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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 AGUSTIN BENITEZ, CARLOS MORALES,
and STEVEN VILLARREAL, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 vs.

19 WESTERN MILLING, LLC and KRUSE
INVESTMENT COMPANY, INC., and
20 PERFECTION PET FOODS, LLC,

21 Defendants.

Case No. 1:18-cv-01484-SKO

CLASS ACTION

**AMENDED COMPLAINT FOR MEAL
AND REST PERIOD VIOLATIONS,
RELATED LABOR CODE
VIOLATIONS, UNFAIR BUSINESS
PRACTICES, PRIVATE ATTORNEY
GENERAL ACT PENALTIES, AND
RETALIATION IN VIOLATION OF THE
FAMILY MEDICAL LEAVE ACT**

1 Pursuant to the Stipulation of the Parties and corresponding Order of the Court,
2 Plaintiffs AGUSTIN BENITEZ (“Benitez”), CARLOS MORALES (“Morales”), and STEVEN
3 VILLARREAL (“Villarreal”; collectively, “Plaintiffs”) bring this action on behalf of themselves
4 and all others similarly situated, and on behalf of all aggrieved employees and the State of
5 California against KRUSE INVESTMENT COMPANY, INC. (“KIC”), and WESTERN
6 MILLING, LLC (“WM”), and PERFECTION PET FOODS, LLC (“PPF,” collectively
7 “Defendants”) and allege as follows:

8 **NATURE OF THE ACTION**

9 1. This case involves Plaintiffs’ claims for missed and/or non-compliant meal and
10 rest periods and resulting violations of the California Labor Code, applicable Industrial
11 Welfare Commission Wage Order, and the Business and Professions Code.

12 2. Defendants, who jointly employed Plaintiffs and the putative class and
13 collective members, require their non-exempt hourly employees to work twelve-hour shifts,
14 but fail to provide those employees with meal periods prior to the end of their fifth and tenth
15 hours of work. Further, Defendants also fail to provide their non-exempt hourly employees at
16 the PPF facilities with a third rest period during shifts longer than ten hours.

17 3. As a result of Defendants’ illegal policies and practices, Plaintiffs and those
18 similarly situated did not receive all wages owed to them and did not receive accurate
19 paystubs. Plaintiffs bring this action seeking unpaid wages, premium wages for missed
20 and/or non-compliant meal and rest periods, interest, and derivative penalties.

21 4. Plaintiff Villarreal requested medical leave under the Family Medical Leave Act
22 (“FMLA”), under which Defendants were covered and to which Villarreal was eligible. In
23 retaliation for having requested FMLA leave, Defendants terminated Villarreal.

1 10. Defendant KIC is a California Corporation with its principal place of business in
2 Goshen, CA. Based on information and belief, at some point during the applicable statutory
3 period KIC had an ownership interest in Perfection Pet Foods, LLC and/or WM, and shared
4 officers, directors, and or other executives with the other Defendants, and controlled the
5 terms and conditions of employment for Plaintiffs and the other PCMs. At all times herein
6 Defendants have been an employer or joint employer of Plaintiffs and the PCMs, covered by
7 the California Labor Code and Industrial Welfare Commission, Wage Order No. 1 (“Wage
8 Order No. 1”).

9 11. Defendant PPF is a California limited liability company with its principal place
10 of business in Visalia, California. Defendant PPF is a dry pet food manufacturer that operates
11 two pet food plants and a warehouse in Visalia, California. Based on information and belief,
12 at some point during the applicable statutory period, PPF shared directors, officers, and/or
13 other executives with the other Defendants. At all times herein Respondent has been an
14 employer or joint employer of Claimants and the PCMs, covered by the California Labor Code
15 and Industrial Welfare Commission, Wage Order No. 1 (“Wage Order No. 1”).

16 12. Defendants recruited Plaintiffs and those similarly situated through one or more
17 temporary staffing agencies. Plaintiffs and those similarly situated were paid through the
18 temporary staffing agency for short periods at the start of their employment. Defendant,
19 however, directly exercised control over the wages, hours, and working conditions of Plaintiffs
20 and those similarly situated. Thus, Defendant employed Plaintiffs’ and those similarly
21 situated even when they were paid through a temporary staffing agency. Defendant was the
22 joint employer of Plaintiffs and those similarly situated while it paid them through a temporary
23 staffing agency pursuant to *Castaneda v. Ensign Group, Inc.* (2014) 229 Cal.App.4th 1015.
24

1 13. Plaintiffs are informed and believe, and on that basis allege that there exists,
2 and at all times relevant herein there existed, a unity of interest and ownership between all
3 Defendants and Perfection Pet Foods, LLC (“PPF”) such that any individuality and
4 separateness between and among such entities has ceased, and each is the alter ego of the
5 other.

6 14. Defendants KIC and WM have completely controlled, dominated, managed,
7 and operated PPF for their sole and exclusive benefit. Defendants KIC and WM have
8 commingled the assets of PPF and themselves to suit their needs and convenience.
9 Defendants and PPF have failed to maintain any degree of separateness with each other,
10 and have failed to observe corporate formalities. Defendants’ activities have been carried out
11 without the holding of directors’ or shareholders meetings, and proper records or minutes of
12 corporate proceedings have not been maintained. Defendants KIC and WM have all at times
13 relevant, controlled and operated PPF as a device to avoid individual, agency, and
14 respondeat superior liability, and for the purpose of substituting financially insolvent
15 corporations and/or other entities with limited financial resources, in the place of themselves,
16 and each of them. Defendants WM and KIC have so inadequately capitalized PPF, compared
17 with the business to be done by PPF and the risks of loss attendant thereto, that their
18 capitalization is trifling and/or illusory.

19 15. Plaintiffs are further informed and believe, and on that basis allege that each of
20 the Defendants, PPF and as yet unidentified defendants are and at all times discussed herein
21 were, a mere shell, instrumentality and conduit through which the other entities carried on
22 their business in the corporate name, exercising control and dominance of such business to
23 such an extent that any individuality or separateness of the individual entities does not, and
24 at all times herein mentioned did not, exist. Indeed, Defendants and PPF operate as a single

1 business enterprise. Though Defendants have multiple corporate, entity, and individual
2 personalities, there is but one enterprise and this enterprise has been so handled that it
3 should respond, as a whole, for the acts committed by Defendants and PPF as alleged herein.

4 16. Adherence to the fiction of the separate existence of such entities would permit
5 an abuse of trust and/or corporate privilege and would sanction a fraud and promote injustice
6 in that Plaintiffs are informed and believe, and on that basis allege, that each of the individual
7 entities was, and at all times relevant is, inadequately capitalized and incapable of responding
8 in damages to Plaintiffs and the PCMs. PPF may have insufficient assets to respond to the
9 ultimate award of compensatory damages, costs, attorney's fees and punitive damages
10 entered in the arbitration pending against it. Further, an award of punitive damages against
11 WM and KIC alone will not accurately reflect the amount necessary for punishment of the
12 other Defendants who have abused the corporate privilege to commit the acts herein alleged
13 against Plaintiffs and the PCMs.

14 17. Defendants share directors, officers, and/or other executives who exercise
15 control over the terms and conditions of Plaintiffs' and the PCMs' employment. Indeed, during
16 the relevant time period, the entire management function of PPF was performed by
17 executives nominally employed by other Defendants. Additional acts and omissions on the
18 part of Defendants, consistent with the factors listed in *Associated Vendors, Inc. v. Oakland*
19 *Meat Co.* (1962) 210 Cal.App.2d 825, 838-840, and subsequent cases, will be developed
20 during discovery in this action.

21 18. Plaintiffs are informed and believe and on that basis allege that at all material
22 times herein, Defendants have continuously been an "employer" within the meaning of the
23 Family and Medical Leave Act, in that Defendants are engaged in commerce and employed
24 50 or more employees during the relevant time period. 29 U.S.C. § 2611(4)(A).

1 **JURISDICTION AND VENUE**

2 19. The FMLA authorizes private rights of action to recover damages for violation
3 of the FMLA's provisions. 29 USC § 2617(a). This Court has original federal question
4 jurisdiction under 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the
5 California state law claims under 28 U.S.C. § 1367(a) because they are so related to this
6 action that they form part of the same case or controversy.

7 20. Pursuant to 28 U.S.C. §1391(b)(2) venue is proper in the Eastern District of
8 California because all of the events and omissions giving rise to the claims occurred in Tulare
9 County.

10 **FACTUAL ALLEGATIONS**

11 21. Defendants are in the business of pet food manufacturing and operate through
12 PPF a dog biscuit plant, dog kibble plant, and a warehouse in Visalia, California. Based on
13 information and belief, Walmart purchases the majority of Defendants' products
14 manufactured at those facilities. At times, Defendants have jointly employed upwards of 250
15 non-exempt hourly workers at its PPF facilities. Defendants typically recruit its workers
16 through a temporary staffing agency and thereafter hires them on a permanent basis through
17 PPF. All of the terms and conditions of Plaintiffs' and PCMs' employment remained the same
18 after they were hired on a permanent basis, including, but not limited to, hours worked, days
19 worked, and working conditions.

20 22. Benitez began working at Defendants' biscuit plant in Visalia, California in June
21 2012 as a Lead Batcher. He was transferred to the kibble plant in approximately January
22 2013. Benitez worked through a temporary staffing agency for the first two weeks of his
23 employment, though he interviewed with and was hired by Defendants. All of the terms and
24 conditions of Benitez's employment were set and governed by Defendants for the first two

1 weeks of his employment during which he was paid by the temporary staffing agency to
2 perform work at Defendants' facilities. Indeed, after Benitez began being paid directly by
3 Defendants, he continued to work the night shift as a Lead Batcher in Defendants' biscuit
4 plant. Benitez worked the night shift for the first year of his employment and then moved to
5 the day shift until his employment ended in March 2014.

6 23. Morales began working at Defendants' biscuit plant in Visalia, California in early
7 2014 as a Sorter. He worked through a temporary staffing agency for approximately the first
8 six months of his employment. All of the terms and conditions of Morales' employment were
9 set and governed by Defendants during the period he was paid by the temporary staffing
10 agency to perform work at Defendants' facilities. When Morales began being paid by
11 Defendants, Defendants continued to dictate his working conditions and Morales continued
12 working the day shift. From approximately mid to late 2014 through March 2016, Morales
13 was employed as a Sanitizer.

14 24. Villarreal began working at Defendants' dog biscuit plant in Visalia, California
15 in February 2013 as a Maintenance Mechanic. For approximately the first three months of
16 Villarreal's employment with Defendants, he worked through a temporary staffing agency. All
17 of the terms and conditions of Villarreal's employment were set and governed by Defendants
18 during the period he was paid by the temporary staffing agency to perform work at
19 Defendants' facilities. Indeed, after Villarreal was hired on a permanent basis he continued
20 to work in the biscuit plant, as a Maintenance Mechanic on the day shift. Villarreal worked at
21 the biscuit plant for approximately one year before being transferred to Defendants' dog
22 kibble plant in Visalia, California. These two plants are separated by an office building that
23 has since been acquired by Defendants. Villarreal worked the day shift until his termination
24 on July 1, 2016.

1 25. The following allegations relate to the four years immediately preceding the
2 filing of the initial action against PPF (*Villarreal v. Perfection Pet Food, LLC*, Case No. 1:16-
3 cv-1661-LJO-EPG, filed November 2, 2016 in this Court):

4 26. Defendants classified Plaintiffs and others working at its Visalia, California PPF
5 pet food plants and warehouse as non-exempt, hourly-wage employees. These employees
6 are all Putative Class Members (“PCMs”).

7 27. Defendants’ plants and warehouse operate 24 hours per day, 7 days per week
8 and PCMs work either the day shift (7:00 a.m. to 7:30 p.m.) or the night shift (7:00 p.m. to
9 7:30 a.m.). Thus, Defendants schedule PCMs to work twelve-hour shifts with a single allotted
10 thirty-minute a meal period. Plaintiffs and PCMs worked the same schedules when they were
11 paid through the temporary staffing agency.

12 28. Defendants refused to provide Plaintiffs and PCMs with an off-duty, thirty-
13 minute meal period prior the end of their fifth hour of work both while Plaintiffs and PCMs
14 were paid by the temporary staffing agency and while they were paid by Defendants. Plaintiffs
15 and PCMs were kept too busy by their managers to take meal periods prior to the end of their
16 fifth hour of work. Plaintiffs’ managers only permitted them to take meal periods when they
17 had been relieved of duty by a co-worker who would take over their work while Plaintiffs took
18 their meal periods.

19 29. Defendants also failed to provide Plaintiffs and PCMs a second off-duty, thirty-
20 minute meal period for shifts lasting longer than ten hours both while Plaintiffs and PCMs
21 were paid by the temporary staffing agency and while they were paid by Defendants until
22 January 1, 2016. Indeed, prior to January 1, 2016, Defendants only provided at most a single
23 (though non-compliant) meal period during each twelve-hour shift. Plaintiffs were unaware
24

1 that they were entitled to a second meal period because a second meal period was never
2 offered.

3 30. Based on information and belief, in or around the end of 2015, Walmart
4 performed an audit of Defendants' operations at the PPF facilities and noted that Defendants
5 systematically failed to provide a second off-duty thirty-minute meal period even though
6 Defendants instituted a schedule requiring all of its non-exempt hourly workers to work
7 twelve-hour days. After the audit, Defendants began permitting second meal periods.

8 31. However, even after January 1, 2016, Defendants refused to provide to
9 Plaintiffs Villarreal and Morales, and those similarly situated, an off-duty, thirty-minute meal
10 period prior the end of their tenth hour of work, such that Villarreal and Morales often received
11 their second meal periods during their eleventh hour of work. Co-workers—who must provide
12 relief while a non-exempt employee is taking a meal period—were routinely unavailable or
13 not directed by management to take over for Villarreal or Morales so that they could take a
14 second meal period prior to the end of their tenth hour of work.

15 32. Defendants refused to authorize and permit Plaintiffs and PCMs to take a third
16 paid, ten-minute rest period during the last four hours (or major fraction thereof) of Plaintiffs'
17 and PCMs' twelve-hour shifts. Plaintiffs and PCMs were only provided with two rest periods
18 during their twelve hour shifts.

19 33. Defendants never paid Plaintiffs or PCMs any premium wages for a missed or
20 otherwise non-compliant meal or rest period. Despite missing meal and rest periods
21 essentially every day that they worked, Defendants never paid Plaintiffs or the PCMs
22 premium wages for the missed and/or non-compliant meal or rest periods. In fact, there was
23 no method by which Plaintiffs and PCMs could even report missed or non-compliant meal
24 and/or rest periods.

1 34. As a result, Plaintiffs and PCMs never received accurate paystubs, in that their
2 paystubs did not reflect the premium wages they should have been paid for missing meal
3 and rest periods. Furthermore, Plaintiffs and PCMs who were terminated were not paid all
4 wages due upon termination of their employment, as they were not paid the missed meal and
5 rest period premiums.

6 35. In or around June 20, 2016, Villarreal informed his manager that he intended
7 to take medical leave because he could no longer work due to the debilitating headaches he
8 began experiencing after his stroke in 2015. Villarreal worked at least 1,250 hours during the
9 12 months prior to the start of the proposed FMLA leave; and worked at a location where at
10 more than 50 employees are employed. Within days of Villarreal's request, Villarreal was
11 falsely accused of sending inappropriate emails to co-workers, and Defendant terminated
12 him. The inappropriate e-mails were fabricated and were used as a pretext for terminating
13 Villarreal for requesting leave under FMLA in retaliation for the same.

14 36. On November 2, 2016, Plaintiffs filed their initial complaint in the Eastern
15 District of California against PPF. On November 2, 2016, Plaintiffs also provided notice to the
16 Labor Workforce and Development Agency ("LWDA") and also to Defendant PPF of their
17 intent to seek penalties pursuant to PAGA as required by that statute. If the LWDA intended
18 to investigate Plaintiffs' allegations, it had to provide them with notice of that intent. Sixty-five
19 days have passed since Plaintiffs provided the LWDA notice on November 2, 2016, but
20 Plaintiffs have not received any notice that the LWDA intends to investigate their allegations.
21 Hence, pursuant to California Labor Code § 2699.3(a)(2)(a-c), Plaintiffs had the right to bring
22 a claim against PPF for PAGA penalties.

23 37. On January 10, 2017, Plaintiffs filed their Amended Complaint in the initial
24 Federal Action against PPF, adding a claim for PAGA penalties.

1 38. On February 7, 2017, PPF filed a motion to compel arbitration, staying all
2 proceedings. That motion was ultimately granted on May 2, 2017, and the case was
3 compelled to arbitration. Due to the filing of the motion to compel arbitration, Plaintiffs were
4 never permitted to commence discovery in the PPF action.

5 39. Shortly thereafter, the Plaintiffs and PPF agreed to arbitrate the matter with
6 JAMS and selected Hon. Steven Brick (Ret.) as Arbitrator, and agreed to engage in an early
7 mediation in an attempt to resolve these claims. Unfortunately, Judge Brick passed away
8 unexpectedly, and the parties were compelled to select a new arbitrator. The parties selected
9 Michael J. Loeb as arbitrator. However, in May 2018, Mr. Loeb declined to serve as arbitrator
10 of these claims. Ultimately, the parties agreed to engage Judge Freedman as arbitrator of
11 the action against PPF.

12 40. On or around the date of the mediation, Plaintiffs became aware that
13 Defendants KCI and WM were also joint employers of themselves and the PCMs, but
14 remained prohibited from conducting discovery regarding that relationship. As of the date of
15 this filing Plaintiffs have still not been permitted to commence discovery against PPF,
16 Defendants, or anything else related to their claims.

17 41. Upon commencement of the arbitration against PPF, Plaintiffs (Claimants in
18 that arbitration) notified PPF and the arbitrator that they intended to join Defendants in that
19 arbitration as joint employers and alter egos of PPF based on the arbitration agreements
20 upon which PPF successfully moved to compel arbitration in the PPF action.

21 42. The arbitrator then directed Plaintiffs to submit an amended statement of claims
22 to that effect, which Plaintiffs submitted in the arbitration on September 5, 2018. On
23 September 26, 2018, Defendants submitted in the arbitration, and "Objection and Opposition"
24 to being named as parties to the PPF Arbitration. In that objection and opposition, Defendants

1 took the position that “at no time did [Defendants] enter into any agreement to arbitrate
2 disputes with [Plaintiffs],” and that the arbitrator did not have authority to decide the issue of
3 whether Defendants could be joined to the arbitration.

4 43. Given that Defendants have conceded that there are no arbitration agreements
5 with Plaintiffs and the PCMs, upon resolution of Defendants’ objection and opposition to
6 being named as parties in the PPF arbitration, Plaintiffs now file the instant action against
7 Defendants.

8 44. Following a second mediation which was successful, for the purposes of the
9 proposed Settlement, Defendant PPF agreed to waive its right to arbitrate the claims for the
10 purposes of this settlement and the parties stipulated to file this amended complaint to include
11 all claims against all Defendants.

12 **CLASS ACTION ALLEGATIONS UNDER F.R.C.P. RULE 23**

13 45. Plaintiffs bring the class allegations, consisting of California state law claims,
14 as an “opt-out” class action pursuant to Federal Rule of Civil Procedure 23. The class is
15 initially defined as:

16 All current and former non-exempt hourly workers that worked at
17 least one shift of more than five hours at any of Defendants’ Visalia,
18 California Perfection Pet Foods, LLC pet food plants and/or
19 warehouse and at some point received a paycheck from Perfection
Pet Foods, LLC, at any time during the time period from November
2, 2012 until preliminary approval of the proposed settlement in this
action.

20 (The “Class.”)

21 46. Numerosity: Defendants have employed at least 300, and potentially
22 thousands, of non-exempt hourly employees in its PPF plants and warehouse during the
23 applicable statutory period. The number of PCMs is therefore far too numerous to be
24 individually joined in this lawsuit.

1 47. Existence and Predominance of Common Questions: There are questions of
2 law and fact common to Plaintiffs that predominate over any questions affecting only
3 individual PCMs. These common questions of law and fact include, without limitation:

- 4 a. Whether Defendants failed to provide to PCMs an off-duty 30-minute meal
5 period prior to the end of their fifth hour of work;
- 6 b. Whether Defendants failed to provide to PCMs a second off-duty 30-minute
7 meal period prior to the end of their tenth hour of work;
- 8 c. Whether Defendants failed to pay PCMs a premium wage for all missed and/or
9 non-compliant meal periods;
- 10 d. Whether Defendants authorized and permitted PCMs to take three 10-minute
11 rest periods when PCMs worked shifts longer than 10 hours;
- 12 e. Whether Defendants failed to pay PCMs a premium wage for all non-compliant
13 and/or missed rest periods;
- 14 f. Whether Defendants failed to maintain and furnish PCMs with accurate records
15 of hours worked in violation of the Labor Code and Wage Orders;
- 16 g. Whether Defendants failed to furnish PCMs with accurate, itemized wage
17 statements to which they were entitled;
- 18 h. Whether Defendants failed to pay all wages to its terminated employees
19 immediately upon termination to which they were entitled;
- 20 i. Whether Defendants jointly employed the PCMs regardless of whether they
21 were nominally employed by PPF or a staffing agency;
- 22 j. Whether Defendants are the alter ego of PPF and/or each other;
- 23 k. The proper measure of damages sustained and the proper measure of
24 restitution recoverable by PCMs.

1 48. Typicality: Plaintiffs' claims are typical of the claims of the Class. Defendants'
2 common policies, practices, and course of conduct in violation of law as alleged herein have
3 caused Plaintiffs to sustain the same or similar injuries and damages. Plaintiffs' claims are
4 thereby representative of and co-extensive with the claims of the Class.

5 49. Adequacy: Plaintiffs will fairly and adequately represent and protect the
6 interests of the Class because Plaintiffs' interests do not conflict with the interests of the
7 members of the Class they seek to represent. Plaintiffs have retained Counsel competent
8 and experienced in complex employment and wage and hour class action litigation, and
9 Counsel intends to prosecute this action vigorously. Plaintiffs and their Counsel will fairly and
10 adequately protect the interests of the Class.

11 50. Superiority: A class action is superior to other available means for the fair and
12 efficient adjudication of this controversy. Individual joinder of Plaintiffs is not practicable, and
13 questions of law and fact common to Plaintiffs predominate over any questions affecting only
14 individual members of the Class. The injury suffered by each PCM, while meaningful on an
15 individual basis, is not of such magnitude as to make the prosecution of individual actions
16 against Defendants economically feasible. Individualized litigation increases the delay and
17 expense to all Parties and the Court. By contrast, class action treatment will allow those
18 similarly situated persons to litigate their claims in the manner that is most efficient and
19 economical for the parties and the judicial system.

20 51. In the alternative, the Class may be certified because the prosecution of
21 separate actions by the individual members of the Class would create a risk of inconsistent
22 or varying adjudication with respect to individual members of the Class, and, in turn, would
23 establish incompatible standards of conduct for Defendant. Defendants have also acted or
24

1 refused to act on grounds that apply generally to the class, so that final injunctive relief or
2 corresponding declaratory relief is appropriate respecting the class as a whole.

3 52. Class treatment will allow those similarly situated persons to litigate their claims
4 in the manner most efficient and economical for the Parties and the judicial system.

5 53. Plaintiffs know of no difficulty that would be encountered in the management of
6 this litigation that would preclude its maintenance as a class action.

7 54. Plaintiffs intend to send notice to all PCMs to the extent required under
8 applicable class action procedures. Plaintiffs contemplate providing a notice or notices to the
9 Class, as approved by the Court, to be delivered through the United States Postal Service.
10 The notice or notices shall, among other things, advise the Class that they shall be entitled
11 to “opt out” of the certified class if they so request by a date specified within the notice, and
12 that any judgment on action, whether favorable or not, entered in this case on the class claims
13 will bind all PCMs except those who affirmatively exclude themselves by timely opting out.

14 **FIRST CLAIM FOR RELIEF**
15 **Failure to Provide Meal Periods**
(Class Claim)

16 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
17 below.

18 55. Defendants’ conduct, as alleged herein, constitutes a violation of California
19 Labor Code § 512(a) and Wage Order No. 1, which requires employers to provide one thirty-
20 minute meal period prior to the end of the fifth hour of work and a second thirty-minute meal
21 period prior to the end of the tenth hour of work.

22 56. Defendants’ conduct, as alleged herein, also constitutes a violation of California
23 Labor Code § 226.7, which prohibits an employer from requiring employees to work during
24 any meal period mandated by the IWC. California Labor Code § 226.7(c) and Wage Order

1 No. 1 require employers to pay employees one hour of premium wages at the employee's
2 regular rate of compensation for each day that the meal periods are not provided in
3 accordance with the law.

4 57. Defendants knowingly and intentionally failed to provide Plaintiffs and PCMs
5 with the legally required meal periods and failed to pay them the resulting premium wages
6 owed.

7 58. As a direct result of Defendants' unlawful employment practices, as alleged
8 herein, Plaintiffs and PCMs have been injured and are entitled to recover unpaid premium
9 wages and interest.

10 **SECOND CLAIM FOR RELIEF**
11 **Failure to Provide Rest Periods**
(Class Claim)

12 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
13 below.

14 59. Defendants' conduct, as alleged herein, also constitutes a violation of California
15 Labor Code § 226.7, which prohibits an employer from requiring employees to work during
16 any rest period mandated by the IWC. California Labor Code § 226.7(c) and Wage Order No.
17 1 require employers to pay employees one hour of premium wages at the employee's regular
18 rate of compensation for each day that the rest periods are not authorized and permitted in
19 accordance with the law.

20 60. Defendants knowingly and intentionally failed to authorize and permit Plaintiffs
21 and PCMs to take all legally required rest periods and failed to pay them the resulting
22 premium wages owed.

1 below.

2 64. Defendants' conduct, as alleged herein, constitutes a violation of California
3 Labor Code § 201(a), which requires an employer to pay an employee all earned and unpaid
4 wages immediately upon discharge. Through its failure to pay Plaintiffs and PCMs missed
5 meal and rest period premiums, Defendants wilfully failed to pay Plaintiffs and PCMs who
6 were terminated all wages owed upon their termination.

7 65. As a direct result of Defendants' unlawful employment practices, as alleged
8 herein, Plaintiffs and PCMs have been injured as alleged herein and are entitled to recover
9 statutory penalties under California Labor Code § 203(a).

10 **FIFTH CLAIM FOR RELIEF**
11 **Unfair and Unlawful Business Practices**
(Class Claim)

12 Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
13 herein.

14 66. California Business and Professions Code §§ 17200, *et seq.* prohibits unfair
15 competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

16 67. California Business and Professions Code § 17204 allows a person injured by
17 the unfair business acts or practices to prosecute a civil action for violation of the UCL.

18 68. California Labor Code § 90.5(a) states it is the public policy of California to
19 vigorously enforce minimum labor standards in order to ensure employees are not required
20 to work under substandard and unlawful conditions, and to protect employers who comply
21 with the law from those who attempt to gain competitive advantage at the expense of their
22 workers by failing to comply with minimum labor standards.

23 69. Beginning at an exact date unknown to Plaintiffs and PCMs, but at least since
24 the date four years prior to the filing of this suit, Defendant has committed acts of unfair

1 competition as defined by the Unfair Business Practices Act by engaging in the unlawful,
2 unfair, and fraudulent business acts and practices described in this Complaint, including, but
3 not limited to:

- 4 a. violations of California Labor Code §§ 204, 512(a), 226.7, 210, 558(a);
5 and Wage Order No. 1 pertaining to meal and rest periods;
- 6 b. violations of California Labor Code §§ 226, 226.3 pertaining to wage
7 statements; and
- 8 c. violations of California Labor Code §§ 201-203 pertaining to waiting time
9 penalties.

10 70. The violations of these laws and regulations, as well as of the fundamental
11 California public policies protecting wages, serve as unlawful predicate acts and practices for
12 purposes of Business and Professions Code §§ 17200, *et seq.*

13 71. The acts and practices described above constitute unfair, unlawful, and
14 fraudulent business practices, and unfair competition, within the meaning of Business and
15 Professions Code §§ 17200, *et seq.* Among other things, the acts and practices have taken
16 from Plaintiffs' and PCMs' wages rightfully earned by them, while enabling the Defendant to
17 gain an unfair competitive advantage over law-abiding employers and competitors.

18 72. Business and Professions Code § 17203 provides that the Court may make
19 such orders or judgments as may be necessary to prevent the use or employment by any
20 person of any practice which constitutes unfair competition.

21 73. As a direct and proximate result of the aforementioned acts and practices,
22 Plaintiffs and PCMs have suffered a loss of money and property, in the form of unpaid wages
23 which are due and payable to them.

1 78. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee to bring a
2 civil action to recover civil penalties pursuant to the procedures specified in California Labor
3 Code § 2699.3. Pursuant to those sections Plaintiffs are entitled to recover civil penalties for
4 PPF's violations of the Labor Code as described hereinabove.

5 79. Pursuant to Labor Code § 2699.3, Plaintiffs gave written notice to the California
6 Labor and Workforce Development Agency ("LWDA") and to PPF of the specific provisions
7 of the Labor Code alleged to have been violated and the facts and theories to support the
8 alleged violations. The LWDA failed to respond to that notice within sixty-five calendar days.
9 Thus, under California law, Plaintiffs were permitted by Labor Code § 2699.3(a)(2)(C) to
10 timely add this cause of action for PAGA penalties.

11 80. Pursuant to Labor Code § 2699(g), Plaintiffs are entitled to an award of
12 reasonable attorneys' fees and costs in connection with their claim for civil penalties.

13 **SEVENTH CLAIM FOR RELIEF**
14 **Interference with Rights Under the FMLA**
(by Plaintiff VILLARREAL only)

15 Plaintiff Villarreal incorporates each of the foregoing paragraphs as though fully set
16 forth herein below.

17 81. Villarreal was eligible for the FMLA's protections in that he had worked for
18 Defendants since 2013, averaging 60-hour workweeks, and Defendants employed more than
19 50 people within a few miles of the dog kibble plant Villarreal worked in when he requested
20 FMLA leave.

21 82. Defendants employed 50 or more employees for at least 20 workweeks in the
22 current or preceding calendar year and was, therefore, covered by the FMLA.

23 83. On or around June 20, 2016, Villarreal informed his manager of his intent to
24 begin medical leave under the FMLA within the next two weeks because he was unable to

1 work due to his serious health condition, namely debilitating headaches resulting from a
2 recent stroke.

3 84. Beginning on June 21, 2016, Defendants fabricated inappropriate e-mails
4 alleging that they were sent by Villarreal to co-workers, and used this as a basis for
5 terminating him.

6 85. Defendants denied Villarreal his FMLA benefits when it fired him on
7 July 1, 2016 for exercising his rights under the FMLA.

8 86. Villarreal's request for leave under the FMLA was a substantial factor in
9 Defendants' decision to terminate him. Indeed, he was fired *because* he requested leave
10 under the FMLA.

11 87. As a direct result of Defendants' unlawful employment practices, as alleged
12 herein, Villarreal is entitled to recover lost wages, interest, and attorney's fees under 29 USC
13 § 2617(a).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- 16 1. Certification of this action as a class action on behalf of the Class Members;
- 17 2. Designation of Plaintiffs as representatives of the Class and PAGA Collective;
- 18 3. Designation of Plaintiffs' counsel of record as class counsel for the Class and
19 the PAGA Collective;
- 20 4. Damages and restitution for missed meal and rest period premium wages,
21 together with interest at the legal rate;
- 22 5. For a declaratory judgment that Defendants were the joint employers of
23 Plaintiffs and the Class;
- 24 6. For a declaratory judgment that Defendants were the alter ego of each other

1 and PPF;

2 7. For a declaratory judgment that Defendants has violated the California Labor
3 Code and public policy as alleged herein;

4 8. For an equitable accounting to identify, locate, and restore to all current and
5 former Plaintiffs the wages they are due, with interest thereon;

6 9. For an order awarding Plaintiffs and the Class compensatory damages,
7 including lost wages, earnings, and other employee benefits, restitution, and all other sums
8 of money owed to Plaintiffs and the Class, together with interest on these amounts, according
9 to proof;

10 10. All applicable statutory penalties, including PAGA penalties, arising from
11 Defendants' unlawful conduct, as alleged herein;

12 11. Attorney's fees and costs pursuant to the California Labor Code, PAGA, Code
13 Civil Procedure § 1021.5 and any other applicable attorney fee provisions;

14 12. For interest on any damages and/or penalties awarded, as provided by
15 applicable law; and

16 13. For an order awarding Plaintiff Villarreal lost wages, interest, and attorney's
17 fees under 29 USC § 2617(a).

18 14. Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Respectfully submitted,

Date: September 17, 2019

HOYER & HICKS

/s/ Ryan L. Hicks

Richard A. Hoyer

Ryan L. Hicks

Nicole B. Gage

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