION 2802**

25 117. At all times herein set forth, California Labor Code section 2802 provides that
26 an employer must reimburse employees for all necessary expenditures and losses incurred by
27 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
28 to prevent employers from passing off their cost of doing business and operating expenses on

1 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
2 (2014). The applicable wage order, IWC Wage Order No. 8-2001 provides that: "[w]hen tools
3 or equipment are required by the employer or are necessary to the performance of a job, such
4 tools and equipment shall be provided and maintained by the employer, except that an
5 employee whose wages are at least two (2) times the minimum wage provided herein may be
6 required to provide and maintain hand tools and equipment customarily required by the trade
7 or craft."

8 118. During the relevant time period, Defendants, on a company-wide basis,
9 required that Plaintiff and other non-party Aggrieved Employees use their personal mobile
10 devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job
11 duties, but failed to reimburse them for the costs of their work-related mobile device expenses.
12 For example, Plaintiff was required to use his personal cellular phone to communicate with
13 Defendants' management through phone calls and text messages, to take and send pictures to
14 management, and to review his timesheets. Although Defendants required Plaintiff and other
15 non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to
16 carry out their work-related responsibilities, Defendants failed to reimburse them for their
17 costs incurred.

18 119. Defendants could have provided Plaintiff and other non-party Aggrieved
19 Employees with company mobile devices, or, Defendants could have reimbursed employees
20 for the costs of their mobile device usage. Instead, Defendants passed these operating costs
21 onto Plaintiff and other non-party Aggrieved Employees.

22 120. Defendants' company-wide policy and/or practice of not reimbursing
23 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
24 and other non-party Aggrieved Employees violates California Labor Code section 2802.
25 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

27 **REQUEST FOR JURY TRIAL**

28 Plaintiff requests a trial by jury.

//

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); 1198 and the applicable IWC Wage Order (by failing to maintain a reasonable work temperature); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of the applicable IWC Wage Order and California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

5. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California

1 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
2 1197, 1197.1, 1198, and 2802;

3 6. For pre-judgment and post-judgment interest as provided by law; and

4 7. For such other and further relief as the Court may deem equitable and
5 appropriate.

6

7 Dated: December 31, 2024

Respectfully submitted,

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Capstone Law APC

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By: Roxanna Tabatabaeepour

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Roxanna Tabatabaeepour

Ryan Tish

Alexander Wallin

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Attorneys for Plaintiff Gino Perez

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EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

SAIRAH BUDHWANI
310.712.8154 Direct
Sairah.Budhwani@capstonelawyers.com

October 25, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Gino Perez v. Western Milling, LLC, et al.*

Dear PAGA Administrator:

This office represents Gino Perez in connection with his claims under the California Labor Code. Mr. Perez was an employee of WESTERN MILLING, LLC; VISERION MILLING, LLC; VISERION INTERNATIONAL, LLC; and/or VISERION COMMODITIES LLC. For the purpose of this letter, Mr. Perez collectively refers to these entities as "WESTERN MILLING."

The employers may be contacted directly at the addresses below:

WESTERN MILLING, LLC
31120 WEST ST
GOSHEN, CA 93227

VISERION MILLING, LLC
385 BROADWAY
BOULDER, CO 80302

VISERION INTERNATIONAL, LLC
385 BROADWAY
BOULDER, CO 80302

VISERION COMMODITIES LLC
385 BROADWAY
BOULDER, CO 80302

Mr. Perez intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Perez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by WESTERN MILLING as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WESTERN MILLING employed Mr. Perez as an hourly paid, non-exempt employee from approximately April 2024 to July 2024. Mr. Perez worked for WESTERN MILLING as a Maintenance Mechanic in McFarland, California. During his employment, Mr. Perez typically worked twelve (12) hours per day, and five (5) days per week. At the time Mr. Perez's employment

with WESTERN MILLING ended, he earned approximately \$25.50 per hour. His job duties included, without limitation, doing electrical and fabrication work, and repairing grain augers.

WESTERN MILLING has committed each of the following Labor Code violations against Mr. Perez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

WESTERN MILLING’s Company-Wide and Uniform Payroll and HR Practices

WESTERN MILLING, LLC is a California limited liability company; VISION MILLING, LLC and VISION INTERNATIONAL, LLC are Delaware limited liability companies; and VISION COMMODITIES LLC is a Colorado limited liability company. Together, they operate commercial feed mills that produce animal and plant feed. Upon information and belief, WESTERN MILLING maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Boulder, Colorado, and Goshen, California, for all non-exempt, hourly paid employees working for WESTERN MILLING in California, including Mr. Perez and other aggrieved employees. At all relevant times, WESTERN MILLING issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Perez and other aggrieved employees, regardless of their location or position.

Upon information and belief, WESTERN MILLING maintains a centralized Payroll department at its corporate headquarters in Boulder, Colorado, and Goshen, California, which processes payroll for all non-exempt, hourly paid employees working for WESTERN MILLING in California, including Mr. Perez and other aggrieved employees. Further, WESTERN MILLING issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Mr. Perez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, WESTERN MILLING utilized the same methods and formulas when calculating wages due to Mr. Perez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) 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. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Perez’s experience and counsel’s review of those records currently available relating to Mr. Perez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Perez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

WESTERN MILLING willfully failed to pay all overtime wages owed to Mr. Perez and other aggrieved employees. During the relevant time period, Mr. Perez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, WESTERN MILLING had, and continues to have, a company-wide policy and/or practice of requiring Mr. Perez and other aggrieved employees to perform tasks off-the-clock after their scheduled shifts and on their days off. For example, at the beginning of his employment, Mr. Perez was required to attend training sessions and orientation meetings for a total of about 2-3 hours while off the clock. As a further example, after clocking out at the end of his shifts, WESTERN MILLING sometimes required Mr. Perez to continue performing tasks such as attaching bolts to machinery. Also, Mr. Perez was required to review and approve his timesheets off-the-clock on a weekly basis. Moreover, WESTERN MILLING's managers contacted Mr. Perez on his personal cellular phone about 3-4 times per week about work-related matters when he was not scheduled to work. Thus, WESTERN MILLING failed to track the time Mr. Perez and other aggrieved employees spent working after their scheduled shifts and on their days off, and Mr. Perez and other aggrieved employees received no compensation for this time.

Second, WESTERN MILLING had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads. WESTERN MILLING's policies and/or practices resulted in a failure to provide Mr. Perez and other aggrieved employees with adequate meal period coverage, and thus, Mr. Perez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. WESTERN MILLING also had a practice of failing to schedule meal periods, which further caused Mr. Perez and other aggrieved employees to not be relieved of their duties for compliant meal periods. WESTERN MILLING did not compensate Mr. Perez and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Third, WESTERN MILLING had, and continues to have, a policy and/or practice of requiring that Mr. Perez and other aggrieved employees carry their personal mobile devices, including, but not limited, their cellular phones, and respond to it at all times, including during meal periods. For example, Mr. Perez would regularly have his meal periods interrupted because he was required to answer calls from WESTERN MILLING's management. Thus, Mr. Perez and other aggrieved employees worked through meal periods and/or had them interrupted to handle their assigned workloads and responsibilities, and WESTERN MILLING did not pay Mr. Perez and other aggrieved employees for the time they continued to perform tasks during meal periods.

WESTERN MILLING knew or should have known that as a result of these company-wide practices and/or policies, Mr. Perez and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Perez and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Perez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

WESTERN MILLING's failure to pay Mr. Perez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor

Code sections 510 and 1198. Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 8-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11080(2)(G) (defining "Hours Worked").

First, as set forth above, during the relevant time period, WESTERN MILLING had a company-wide policy and/or practice of requiring Mr. Perez and other aggrieved employees to perform various work-related tasks while off-the-clock, including attending training sessions and orientation meetings, completing maintenance and repair tasks, reviewing timesheets, and responding to phone calls from managers. Thus, WESTERN MILLING failed to track the time Mr. Perez and other aggrieved employees spent working off-the-clock, and Mr. Perez and other aggrieved employees received no compensation for this time.

Second, as also stated, due to WESTERN MILLING's policies and/or practices of understaffing its locations while assigning heavy workloads, failing to schedule meal periods, and requiring employees to respond to phone calls during meal periods, Mr. Perez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

WESTERN MILLING did not pay at least minimum wages for all hours worked by Mr. Perez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, WESTERN MILLING did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, WESTERN MILLING regularly failed to pay at least minimum wages to Mr. Perez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at

the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, WESTERN MILLING had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Perez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, WESTERN MILLING had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Perez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, as stated, WESTERN MILLING had a company-wide policy and/or practice of requiring that Mr. Perez and other aggrieved employees carry their personal mobile devices and to respond to requests at all times, including during meal periods.

As a result, Mr. Perez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Perez's meal periods were regularly interrupted by managers contacting him about work-related matters. Additionally, he sometimes had to take his meal periods late, after the fifth hour of his shift, due to lack of coverage and heavy workload.

Second, because WESTERN MILLING frowned upon employees accruing meal period premiums, WESTERN MILLING's management pressured employees to record compliant meal periods, upon threat of discipline, even when they had not received compliant meal periods, in order to strictly limit the meal period premiums that WESTERN MILLING would otherwise owe. For example, Mr. Perez was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

Third, WESTERN MILLING did not always provide Mr. Perez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. During his employment, Mr. Perez regularly worked shifts in excess of ten (10) or more hours per day but was not always provided a second 30-minute meal period. Additionally, when he was able to take a second meal period, Mr. Perez's second meal periods were often interrupted to speak with managers. Mr. Perez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, WESTERN MILLING knew or should have known that, as a result of these policies, Mr. Perez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. WESTERN MILLING further knew or should have known that WESTERN MILLING did not pay Mr. Perez and

other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, WESTERN MILLING engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Perez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, WESTERN MILLING failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, WESTERN MILLING regularly failed to authorize and permit Mr. Perez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WESTERN MILLING's company-wide practices, including understaffing and assigning heavy workloads, and its requirement that employees carry their personal mobile devices at all times, including during rest periods, prevented Mr. Perez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, WESTERN MILLING failed to schedule rest periods, which, coupled with WESTERN MILLING's failure to provide adequate rest period coverage, further led to Mr. Perez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, WESTERN MILLING maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Perez and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Perez and other aggrieved employees were restricted from leaving the

premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, WESTERN MILLING effectively maintained control over Mr. Perez and other aggrieved employees during rest periods.

As a result of WESTERN MILLING's practices and policies, Mr. Perez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, about 2-3 times per week, Mr. Perez had to forgo his rest periods due to the heavy workload. He regularly had to forgo his third rest breaks for shifts over 10 hours for the same reason. Whenever Mr. Perez was able to take his rest periods, they were regularly interrupted by managers calling Mr. Perez on his personal cellular phone to discuss work-related matters.

WESTERN MILLING has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Perez and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, WESTERN MILLING failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WESTERN MILLING has knowingly and intentionally provided Mr. Perez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WESTERN MILLING issued uniform wage statements to Mr. Perez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, WESTERN MILLING violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because WESTERN MILLING did not record the time Mr. Perez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were

interrupted and/or missed (and therefore time for which they should have been paid), WESTERN MILLING did not list the correct amount of gross wages and net wages earned by Mr. Perez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WESTERN MILLING failed to accurately list the total number of hours worked by Mr. Perez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, and separate from these violations, WESTERN MILLING issued uniform wage statements to Mr. Perez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Perez’s and other aggrieved employees’ wage statements incorrectly list the employer’s address as “PO BOX 1029, GOSHEN, CA 93227” but, according to the California Secretary of State’s website, the correct address is “31120 WEST ST, GOSHEN, CA 93227.” *See example paystub below.*

Western Milling, LLC PO Box 1029, Goshen, CA 93227 Business Phone #: 559-302-1000	1 of 1
Western Milling, LLC PO Box 1029 Goshen, CA 93227	Pay Date: 06/21/2024 Voucher #: (348060)

Deposited To The Account(s) Of	Deposit #	Account Type	Account #	Transit ABA	Deposit
Gino Perez	1	Checking			1,101.26

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), WESTERN MILLING willfully failed to maintain accurate payroll records for Mr. Perez

and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WESTERN MILLING engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Mr. Perez and other aggrieved employees, in violation of section 1198. Furthermore, in light of WESTERN MILLING’s failure to provide Mr. Luna and other aggrieved employees with second 30-minute meal periods to which they were entitled, AGI kept no records of meal start and end times for second meal periods.

Because WESTERN MILLING failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Perez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Perez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, WESTERN MILLING failed to pay Mr. Perez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (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.

On information and belief, WESTERN MILLING has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Perez was terminated from his employment on or around July 18, 2024; however, he received his final paycheck on or around July 19, 2024. Thus, WESTERN MILLING failed to pay Mr. Perez his final wages immediately, in violation of California Labor Code section 201.

In addition, WESTERN MILLING willfully failed to pay Mr. Perez and other aggrieved employees who are no longer employed by WESTERN MILLING all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving WESTERN MILLING's employ.

Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11080 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11080(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, WESTERN MILLING violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5)(A), because WESTERN MILLING failed to pay Mr. Perez and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

On information and belief, WESTERN MILLING had a company-wide practice of sending Mr. Perez and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Perez and other aggrieved employees for half of their usual or scheduled shift. For example, at least once during his employment, WESTERN MILLING's managers sent Mr. Perez home before he had an opportunity to work at least half of his scheduled shift, but on information and belief, Mr. Perez was only paid for the time he had worked. Although Mr. Perez and other aggrieved employees would report to work based on the schedule that WESTERN MILLING provided to them, WESTERN MILLING would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Perez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5A). Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11080 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, sections 11080(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs. tit. 8, § 3203).

Upon information and belief, WESTERN MILLING violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(15), because WESTERN MILLING failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Mr. Perez and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees

Fahrenheit. WESTERN MILLING failed to provide Mr. Perez and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and in IWC Wage Order No. 8-2001, subdivision 15. For example, Mr. Perez and other aggrieved employees who were present in WESTERN MILLING's facilities were not provided sufficient air conditioning or fans, and would be required to work indoors at 82 degrees Fahrenheit or more. Accordingly, WESTERN MILLING failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, Mr. Perez and other aggrieved employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(15).

Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 8-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, WESTERN MILLING, on a company-wide basis, required Mr. Perez and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones and/or mobile data, to carry out their job duties but failed to fully reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Perez used his personal mobile device to communicate with WESTERN MILLING's management through phone calls and text messages, to take and send pictures to management, and to review his timesheets. Although WESTERN MILLING required Mr. Perez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, WESTERN MILLING failed to fully reimburse them for their costs incurred.

WESTERN MILLING could have provided Mr. Perez and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or WESTERN MILLING could have reimbursed employees for the costs of their mobile device usage. Instead, WESTERN MILLING passed these operating costs onto Mr. Perez and other aggrieved employees.

Thus, WESTERN MILLING had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WESTERN MILLING into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” WESTERN MILLING, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Perez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Perez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Perez acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against WESTERN MILLING for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Perez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Perez’s reasonable attempt to settle his dispute with WESTERN MILLING prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform WESTERN MILLING of Mr. Perez’s aforementioned grievances and the proposed remedies as detailed below, while affording WESTERN MILLING a reasonable opportunity to satisfy Mr. Perez’s demands.

Demand is hereby made that WESTERN MILLING shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. WESTERN MILLING shall pay Mr. Perez and all other aggrieved employees employed by WESTERN MILLING at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. WESTERN MILLING shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. WESTERN MILLING shall conduct a survey or interview all current and former aggrieved employees in California who worked for WESTERN MILLING in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to

pay for mobile device expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. WESTERN MILLING shall pay Mr. Perez and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. WESTERN MILLING also shall pay Mr. Perez and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. WESTERN MILLING shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
6. WESTERN MILLING shall reimburse Mr. Perez and all aggrieved employees who were required to pay for any business expenses incurred for WESTERN MILLING's benefit, including, but not limited to, personal mobile device expenses and other expenditures, as required by Labor Code section 2802.
7. WESTERN MILLING shall pay accrued legal interest to Mr. Perez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. WESTERN MILLING shall provide Mr. Perez and all aggrieved employees employed by WESTERN MILLING at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. WESTERN MILLING shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. WESTERN MILLING shall maintain a temperature in work areas that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and take all feasible means to reduce excessive heat to a degree providing reasonable comfort, as required by California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(15).
11. WESTERN MILLING shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, et seq., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 8-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: WESTERN MILLING, LLC (via U.S. Certified Mail); VISERION MILLING, LLC (via U.S. Certified Mail); VISERION INTERNATIONAL, LLC (via U.S. Certified Mail); VISERION COMMODITIES LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



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WESTERN MILLING, LLC
31120 WEST ST
GOSHEN, CA 93227

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Los Angeles, CA 90067



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BOULDER, CO 80302

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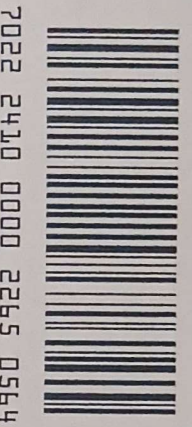
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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for instructions

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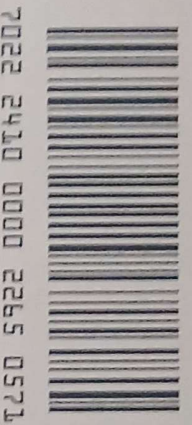
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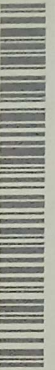
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C. Date of Delivery

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A. Signature

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☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/30/24

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385 BROADWAY
BOULDER, CO 80302**



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GOSHEN, CA 93227



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A. Signature ☒ Linda Avila ☐ Agent ☐ Addressee

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- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Restricted Delivery