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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.,

20 Defendants.

Case No.

CLASS ACTION

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

1 Plaintiffs AGUSTIN BENITEZ (“Benitez”), CARLOS MORALES (“Morales”), and
2 STEVEN VILLARREAL (“Villarreal”; collectively, “Plaintiffs”) bring this action on behalf of
3 themselves and all others similarly situated against KRUSE INVESTMENT COMPANY, INC.
4 (“KIC”), and WESTERN MILLING, LLC (“WM,” collectively “Defendants”) and allege as
5 follows:

6 **NATURE OF THE ACTION**

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

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

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

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

22 5. As a result of Defendants’ interference with, restraint, and/or denial of Plaintiff’s
23 attempt to exercise his rights under the FMLA, Villarreal has suffered lost wages, benefits,
24 and has incurred interest thereon.

PARTIES

1
2 6. Benitez was, at all relevant times herein, a resident of Tulare County, California.
3 Benitez was employed as a Lead Batcher, a non-exempt, hourly position, from June 2012
4 through March 2014 at Defendant’s Visalia, California pet food plants.

5 7. Morales was, at all relevant times herein, a resident of Tulare County,
6 California. Morales was first employed as a Sorter, a non-exempt, hourly position, in
7 Defendant’s biscuit plant. Later he was employed as a Sanitizer, another non-exempt, hourly
8 position, in Defendant’s kibble plant. Morales was employed by Defendant from early 2014
9 through March 2016.

10 8. Villarreal was, at all relevant times herein, a resident of Kings County,
11 California. Villarreal was employed as a Maintenance Mechanic, a non-exempt, hourly
12 position, from February 2013 through July 1, 2016 at Defendant’s Visalia, California pet food
13 plants.

14 9. Defendant WM is a California Limited Liability Company with its principal place
15 of business in Goshen, CA. Based on information and belief, at some point during the
16 applicable statutory period WM had an ownership interest in Perfection Pet Foods, LLC,
17 and/or KIC, and shared officers, directors, and or other executives with the other Defendants,
18 and controlled the terms and conditions of employment for Plaintiffs and the other PCMs. At
19 all times herein WM has been an employer or joint employer Plaintiffs and the PCMs, covered
20 by the California Labor Code and Industrial Welfare Commission, Wage Order No. 1 (“Wage
21 Order No. 1”).

22 10. Defendant KIC is a California Corporation with its principal place of business in
23 Goshen, CA. Based on information and belief, at some point during the applicable statutory
24 period KIC had an ownership interest in Perfection Pet Foods, LLC and/or WM, and shared

1 officers, directors, and or other executives with the other Defendants, and controlled the
2 terms and conditions of employment for Plaintiffs and the other PCMs. At all times herein
3 Defendants have been an employer or joint employer of Plaintiffs and the PCMs, covered by
4 the California Labor Code and Industrial Welfare Commission, Wage Order No. 1 (“Wage
5 Order No. 1”).

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

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

19 13. Defendants KIC and WM have completely controlled, dominated, managed,
20 and operated PPF for their sole and exclusive benefit. Defendants KIC and WM have
21 commingled the assets of PPF and themselves to suit their needs and convenience.
22 Defendants and PPF have failed to maintain any degree of separateness with each other,
23 and have failed to observe corporate formalities. Defendants’ activities have been carried out
24 without the holding of directors’ or shareholders meetings, and proper records or minutes of

1 corporate proceedings have not been maintained. Defendants KIC and WM have all at times
2 relevant, controlled and operated PPF as a device to avoid individual, agency, and
3 respondeat superior liability, and for the purpose of substituting financially insolvent
4 corporations and/or other entities with limited financial resources, in the place of themselves,
5 and each of them. Defendants WM and KIC have so inadequately capitalized PPF, compared
6 with the business to be done by PPF and the risks of loss attendant thereto, that their
7 capitalization is trifling and/or illusory.

8 14. Plaintiffs are further informed and believe, and on that basis allege that each of
9 the Defendants, PPF and as yet unidentified defendants are and at all times discussed herein
10 were, a mere shell, instrumentality and conduit through which the other entities carried on
11 their business in the corporate name, exercising control and dominance of such business to
12 such an extent that any individuality or separateness of the individual entities does not, and
13 at all times herein mentioned did not, exist. Indeed, Defendants and PPF operate as a single
14 business enterprise. Though Defendants have multiple corporate, entity, and individual
15 personalities, there is but one enterprise and this enterprise has been so handled that it
16 should respond, as a whole, for the acts committed by Defendants and PPF as alleged herein.

17 15. Adherence to the fiction of the separate existence of such entities would permit
18 an abuse of trust and/or corporate privilege and would sanction a fraud and promote injustice
19 in that Plaintiffs are informed and believe, and on that basis allege, that each of the individual
20 entities was, and at all times relevant is, inadequately capitalized and incapable of responding
21 in damages to Plaintiffs and the PCMs. PPF may have insufficient assets to respond to the
22 ultimate award of compensatory damages, costs, attorney's fees and punitive damages
23 entered in the arbitration pending against it. Further, an award of punitive damages against
24 WM and KIC alone will not accurately reflect the amount necessary for punishment of the

1 other Defendants who have abused the corporate privilege to commit the acts herein alleged
2 against Plaintiffs and the PCMs.

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

10 17. Plaintiffs are informed and believe and on that basis allege that at all material
11 times herein, Defendants have continuously been an "employer" within the meaning of the
12 Family and Medical Leave Act, in that Defendants are engaged in commerce and employed
13 50 or more employees during the relevant time period. 29 U.S.C. § 2611(4)(A).

14 **JURISDICTION AND VENUE**

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

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

FACTUAL ALLEGATIONS

1
2 20. Defendants are in the business of pet food manufacturing and operate through
3 PPF a dog biscuit plant, dog kibble plant, and a warehouse in Visalia, California. Based on
4 information and belief, Walmart purchases the majority of Defendants' products
5 manufactured at those facilities. At times, Defendants have jointly employed upwards of 250
6 non-exempt hourly workers at its PPF facilities. Defendants typically recruit its workers
7 through a temporary staffing agency and thereafter hires them on a permanent basis through
8 PPF. All of the terms and conditions of Plaintiffs' and PCMs' employment remained the same
9 after they were hired on a permanent basis, including, but not limited to, hours worked, days
10 worked, and working conditions.

11 21. Benitez began working at Defendants' biscuit plant in Visalia, California in June
12 2012 as a Lead Batcher. He was transferred to the kibble plant in approximately January
13 2013. Benitez worked through a temporary staffing agency for the first two weeks of his
14 employment, though he interviewed with and was hired by Defendants. All of the terms and
15 conditions of Benitez's employment were set and governed by Defendants for the first two
16 weeks of his employment during which he was paid by the temporary staffing agency to
17 perform work at Defendants' facilities. Indeed, after Benitez began being paid directly by
18 Defendants, he continued to work the night shift as a Lead Batcher in Defendants' biscuit
19 plant. Benitez worked the night shift for the first year of his employment and then moved to
20 the day shift until his employment ended in March 2014.

21 22. Morales began working at Defendants' biscuit plant in Visalia, California in early
22 2014 as a Sorter. He worked through a temporary staffing agency for approximately the first
23 six months of his employment. All of the terms and conditions of Morales' employment were
24 set and governed by Defendants during the period he was paid by the temporary staffing

1 agency to perform work at Defendants' facilities. When Morales began being paid by
2 Defendants, Defendants continued to dictate his working conditions and Morales continued
3 working the day shift. From approximately mid to late 2014 through March 2016, Morales
4 was employed as a Sanitizer.

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

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

19 25. Defendants classified Plaintiffs and others working at its Visalia, California PPF
20 pet food plants and warehouse as non-exempt, hourly-wage employees. These employees
21 are all Putative Class Members ("PCMs").

22 26. Defendants' plants and warehouse operate 24 hours per day, 7 days per week
23 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
24 7:30 a.m.). Thus, Defendants schedule PCMs to work twelve-hour shifts with a single allotted

1 thirty-minute a meal period. Plaintiffs and PCMs worked the same schedules when they were
2 paid through the temporary staffing agency.

3 27. Defendants refused to provide Plaintiffs and PCMs with an off-duty, thirty-
4 minute meal period prior the end of their fifth hour of work both while Plaintiffs and PCMs
5 were paid by the temporary staffing agency and while they were paid by Defendants. Plaintiffs
6 and PCMs were kept too busy by their managers to take meal periods prior to the end of their
7 fifth hour of work. Plaintiffs' managers only permitted them to take meal periods when they
8 had been relieved of duty by a co-worker who would take over their work while Plaintiffs took
9 their meal periods.

10 28. Defendants also failed to provide Plaintiffs and PCMs a second off-duty, thirty-
11 minute meal period for shifts lasting longer than ten hours both while Plaintiffs and PCMs
12 were paid by the temporary staffing agency and while they were paid by Defendants until
13 January 1, 2016. Indeed, prior to January 1, 2016, Defendants only provided at most a single
14 (though non-compliant) meal period during each twelve-hour shift. Plaintiffs were unaware
15 that they were entitled to a second meal period because a second meal period was never
16 offered.

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

22 30. However, even after January 1, 2016, Defendants refused to provide to
23 Plaintiffs Villarreal and Morales, and those similarly situated, an off-duty, thirty-minute meal
24 period prior the end of their tenth hour of work, such that Villarreal and Morales often received

1 their second meal periods during their eleventh hour of work. Co-workers—who must provide
2 relief while a non-exempt employee is taking a meal period—were routinely unavailable or
3 not directed by management to take over for Villarreal or Morales so that they could take a
4 second meal period prior to the end of their tenth hour of work.

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

9 32. Defendants never paid Plaintiffs or PCMs any premium wages for a missed or
10 otherwise non-compliant meal or rest period. Despite missing meal and rest periods
11 essentially every day that they worked, Defendants never paid Plaintiffs or the PCMs
12 premium wages for the missed and/or non-compliant meal or rest periods. In fact, there was
13 no method by which Plaintiffs and PCMs could even report missed or non-compliant meal
14 and/or rest periods.

15 33. As a result, Plaintiffs and PCMs never received accurate paystubs, in that their
16 paystubs did not reflect the premium wages they should have been paid for missing meal
17 and rest periods. Furthermore, Plaintiffs and PCMs who were terminated were not paid all
18 wages due upon termination of their employment, as they were not paid the missed meal and
19 rest period premiums.

20 34. In or around June 20, 2016, Villarreal informed his manager that he intended
21 to take medical leave because he could no longer work due to the debilitating headaches he
22 began experiencing after his stroke in 2015. Villarreal worked at least 1,250 hours during the
23 12 months prior to the start of the proposed FMLA leave; and worked at a location where at
24 more than 50 employees are employed. Within days of Villarreal's request, Villarreal was

1 falsely accused of sending inappropriate emails to co-workers, and Defendant terminated
2 him. The inappropriate e-mails were fabricated and were used as a pretext for terminating
3 Villarreal for requesting leave under FMLA in retaliation for the same.

4 35. On November 2, 2016, Plaintiffs filed their initial complaint in the Eastern
5 District of California against PPF.

6 36. On January 10, 2017, Plaintiffs filed their Amended Complaint in the Federal
7 Action against PPF, adding a claim for PAGA penalties.

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

12 38. Shortly thereafter, the Plaintiffs and PPF agreed to arbitrate the matter with
13 JAMS and selected Hon. Steven Brick (Ret.) as Arbitrator, and agreed to engage in an early
14 mediation in an attempt to resolve these claims. Unfortunately, Judge Brick passed away
15 unexpectedly, and the parties were compelled to select a new arbitrator. The parties selected
16 Michael J. Loeb as arbitrator. However, in May 2018, Mr. Loeb declined to serve as arbitrator
17 of these claims. Ultimately, the parties agreed to engage Judge Freedman as arbitrator of
18 the action against PPF.

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

24 40. Upon commencement of the arbitration against PPF, Plaintiffs (Claimants in

1 that arbitration) notified PPF and the arbitrator that they intended to join Defendants in that
2 arbitration as joint employers and alter egos of PPF based on the arbitration agreements
3 upon which PPF successfully moved to compel arbitration in the PPF action.

4 41. The arbitrator then directed Plaintiffs to submit an amended statement of claims
5 to that effect, which Plaintiffs submitted in the arbitration on September 5, 2018. On
6 September 26, 2018, Defendants submitted in the arbitration, and “Objection and Opposition”
7 to being named as parties to the PPF Arbitration. In that objection and opposition, Defendants
8 took the position that “at no time did [Defendants] enter into any agreement to arbitrate
9 disputes with [Plaintiffs],” and that the arbitrator did not have authority to decide the issue of
10 whether Defendants could be joined to the arbitration.

11 42. Given that Defendants have conceded that there are no arbitration agreements
12 with Plaintiffs and the PCMs, upon resolution of Defendants’ objection and opposition to
13 being named as parties in the PPF arbitration, Plaintiffs now file the instant action against
14 Defendants.

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

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

19 All current and former non-exempt hourly workers that worked at
20 least one shift of more than five hours at any of Defendants’ Visalia,
21 California Perfection Pet Foods, LLC pet food plants and/or
warehouse, at any time during the time period from November 2,
2012 until resolution of this action.

22 (The “Class.”)

23 44. Numerosity: Defendants have employed at least 300, and potentially
24 thousands, of non-exempt hourly employees in its PPF plants and warehouse during the

1 applicable statutory period (whether nominally employed by Defendants, PPF, or a staffing
2 agency). The number of PCMs is therefore far too numerous to be individually joined in this
3 lawsuit.

4 45. Existence and Predominance of Common Questions: There are questions of
5 law and fact common to Plaintiffs that predominate over any questions affecting only
6 individual PCMs. These common questions of law and fact include, without limitation:

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

1 j. Whether Defendants are the alter ego of PPF and/or each other;

2 k. The proper measure of damages sustained and the proper measure of
3 restitution recoverable by PCMs.

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

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

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

23 49. In the alternative, the Class may be certified because the prosecution of
24 separate actions by the individual members of the Class would create a risk of inconsistent

1 or varying adjudication with respect to individual members of the Class, and, in turn, would
2 establish incompatible standards of conduct for Defendant. Defendants have also acted or
3 refused to act on grounds that apply generally to the class, so that final injunctive relief or
4 corresponding declaratory relief is appropriate respecting the class as a whole.

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

7 51. Plaintiffs know of no difficulty that would be encountered in the management of
8 this litigation that would preclude its maintenance as a class action.

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

16 **FIRST CLAIM FOR RELIEF**
17 **Failure to Provide Meal Periods**
(Class Claim)

18 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
19 below.

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

1 54. Defendants' conduct, as alleged herein, also constitutes a violation of California
2 Labor Code § 226.7, which prohibits an employer from requiring employees to work during
3 any meal period mandated by the IWC. California Labor Code § 226.7(c) and Wage Order
4 No. 1 require employers to pay employees one hour of premium wages at the employee's
5 regular rate of compensation for each day that the meal periods are not provided in
6 accordance with the law.

7 55. Defendants knowingly and intentionally failed to provide Plaintiffs and PCMs
8 with the legally required meal periods and failed to pay them the resulting premium wages
9 owed.

10 56. As a direct result of Defendants' unlawful employment practices, as alleged
11 herein, Plaintiffs and PCMs have been injured and are entitled to recover unpaid premium
12 wages and interest.

13 **SECOND CLAIM FOR RELIEF**
14 **Failure to Provide Rest Periods**
(Class Claim)

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

17 57. Defendants' conduct, as alleged herein, also constitutes a violation of California
18 Labor Code § 226.7, which prohibits an employer from requiring employees to work during
19 any rest period mandated by the IWC. California Labor Code § 226.7(c) and Wage Order No.
20 1 require employers to pay employees one hour of premium wages at the employee's regular
21 rate of compensation for each day that the rest periods are not authorized and permitted in
22 accordance with the law.

1 **FOURTH CLAIM FOR RELIEF**
2 **Waiting Time Penalties**
3 **(Class Claim)**

4 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
5 below.

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

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

14 **FIFTH CLAIM FOR RELIEF**
15 **Unfair and Unlawful Business Practices**
16 **(Class Claim)**

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

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

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

23 66. California Labor Code § 90.5(a) states it is the public policy of California to
24 vigorously enforce minimum labor standards in order to ensure employees are not required
to work under substandard and unlawful conditions, and to protect employers who comply

1 with the law from those who attempt to gain competitive advantage at the expense of their
2 workers by failing to comply with minimum labor standards.

3 67. Beginning at an exact date unknown to Plaintiffs and PCMs, but at least since
4 the date four years prior to the filing of this suit, Defendant has committed acts of unfair
5 competition as defined by the Unfair Business Practices Act by engaging in the unlawful,
6 unfair, and fraudulent business acts and practices described in this Complaint, including, but
7 not limited to:

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

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

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

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

1 71. As a direct and proximate result of the aforementioned acts and practices,
2 Plaintiffs and PCMs have suffered a loss of money and property, in the form of unpaid wages
3 which are due and payable to them.

4 72. Business and Professions Code § 17203 provides that the Court may restore
5 to any person in interest any money or property which may have been acquired by means of
6 such unfair competition. Plaintiffs and the Class are entitled to restitution pursuant to
7 Business and Professions Code § 17203 for all wages and payments unlawfully withheld
8 from employees during the four-year period prior to the filing of this Complaint.

9 73. Plaintiffs' success in this action will enforce important rights affecting the public
10 interest and, in that regard, Plaintiffs sues on behalf of himself and others similarly situated.
11 Plaintiffs and PCMs seek and are entitled to unpaid wages, declaratory relief, and all other
12 equitable remedies owing to them.

13 74. Plaintiffs herein take upon themselves enforcement of these laws and lawful
14 claims. There is a financial burden involved in pursuing this action, the action is seeking to
15 vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs
16 by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are
17 appropriate pursuant to Code of Civil Procedure § 1021.5 and otherwise.

18 **SIXTH CLAIM FOR RELIEF**
19 **Interference with Rights Under the FMLA**
(by Plaintiff VILLARREAL only)

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

22 75. Villarreal was eligible for the FMLA's protections in that he had worked for
23 Defendants since 2013, averaging 60-hour workweeks, and Defendants employed more than
24

1 50 people within a few miles of the dog kibble plant Villarreal worked in when he requested
2 FMLA leave.

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

5 77. On or around June 20, 2016, Villarreal informed his manager of his intent to
6 begin medical leave under the FMLA within the next two weeks because he was unable to
7 work due to his serious health condition, namely debilitating headaches resulting from a
8 recent stroke.

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

12 79. Defendants denied Villarreal his FMLA benefits when it fired him on
13 July 1, 2016 for exercising his rights under the FMLA.

14 80. Villarreal's request for leave under the FMLA was a substantial factor in
15 Defendants' decision to terminate him. Indeed, he was fired *because* he requested leave
16 under the FMLA.

17 81. As a direct result of Defendants' unlawful employment practices, as alleged
18 herein, Villarreal is entitled to recover lost wages, interest, and attorney's fees under 29 USC
19 § 2617(a).

20 **PRAYER FOR RELIEF**

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

- 22 1. Certification of this action as a class action on behalf of the Class Members;
23 2. Designation of Plaintiffs as representatives of the Class;
24 3. Designation of Plaintiffs' counsel of record as class counsel for the Class;

1 4. Damages and restitution for missed meal and rest period premium wages,
2 together with interest at the legal rate;

3 5. For a declaratory judgment that Defendants were the joint employers of
4 Plaintiffs and the Class;

5 6. For a declaratory judgment that Defendants were the alter ego of each other
6 and PPF;

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

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

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

15 10. All applicable statutory penalties arising from Defendants' unlawful conduct, as
16 alleged herein;

17 11. Attorney's fees and costs pursuant to Code Civil Procedure § 1021.5 and any
18 other attorney fee provisions referenced herein;

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

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

23 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: October 25, 2018

HOYER & HICKS

/s/ Ryan L. Hicks
Richard A. Hoyer
Ryan L. Hicks
Nicole B. Gage
*Attorneys for Plaintiffs Steven Villarreal,
Agustin Benitez, and Carlos Morales*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AGUSTIN BENITEZ, CARLOS MORALES, and STEVEN VILLARREAL

(b) County of Residence of First Listed Plaintiff Tulare (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard A. Hoyer, Hoyer & Hicks, 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111 (415) 766-3539

DEFENDANTS

Western Milling, LLC and Kruse Investment Company, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Chris Rusca, Sagaser, Watkins & Wieland PC,

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1331; 29 USC § 2617(a)

Brief description of cause: Wage and Hour class claims; indivudal FMLA interference claim.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/25/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Ryan L. Hicks

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:18-cv-01484-DAD-SKO Document 1-1 Filed 10/25/18 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Perfection Pet Foods Cos. Owe Unpaid Wages, Class Action Lawsuit Claims](#)
