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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BILLY DANIEL JR., an individual(s), on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

THE VASQUEZ COMPANY, a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: CIVSB2204403

**DECLARATION OF MICHAEL H.
BOYAMIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PAGA
SETTLEMENT APPROVAL**

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1. I am an attorney duly licensed to practice law in the State of California. I am an attorney at law and partner at Boyamian Law, Inc. I am a member in good standing of the State Bar of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiffs' Motion for Private Attorneys General Act ("PAGA") Settlement Approval. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

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2. I am a 2007 graduate of Whittier Law School. While in Law School, I served as the President of the Armenian Law Students Society and was a member of the Moot Court Honors Board. I was admitted to the California State Bar and to the Supreme Court of the State of California in June of 2008. I am a member of various professional organizations, including the California Employment Lawyers Association (CELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Armenian Bar Association. I have been named as a Southern California Super Lawyer - Rising Star from 2015 through 2022 by Los Angeles Magazine.

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1 b. *Meneses v. CVS Pharmacy, Inc., et al.*, Case No. BC 489739 (2014), filed in Los
2 Angeles County on behalf of pharmacists, which settled for \$2,800,000.

3 c. *Stovall-Gusman v. W.W. Grainger, Inc.*, Case No. 13-cv-02540-HSG (N.D. Cal.
4 2015), which settled for \$715,000.

5 d. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case
6 No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action
7 involving California Labor Code violations relating to restaurant workers, settled for \$2.2
8 million.

9 e. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx)
10 (C.D. Cal 2015) wage and hour class action involving misclassification of independent
11 contractors, which settled for \$4,000,000.

12 f. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action
13 for unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.

14 g. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS*
15 *Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016) wage and
16 hour class action involving Labor Code overtime violations on behalf of pharmacists
17 (\$7,461,600 settlement).

18 h. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-
19 GHK-FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime
20 violations on behalf of pharmacists (\$2,937,600 settlement).

21 i. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC
22 (N.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on
23 behalf of pharmacists (\$2,350,800 settlement).

24 j. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431,
25 BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour class action
26 involving Labor Code travel time violations on behalf of pharmacists (\$2,000,000 settlement).

1 k. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and
2 hour class action involving Labor Code overtime violation on behalf of home health nurses and
3 other home health professionals (\$1,500,000.00).

4 l. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour
5 class action involving Labor Code off-the-clock, overtime, meal and rest break, and
6 unreimbursed business expense violations on behalf of restaurant servers (\$1,300,000).

7 m. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour
8 class action involving Labor Code overtime violation on behalf of Car Haulers (\$2,900,000).

9 n. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class
10 action involving Labor Code overtime violations on behalf of school bus drivers (\$475,000
11 settlement).

12 o. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and
13 hour class action involving Labor Code overtime, meal and rest break, and unreimbursed
14 business expense violations on behalf of home-based service technicians (\$1,500,000).

15 p. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D.
16 Cal. 2017) wage and hour class action involving misclassification of independent contractors
17 (\$1,550,000 partial settlement).

18 q. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal.
19 2018) wage and hour class action involving misclassification of independent contractor
20 newspaper carriers (\$500,000 settlement).

21 r. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County
22 Superior Court Case No. CIVDS1809319 (2019), wage and hour class action concerning
23 overtime and meal and rest break violations in re a commission-only compensation plan
24 (\$2,000,000).

25 s. *Malone, et al., v KAG West, LLC, et al.*, County of Alameda Superior Court, Case
26 No. RG15784137 (2019) wage and hour class action involving Labor Code overtime violations
27 on behalf of delivery truck drivers (\$1,600,000) settlement.
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1 t. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-
2 DSF-FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-clock,
3 overtime, meal and rest break, and unreimbursed business expense violations on behalf of
4 restaurant servers (\$900,000).

5 u. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-
6 SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure to provide
7 meal and rest breaks and reimbursement of necessary expenditures to California-based truck
8 drivers (\$375,000).

9 v. *Delores Humes, et al. v. First Student, Inc.*, Case No. 1:15-cv-01861-BAM (E.D.
10 Cal. 2020), wage and hour class action involving Labor Code wage statement violations on
11 behalf of school bus drivers (\$650,000 settlement).

12 w. *Rita Khatchadourian, et al. v. Sterling Bank and Trust, FSB*, Alameda County
13 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action concerning
14 overtime, meal break, rest break, and commission agreement violations for bank employees
15 (\$300,000 settlement).

16 x. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia II")*, Case No. 3:16-cv-04440-
17 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of independent
18 contractors (\$3,500,000 partial settlement).

19 y. *Espinoza v. Williams-Sonoma, et al.*, LASC Case No. BC693245 (2021) wage
20 and hour class action involving misclassification of last-mile delivery drivers as independent
21 contractors. (\$2,250,000).

22 z. *Perez v. The Roman Catholic Archbishop of Los Angeles*, LASC Case
23 No.BC714164 (2021) wage and hour class action involving Labor Code off-the-clock, overtime,
24 meal and rest break, and unreimbursed business expense violations on behalf of cemetery
25 groundskeepers (\$1,300,000).

26 aa. *Soursa v. Northeast Valley Health Corporation*, LASC Case No. 20STCV02921
27 (2022) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest
28 break violations on behalf of medical personnel (\$600,000)

1 bb. *De Los Reyes v. Call-The-Car, LLC*, LASC Case No. 19STCV25782 (2022)
2 wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break
3 violations on behalf of non-emergency paramedic drivers (\$400,000).

4 cc. *Amirian, et al. v. Umpqua Bank*, L.A.S.C Case No. BC674115 (2022) wage and
5 hour class action involving Labor Code off-the-clock, overtime, meal and rest break violations
6 on behalf of various in-branch bank employees (\$1,250,000);

7 dd. *Ornelas v. Tapestry, Inc.*, Case No. 3:18-cv-06453-WHA (N.D. Cal. 2022),
8 certified wage and hour class action involving Labor Code off-the-clock, overtime, meal and
9 rest break violation premised on off-the-clock security checks for in-store retail employees
10 (\$350,000);

11 ee. *Castenato, et al. v. Calop Business Systems, Inc., et al.* L.A.S.C. Case No.
12 20STCV03772 (2022) PAGA-only representative action involving Labor Code and Living
13 Wage Ordinance violations for non-exempt employees of airport employees of LAX
14 (\$300,000);

15 ff. *Baker v. Hesler Logistics, LLC*, San Diego Sup. Ct. Case No. 37-2021-00007468-
16 CU-OE-CTL (2022), PAGA-only representative action involving transportation delivery hourly
17 employees alleging violations of the Labor Code for unpaid time (\$135,000);

18 gg. *Caballero v. Fidelitone Last Mile, Inc.*, San Bernardino Sup. Ct., Case No.
19 CIVSB2102002 (2022) wage and hour class action involving misclassification of last-mile
20 delivery drivers as independent contractors (\$1,000,000.00);

21 hh. *Whitten v. Rite Aid Corporation, et al.*, Los Angeles Superior Court, Case No.
22 BC646398 (2022) wage and hour class action involving Labor Code off-the-clock, overtime,
23 meal and rest break violation premised on off-the-clock security checks for warehouse
24 employees (\$1,762,424.00);

25 ii. *Gonzales v. San Gabriel Transit, Inc.*, L.A.S.C. Case No. BC536584, California
26 Court of Appeal Case No. B282377, California Supreme Court Case No. S259027 — denial of
27 certification for class of misclassified taxi cab drivers certified reversed and remanded by Court
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1 of Appeal after published opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App. 5th 1131,
2 1149 (2019), review dismissed, cause remanded sub nom., 481 P.3d 1144 (Cal. 2021).

3 5. I have also been a speaker or panelist at various Wage and Hour Seminars hosted
4 by CELA and Los Angeles County Bar Association: Fool's Errand or Fish in a Barrel? Piece
5 Rate, Commission, and Trucking Cases in 2017 (CELA; May 2017); Nuts & Bolts of Labor and
6 Employment Law Program; A Life of a PAGA Claim (LACBA; Dec. 2018).

7 6. In addition, I have also been certified as class counsel following contested class
8 certification motions: *Tyrer v. First Student, Inc.*, L.A.S.C Case No.: BC459305 (June 2014),
9 *Chavez v. Teavana Corporation*, L.A.S.C. Case No.: BC475921 (May 2014); *Clark v. Quest*
10 *Diagnostics Clinical, et al.*, L.A.S.C. Case No. BC594022 (May 2019); *Zarate, et al. v. La Pizza*
11 *Loca, Inc., et al.*, L.A.S.C. Case No. BC642714 (Mar. 2021); *Ornelas v. Tapestry, Inc.*, N.D.
12 Cal., Case No. 3:18-cv-06453-WHA (Aug. 2021).

13 7. My office is currently lead counsel on no less than 30 active class
14 action/representative cases.

15 **RELEVANT FACTUAL BACKGROUND**

16 8. Plaintiff Jessica Pereabras filed this representative action against Defendants The
17 Vasquez Company, Inc. and Miguel's Jr., Inc. in the State of California on behalf of herself and
18 all non-exempt, hourly Restaurant Employees who provide food and customer service at
19 Defendants' California restaurant locations. Plaintiff and Aggrieved Employees are hourly,
20 non-exempt Restaurant Employees. In this action, Plaintiff Pereabras alleges that she and other
21 similarly situated Restaurant Employees were subjected to a variety of Labor Code violations.

22 10. Plaintiff Jessica Pereabras is a former employee of Defendants, who worked at
23 Defendants' restaurant location in Rialto, California. She commenced her employment with
24 Defendant in or around November 28, 2021 until she resigned on December 18, 2021.
25 Throughout her brief tenure with Defendants, Plaintiff was classified as non-exempt, hourly
26 employee.

27 11. At its core, Plaintiff Pereabras alleged that Restaurant Employees, including
28 herself, were denied statutory-compliant meal and rest periods, and that Aggrieved Employees

1 were not paid for all hours worked, including, overtime. Plaintiff also alleged in her complaint
2 that she was denied payment for all hours worked and that Defendants did not timely process
3 wages for herself and other Restaurant Employees. Plaintiff further contended that these Labor
4 Code violations stem from common company policies and practices that fail to comply with
5 California law and a business and staffing model where employees are overworked and
6 understaffed as they strive to fulfill Defendants' directives - to maximize on customer service
7 and sales. Finally, Plaintiff Pereabras alleged that she incurred necessary business expenditures
8 in the form of a required uniform for which she and other Restaurant Employees were not
9 reimbursed.

10 **RELEVANT PROCEDURAL HISTORY**

11 12. On February 7, 2022, in compliance with Labor Code § 2699.3(a)(1), Plaintiff
12 Jessica Pereabras submitted written notice via online filing to the LWDA, setting forth the facts
13 and theories of the violations alleged against Defendants, claiming that they and other similarly
14 situated Restaurant Employees were subjected to a variety of Labor Code violations. A true and
15 correct copy of the PAGA Notice Letter is attached hereto as **Exhibit 1**. Plaintiff then filed this
16 PAGA representative action against Defendants on April 22, 2022, in San Bernardino Superior
17 Court, Case No. CIVSB2208345, entitled *Jessica Pereabras v. The Vasquez Company, Inc., et*
18 *al.* Plaintiff alleged a singular cause of action on behalf of herself and other Restaurant
19 Employees seeking civil penalties pursuant to PAGA.

20 13. Unbeknownst to Plaintiff and her counsel, an earlier action was filed by Plaintiff
21 Billy Daniel Jr. in San Bernardino Superior Court on February 28, 2022, entitled *Daniel Jr. v.*
22 *The Vasquez Co.*, Case No. CIVSB2204403 alleging wage and hour claims consistent with the
23 claims and legal theories alleged in the *Pereabras* matter and seeking to represent the same pool
24 of aggrieved employees that Plaintiff Pereabras sought to represent and recover civil penalties
25 for in her action. A reality of today's class and representative action landscape is that multiple
26 plaintiffs may file overlapping cases. Indeed, as recognized in *Tanguilig v. Neiman Marcus*
27 *Group, Inc.*, 2015 WL 4988336 (2015), "'dueling' class actions ... where various counsel
28 bring actions challenging essentially the same defendant's actions with similar, overlapping, or

1 sometimes identical class definitions” are common. *Tanguilig*, 2015 WL 4988336 at *3. Upon
2 learning of the other actions, plaintiffs’ lawyers who wish to avoid in-fighting and the
3 possibility of a reverse auction agree to team up to oppose the defendant employer collectively.
4 Such was the case here. When counsel for these actions became aware of one another, they
5 prudently opted to work collaboratively.

6 14. The parties to this collective litigation attended a global mediation on December
7 5, 2022. As part of the settlement process, the Parties agreed to stipulate for leave to file a
8 Second Amended Complaint in the *Daniel Jr.* matter in order to conform the pleadings with the
9 scope of the settlement and the claims to be released, and to formally include Ms. Pereabras into
10 the earlier filed *Daniel Jr.* action for purposes relating to obtaining settlement approval and a
11 global release and closure from all active litigation.

12 **RELEVANT LITIGATION HISTORY**

13 15. Early on in the litigation, the parties discussed and agreed to explore a global
14 resolution pertaining to the facts and theories of the complaint. The Parties therefore engaged in
15 extensive discovery in order to develop their respective positions for this litigation and towards
16 mediation. This discovery, in conjunction with the Parties’ meet and confer efforts, resulted in
17 the production of numerous documents and thousands of lines of data. Specifically, in advance
18 of the scheduled mediation, Defendants produced time and pay records for all restaurant
19 locations for all restaurant employees, which entailed an analysis of 166,333 shifts, amounting
20 to relevant data records for approximately 99.7% of the Restaurant Employees for the entire
21 relevant PAGA period.

22 16. Defendants also produced demographic data and Defendants’ labor policies and
23 procedures manuals which covered a broad range of topics including, inter alia, employee clock-
24 in policies and procedures, attendance policies, meal periods/rest periods, overtime & premium
25 pay.

26 17. Using the records detailing the time and pay records of Class Members and the
27 data surrounding the number of current and former Class Members, Plaintiffs’ expert was able
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1 to provide numerous data points used in establishing a potential exposure model in preparation
2 for mediation.

3 18. On December 5, 2022, the Parties participated in full-day mediation with Tripper
4 Ortman, Esq., an experienced mediator of wage and hour class actions. Mr. Ortman helped to
5 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks
6 to both sides. With Mr. Ortman's guidance, the Parties were eventually able to negotiate a
7 complete settlement of Plaintiffs' claims in this collective litigation. At all times, the Parties'
8 negotiations were adversarial and non-collusive.

9 **SUBSTANTIAL WORK PERFORMED BY CLASS COUNSEL**

10 19. Plaintiffs' counsel performed a substantial amount of other work in this matter,
11 including but not limited to the following:

12 • Plaintiffs' counsel spent many hours reviewing the relevant case law, Wage Orders,
13 Plaintiffs' employment records, and applicable statutes related to the merits of the Plaintiffs'
14 potential claims;

15 • Drafted detailed letters to notify the Labor Workforce & Development Agency of
16 Plaintiffs' intent to seek civil penalties and other available relief recoverable under PAGA for
17 Labor Code violations;

18 • Reviewed voluminous documents and data concerning the payroll and time records of
19 Settlement Class Members, and worked with an expert statistician to develop a damages
20 analysis on which to guide Plaintiff's position at mediation;

21 • Reviewed and revised a detailed mediation brief, attended mediation, and engaged in
22 robust discussions about the strengths, weaknesses, and overall merits of the case;

23 • Achieved a settlement on behalf of the Settlement Class after extensive negotiations
24 before, during and after the mediation; and

25 • Negotiated terms of settlement and drafted Memorandum of Understanding and notice
26 and prepared motion for settlement approval.

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ATTORNEYS FEES, LODESTAR AND COSTS INCURRED

20. My total lodestar to date is \$34,405.00 (49.15 hours * \$700.00 per hour). I anticipate having to expend an additional 10 hours on this case dealing with issues regarding the settlement as well as drafting, preparing, and attending the approval hearing. My co-counsels have also expended time and energy in prosecuting this action. Moreover, I note that neither I nor my co-counsel have received any attorneys' fees to date in this matter as we have been representing the Plaintiffs, the State of California, and aggrieved employees entirely on a contingency basis. I believe this to be an important consideration as the Court assesses my lodestar and the total attorneys' fees to award to Class Counsel. Additionally, my firm has incurred litigation expenses in the amount of \$2,240.30 in connection with this matter. A true and correct copies of my time detail and detailed spreadsheet are attached to my declaration as **Exhibits 2 & 3.**

21. I support the analysis provided by co-counsel, Jean-Claude Lapuyade in his concurrently filed declaration explaining the background and events of this action, the contribution of Plaintiffs, the investigation and discovery completed by the parties, and Plaintiffs' counsel's calculation of the maximum potential liability and civil penalties owed in this action.

22. The conclusion to be drawn from co-counsel's analysis is that neither liability, nor civil penalties was clear-cut – which is why the parties elected to settle this matter. As such, Plaintiffs' Counsel have collectively concluded, taking into account the sharply contested issues involved, the expense and time necessary to pursue the litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the State of California, Named Plaintiffs and the members of the PAGA Group pursuant to the Stipulation of Settlement, that a settlement with Defendants on the terms and conditions set forth therein is fair, reasonable, adequate, and in the best interests of the State of California and PAGA Group. Thus, based on these disputes, which had the potential to significantly decrease Plaintiffs' recovery, the range of realistic "litigation outcomes" on the Plaintiffs' PAGA claims, and

1 notwithstanding the existence of the factors and real-life implications listed above, the
2 Settlement achieves a very significant benefit.

3 I declare, under penalty of perjury of the laws of California, the foregoing to be true
4 and correct. Executed this 30th day of March 2023, in Glendale, California.

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Michael H. Boyamian

EXHIBIT 1



BOYAMIAN LAW

February 7, 2022

SENT VIA ONLINE SUBMISSION TO:

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

**Re: *Pereabras adv. The Vasquez Company, Inc., et al*
Notice of PAGA Claims Pursuant to Labor Code Section 2699.3**

Dear Labor and Workforce Development Agency and Employer:

My office represents Jessica Pereabras with respect to claims on behalf of herself and other similarly situated current and former hourly, non-exempt restaurant employees (hereinafter, Restaurant Employees) of The Vasquez Company, Inc. and Miguel's Jr., Inc. (hereinafter collectively referred to as "Miguel's" or the "Company" unless otherwise noted). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a).

Below we set forth the facts and theories which we believe support our contention that Miguel's has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to pay for all hours worked, failure to provide timely and adequate meal and rest breaks, and other related penalties.

Facts and Theories About the Case

Miguel's is a "fast food restaurant" that serves "homestyle Mexican food" (miguel'sjr.com). Ms. Pereabras worked for Miguel's from in or around November 28, 2021, to in or around December 18, 2021. Ms. Pereabras was hired as a Drive-Thru Cashier at the Miguel's Jr. location at 1240 W. Renaissance Pkwy, Rialto, CA 92376 and was classified as a non-exempt, hourly employee.

A. Meal & Rest Break Violations

Our investigation has revealed that Restaurant Employees, including Ms. Pereabras, are not provided with legally compliant meal and rest breaks, as meal and rest breaks were often not made available due to the press of work. Our investigation also revealed that, although Miguel's "Team Handbook" provides a suggested schedule that "should" be followed for rest breaks and meal breaks, at times during the relevant time period, Miguel's did not, in practice, maintain a meal and break schedule to inform or notify Restaurant Employees when to take their breaks.

Our investigation has also uncovered that Miguel's rarely, if ever, issues any compensation to Restaurant Employees for missed, late or shortened meal and/or rest breaks. Indeed, the Company's Team Member Handbook provides, "If your rest break is interrupted, you must be provided and are encouraged to take a full, continuous 10-minute rest break *at a later time*." Elsewhere, the Team Member Handbook provides: "However, during an eight-hour workday, if you were unable to take a rest break before your meal period, you are encouraged to take two separate rest breaks after your meal period that are as evenly spaced as possible." This policy itself is violative of California law. Moreover, due to the nature and press of the work, meal and rest breaks are at times skipped, shortened, or late.

As a result of this practice and/or policy, Miguel's violated California law which requires that an employer provide a rest period in the middle of the "work period" before their lunch and a separate rest period in the middle of the "work period" after their lunch break. *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1045. Because Miguel's failed to provide rest periods in compliance with the requirements of California law, Miguel's needed to pay the Restaurant Employees, including Ms. Pereabras, one hour of pay at their regular rate of pay each day that they were not provided a mandated breaks or provided one combined break. Lab. Code § 226.7; Wage Order No. 4, subd. 12(B).

California law requires that an employer provides an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11070(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11070(11)(D). Additionally, California law mandates that an employer must "authorize and permit" an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11070(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11070(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

B. Failure to Pay for All Hours Worked, Including Overtime

Current and former hourly, non-exempt Restaurant Employees, including Ms. Pereabras, are not paid for all of their time worked.

Our investigation has revealed that Miguel's does not compensate its Restaurant Employees, including Ms. Pereabras, for all hours worked, including overtime. Specifically, the Company required Restaurant Employees to regularly work for more than eight (8) hours per day and more than forty (40) hours per week. Miguel's do not

and did not pay Restaurant Employees one and one-half (1-1/2) times their regular rate of pay for any overtime hours worked over eight hours per day and/or forty hours per week.

Miguel's utilized a timekeeping system, which failed to compensate Ms. Pereabras and other aggrieved non-exempt, hourly Restaurant Employees for all hours worked, whether by rounding, time-shaving, or otherwise. Specifically, our investigation leads us to believe that Miguel's rounding of time was not even-handed and has resulted in Ms. Pereabras and other aggrieved non-exempt, hourly Restaurant Employees not being compensated for all hours worked, including all minimum and overtime wages earned. Miguel's has the ability to compensate Ms. Pereabras and other aggrieved Restaurant Employees to the minute as it appears the Company utilizes a timekeeping system which allows Restaurant Employees, including Ms. Pereabras to digitally punch in and punch out at the cash registers – following their introductory period. Such a practice or mechanism that is used in lieu of real-time recording such as a time clock, does not accurately account for all hours worked. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000); *See also Troester v. Starbucks Corp.*, 421 P.3d 1114 (2018) (recent California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.)

Ms. Pereabras also worked without receiving payment for all hours worked, and Miguel's did not timely process wages for herself and other Restaurant Employees. Specifically, Ms. Pereabras worked from November 24, 2021 to December 16, 2021 and did not receive all the wages that she was owed for the work she performed during that period nor was any compensation paid in a timely manner. Specifically, she worked the following schedule during her tenure with Miguel's:

Sunday 11/28/2021	12:00 P.M.-5:00 P.M.
Monday 11/29/2021	5:00 P.M.-9:30 P.M.
Wednesday 12/01/2021	5:00 P.M.-9:30 P.M.
Thursday 12/02/2021	4:30 P.M.-8:30 PM
Friday 12/03/2021	4:00 P.M.-10:00 P.M.
Saturday 12/4/2021	10:30 P.M.-4:30 P.M.
Monday 12/6/2021	4:00 P.M.-10:00 P.M.
Wednesday 12/08/2021	5:15 P.M. -9:00 P.M.
Thursday 12/09/2021	4:45 P.M.-9:00 P.M.
Saturday 12/11/2021	5:00 P.M.-9:30 P.M.
Sunday 12/12/2021	4:00 P.M.-8:00 P.M.
Wednesday 12/15/2021	5:15 P.M.-10:00 P.M.
Thursday 12/16/2021	4:00 P.M.-8:00 P.M.

Ms. Pereabras complained on multiple occasions about not receiving her wages, much less any wages. Miguel's ignored her complaints. Having determined that Miguel's was forcing her to work continuously with no pay, Ms. Pereabras was forced to resign. The final paycheck issued by Miguel's on December 27, 2021 – the only pay stub Ms. Pereabras received - was in the gross amount of "\$56.25" which represented "3.75" hours. However, given the schedule outlined above, Ms. Pereabras clearly worked more than 3.75 hours. Furthermore, the total earnings column of "\$513.30" is also incorrect as Ms. Pereabras never earned that amount during her brief tenure at Miguel's.

In addition to the legal principles above, California Labor Code § 204 requires an employer to pay employees twice monthly on a pre-designated, regular day. See Cal. Labor Code § 204(a). The statute, therefore, imposes "an obligation of timely payment of wages upon California employers and provides rules for scheduling wage payments." *See's Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 904 (2012). The remedy for a violation of § 204 is found in § 210, which provides that "every person who fails to pay the wages of each employee" as provided for in § 204 "shall be subject to a penalty[.]" Cal. Lab. Code § 210; *see also Singer v. Becton, Dickinson & Co.*, No. 08-CV-821-IEG-BLM, 2008 WL 2899825, at *3 (S.D. Cal. July 25, 2008) ("Section 210 provides the only remedy for failure to comply with 204, i.e., for failure to make timely wage payments, and the remedy is a civil penalty.").

Further, Miguel's expects its employees to "check, doublecheck and go the extra mile" for every customer during every shift. In doing so, Restaurant Employees, including Ms. Pereabras, were often forced to work through their meal and rest breaks in order to keep up with the flow of customers and meet Miguel's standard of "excellence", as expressed in its "Core Values" and "Family Four Behaviors" sections of the Team Handbook. Consequently, Ms. Pereabras, and other Restaurant Employees, were not fully compensated for the time spent working through their meal and rest breaks.

California law requires that an employer compensate an employee for all hours worked. Pursuant to Labor Code § 1194 Miguel's had a duty to pay Ms. Pereabras not less than the minimum required hourly rate of pay set by the Department of Industrial Relations, and legal overtime wages. Sections 1194 and 1197 direct employers to compensate employees at the state-mandated minimum wage for all hours worked. Cal. Lab. Code §§ 1194, 1197. California law requires payment of overtime premium pay for all hours worked by non-exempt employees in excess of eight hours in one day, 40 hours in one week, and for the first eight hours on the seventh-straight day of work in one workweek. *See, e.g.*, Labor Code § 510. It further requires payment of double-time premium pay for all hours worked by such employees in excess of twelve hours in one day, or in excess of eight hours on the seventh-straight day of work in a single workweek. *Id.*

C. Unreimbursed Business Expenditures

California Labor Code § 2802 requires employers to always reimburse employees for necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

Restaurant Employees, including Ms. Pereabras, are required by Miguel's to wear and maintain a Miguel's uniform, which was given to them by Miguel's, and black, non-denim pants and non-slip shoes, purchased individually. Our investigation has uncovered that the articles of clothing at issue - namely, black, non-denim pants and non-slip shoes - were part of Miguel's uniform, and that Miguel's maintained an inflexible uniform policy requiring employees to wear such items (e.g., for health and safety reasons).

Additionally, due to the nature of fast-food restaurant work Ms. Pereabras' uniforms were often, and easily, dirtied and stained with food. Accordingly, Ms. Pereabras regularly had to spend extra money on her uniform maintenance. Ms. Pereabras, and other Restaurant Employees were not reimbursed for such uniforms or maintenance of uniforms.

D. Other Claims

The other alleged violations for penalties, including inaccurate wage statements, the failure to pay all wages by the appropriate pay period, and waiting time penalties, are largely derivative of the failure to provide statutory mandated and compliant meal and rest breaks to Restaurant Employees, including Ms. Pereabras.

a. Inaccurate Wage Statements

Separately, the unpaid hours are not reflected on wage statements issued to the Restaurant Employees, including Ms. Pereabras, in violation of Labor Code Section 226. California Labor Code Section 226(a) governs the information that must appear on wage statements. Specifically, Labor Code Section 226(a) requires that wage statements accurately itemize "(2) total hours worked by the employee..." Miguel's wage statements are facially non-compliant by virtue of the defective meal and rest period policies and practices, the uncompensated work, the unlawful timekeeping systems which does not accurately record the total hours worked by aggrieved Restaurant Employees, including Ms. Pereabras. Accordingly, the wage statements do not accurately itemize or reflect showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

b. Waiting Time Penalties.

These unpaid wages were also not paid at the time of the employees' termination or resignation, in violation of Labor Code Section 203. Additionally, wages that had been accounted for were not paid to employees upon the requisite time following their termination or resignation.

Based on the foregoing facts, Ms. Pereabras is asserting PAGA claims on behalf of herself and on behalf of all other Restaurant Employees employed by Miguel's in California from February 7, 2021, to the present. Ms. Pereabras seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, The Vasquez Company does not permit Ms. Pereabras and other Restaurant Employees to take off-duty meal periods and do not pay one additional hour of pay at their regular rate of compensation for each missed meal period. The Vasquez Company also does not provide Ms. Pereabras and other Restaurant Employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period
2. Violations of Labor Code sections 216, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, The Vasquez Company does not pay minimum and overtime wages to Ms. Pereabras and other Restaurant Employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.
3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as The Vasquez Company does not include all hours worked and wages earned on the wage statements of Ms. Pereabras and other Restaurant Employees.
4. Violations of Labor Code sections 204 and 210, based on The Vasquez Company's failure to pay Ms. Pereabras and similarly situated Restaurant Employees on the regular pay day all owed wages.

Accordingly, we believe the Company has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2802, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Ms. Pereabras and other similarly situated current and former Restaurant Employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

February 7, 2022

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We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If Miguel's wishes to resolve these claims prior to litigation by stopping its unlawful practices and making full restitution to Ms. Pereabras and others, please contact the undersigned forthwith to discuss this matter further. Thank you in advance for your attention to this matter.

Sincerely,

BOYAMIAN LAW, INC.



Michael H. Boyamian, Esq.

Cc: The Vasquez Company, Inc.
Attention: Javier S. Vasquez (*Agent of Service of Process*)
280 Corporate Terrace Street
Corona, California 92879

Miguel's Jr., Inc.
Attention: Javier S. Vasquez (*Agent of Service of Process*)
280 Corporate Terrace Street
Corona, California 92879

EXHIBIT 2

Pereabras v. The Vasquez Co., et al. - MHB Time

<u>Event/Description</u>	<u>Date</u>	<u>Time</u>
PNC Pereabras adv. Miguel's Jr; investigation	12/23/2021	0.75
PNC Pereabras adv. Miguel's Jr; investigation	12/30/2021	0.5
Interview w/ Client re Potential Claims	1/4/2022	1.4
Prepare, draft, edit Retainer Agreement + Related Docs	1/12/2022	0.8
Corr. w/ Client re Claims	1/17/2022	0.4
Research, draft, PAGA Letter	2/1/2022	2.75
Research, draft, PAGA Letter + Complaint	2/17/2022	3.6
Corr. w/ Defense Counsel re Personnel File	2/18/2022	0.3
Review of Personnel File; Corr. w/ Client	4/17/2022	0.7
Review of Personnel File; Corr. w/ Client	4/20/2022	0.5
Review, revise PAGA Complaint	4/21/2022	2.65
Review CMC Order + Guidelines	6/2/2022	0.3
Corr. w/ Defense Counsel re Acceptance of Service	6/13/2022	0.2
Corr. w/ Defense Counsel re Acceptance of Service	6/20/2022	0.1
Review Corr. From OC	8/1/2022	0.1
Review Def's Answer + Related Case	8/2/2022	0.4
Corr. w/ OC re Int'l Case Management Conf.	8/8/2022	0.1
Draft, Revise It Stip to Con't ICMC	8/12/2022	0.6
Corr. w/ Client re Update	8/18/2022	0.2
Corr. w/ Pot. Co-Counsel	8/18/2022	0.5
Review of JPA Agmmt	8/23/2022	0.4
Corr. w/ Co-Counsel re Mediation/Data	9/26/2022	0.5
Review of Notice of Related Case	10/14/2022	0.1
Prepare, draft Notice of Cont Conf re Mediation	10/31/2022	0.5
Corr. w/ Defense Counsel	10/31/2022	0.2
Corr. w/ Defense Counsel re Mediation	11/1/2022	0.4
Review of Doc Prod re Mediation	11/7/2022	0.8
Review of Doc Prod re Mediation	11/10/2022	1.4
Prepare for, appeared for Initial Case Management Conf.	11/7/2022	1.2
Corr. w/ Expert re Mediation Data	11/17/2022	0.5

Corr. w/ Expert re Mediation Data	11/18/2022	0.3
Review of Doc Prod re Mediation	11/18/2022	1.9
Review of Doc Prod re Mediation; Corr. w/ Co-Counsel	11/21/2022	1.5
Corr. w/ Co-Counsel re Mediation/Data	11/22/2022	0.7
Review of Damages Model; Corr. w/ Expert	11/23/2022	2.1
Corr. w/ Client re Update	11/30/2022	0.2
Corr. w/ Co-Counsel re Mediation/Data	11/30/2022	0.6
Corr. w/ Co-Counsel re Mediation/Data	12/1/2022	0.3
Review, revise Mediation Brief	12/3/2022	1.9
Prepare for, participate in Mediation; review MOU	12/5/2022	10.6
Review Ntc of Case Reassignment	1/31/2023	0.1
Review, revise SAC + settlement docs	1/31/2023	0.8
Review, revise settlement documents	2/3/2023	0.95
Draft Joint Report for Further Case Mgmt Conf.	2/6/2023	0.5
Prepared for, appeared for FSC	2/9/2023	0.75
Corr. w/ OC re Requested Forms	3/13/2023	0.2
Review Motion for Settlement Approval	3/23/2023	0.8
Draft, Revise Decl. ISO Motion for Settlement Approval	3/24/2023	2.1

TOTAL TIME: 49.15

EXHIBIT 3

Boyamian Law, Inc. - Litigation Costs Pereabras v. The Vasquez Company

Date	Vendor	Notes (if applicable)	Amount
2022-02-07	LWDA	PAGA Claim - Def. Miguel's Jr.	\$75.00
2022-02-07	LWDA	PAGA Claim - Def. Vasquez Comapny	\$75.00
2022-02-07	USPS	Mailing - PAGA Claim	\$7.33
2022-02-07	USPS	Mailing - PAGA Claim	\$7.33
2022-04-22	SB Court	PAGA Complaint	\$435.00
2022-04-22	OneLegal	PAGA Complaint	\$125.00
2022-06-01	SB Court	Complex Fees	\$1,000.00
2022-06-30	Valpro	Service of Complaint to Def. TVC	\$103.00
2022-06-30	Valpro	Service of Complaint to Def. Miguels	\$203.00
2022-06-30	TurboCourt	POS of Summons for both Defendants	\$9.95
2022-08-12	TurboCourt	Stip and Prop Order to Continue ICMC	\$30.69
2022-11-07	CourtCall	Initial Case Management Conference	\$94.00
2023-02-09	CourtCall	Further Case Management Conference	\$75.00
		TOTAL:	\$2,240.30