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11 *CHRISTOBAL PENA HERNANDEZ,*
as Private Attorney General

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SANTA BARBARA – COOK DIVISION**

14 STATE OF CALIFORNIA ex rel.
CHRISTOBAL PENA HERNANDEZ, as
15 Private Attorney General,

16 Plaintiff,

17 v.

18 REITER BERRY FARMS, INC., a
19 corporation; and DOES 1-25, inclusive,

20 Defendants.

Case No. 20CV01640

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

21
22 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. CHRISTOBAL PENA
23 HERNANDEZ as Private Attorney General (“Plaintiff”), who asserts claims against REITER
24 BERRY FARMS, INC., a corporation, and DOES 1 through 25, inclusive (collectively
25 “Defendants” or “Employers”) as follows:

26 **INTRODUCTION**

27 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
28 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of the State of California for

approximately 500 non-exempt current and former aggrieved employees employed by Employers as general laborers, drivers, and other positions where work was performed at outdoor places of employment (“Employees”) at any time from January 31, 2019, through the resolution of this action (“Statutory Period”).

2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Employees bring this civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil penalties specifically set forth within the text of the California Labor Code. Those civil penalties are sought for violations committed against Employees of Employers.

3. Pursuant to Section 2699.3, subdivisions (a)(1) and (b)(1), Plaintiff gave proper notice to the California Labor and Workforce Development Agency, the Division of Occupational Safety and Health, and Defendants, of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. Neither the LWDA nor the Division of Occupational Safety and Health inspected or investigated the violations. With respect to those violations that were curable under Subdivisions (b)(1) and/or (c)(1), the Employers failed to cure the violations within the time provided under PAGA. Plaintiff and Employees are, therefore, entitled to all civil penalties pursuant to Sections 2699(a), and pursuant to Section 2699(f), in addition to Plaintiff's costs and attorneys' fees.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10.

5. Venue is proper in this Court because this action arises from work performed in Northern Santa Barbara County.

6. Plaintiff is not required to proceed via arbitration. Pre-dispute arbitration agreements executed by employees do not apply to PAGA actions, where the State of California

(which did not agree to arbitrate) is the real party in interest. *See Betancourt v. Prudential Overall Supply* (2017) 9 Cal.App.5th 439, 445-446; *Tanguilig v. Bloomingdale's, Inc.* (2016) 5 Cal.App.5th 665, 678; *ZB, NA v. Superior Court* (2019) 8 Cal.5th 175, 198.

PARTIES

7. For all times relevant herein, CHRISTOBAL PENA HERNANDEZ was an adult individual residing in Santa Barbara County, California. Mr. Pena Hernandez is not suing in his individual capacity; he is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including himself and approximately 500 other aggrieved employees.

8. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant REITER BERRY FARMS, INC. was and is a California corporation with its principal California place of business in Aromas, CA.

9. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of its agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the business and affairs of Defendants.

10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants are ascertained.

11. Plaintiff is informed and believes, and based thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

12. Plaintiff is further informed and believe, and thereon allege, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendant(s) and each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any conduct by Defendants, or any of them, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employment or agency with Defendants.

FIRST COUNT

Failure to Pay Minimum Wages Owed

(By Plaintiff against All Defendants)

13. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

14. Section 1197 provides that “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12, subd. (b).

15. Pursuant to Section 1197.1, “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid

1 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
2 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
3 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
4 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
5 for each underpaid employee for each pay period for which the employee is underpaid. This
6 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
7 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
8 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
9 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
10 regardless of whether the initial violation is intentionally committed. This amount shall be in
11 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
12 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

13 16. Throughout the Statutory Period, Defendants failed to pay Employees at least
14 minimum wage for all time worked, including time during which they are required to remain on
15 the Employer’s premises during meal periods, which must be paid at a rate of not less than
16 minimum wage pursuant to California law. Defendants had an illegal policy and practice of
17 prohibiting Employees from leaving its premises during meal periods and/or requiring Employees
18 to obtain special permission before leaving the premises during their meal periods, creating a de
19 facto rule and employer expectation that Employees would remain on the premises and be
20 available to work during such breaks, or else be subject to disciplinary action. Defendants paid
21 zero dollars to Employees for hours worked during their meal periods. Consequently, Defendants
22 violated the foregoing minimum wage laws.

23 17. Employees are entitled to all civil penalties provided by law.

24 **SECOND COUNT**

25 **Failure to Pay Overtime Wages Owed**

26 **(By Plaintiff against All Defendants)**

27 18. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

1 19. “The maximum hours of work and the standard conditions of labor fixed by the
2 commission shall be the maximum hours of work and the standard conditions of labor for
3 employees. The employment of any employee for longer hours than those fixed by the order or
4 under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198. Pursuant
5 to Industrial Welfare Commission Wage Order 7, “employees shall not be employed more than
6 eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
7 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
8 over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
9 beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible
10 provided the employee is compensated for such overtime at not less than: (a) One and one-half (1
11 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to
12 and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh
13 (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate of pay
14 for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of
15 eight (8) hours on the seventh (7th) consecutive day of work in a workweek.”

16 20. Prior to January 1, 2019, pursuant to Industrial Welfare Commission Wage Order
17 14, “employees shall not be employed more than ten (10) hours in any one workday or more than
18 six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such
19 employee’s regular rate of pay for all hours worked over ten (10) hours in any workday and for the
20 first eight (8) hours on the seventh (7th) day of work and double the employee’s regular rate of
21 pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.”

22 21. Effective January 1, 2019, for employers of more than 25 employees like
23 Defendants, Wage Order 14 provides that Employees shall not be employed more than nine and
24 one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
25 receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked
26 over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any
27 one workweek.

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1 22. Effective January 1, 2020, Employees shall not be employed more than nine (9)
2 hours per workday or fifty (50) hours per workweek unless the employee receives one and one-
3 half (11/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in
4 any one workday or more than fifty (50) hours in any one workweek.

5 23. Starting January 1, 2021, Employees shall not be employed more than eight and
6 one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
7 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
8 over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any
9 one workweek.

10 24. Starting January 1, 2022, Employees shall not be employed more than eight (8)
11 hours per workday or work in excess of forty (40) hours per workweek unless the employee
12 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
13 over eight (8) hours in any workday or more than forty (40) hours in any workweek and double
14 the employee's regular rate of pay for all hours worked over twelve (12) hours in any one
15 workday.

16 25. "Any employer or other person acting on behalf of an employer who violates, or
17 causes to be violated, a section of this chapter or any provision regulating hours and days of work
18 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
19 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
20 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
21 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
22 employee for each pay period for which the employee was underpaid in addition to an amount
23 sufficient to recover underpaid wages." Cal. Lab. Code, § 558, subd. (a).

24 26. Throughout the Statutory Period, Defendants failed to pay Employees at least
25 minimum wage for all time worked. Because Employees exceeded overtime and double overtime
26 thresholds, Employees were also not paid the overtime and double overtime rates to which they
27 are entitled.

28 27. The Employees are entitled to all civil penalties available under the PAGA.

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THIRD COUNT

Failure to Keep Accurate Records of Employees’ Hours Worked and Meal Periods
(By Plaintiff against All Defendants)

28. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

29. “Every person employing labor in this state shall: ... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.” Lab. Code, § 1174, subd. (d).

30. Moreover, Wage Orders 7 and 14 require employers to keep accurate information regarding their employees, including time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. The “standard conditions of labor fixed by the commission [in Wage Orders 7 and 14] shall be ... the standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.” Lab. Code, § 1198.

31. Throughout the Statutory Period, Defendants failed to accurately record and keep payroll records showing the hours worked daily by Employees for the minimum period of three years, failed to keep accurate information showing when Employees began and ended each work period, and failed to keep accurate records of Employees’ meal periods.

32. The Employees are entitled to all civil penalties available under the PAGA.

FOURTH COUNT

Failure to Provide or Pay for Recovery Periods
(By Plaintiff against All Defendants)

33. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

1 34. “An employer shall not require an employee to work during a ... recovery period
2 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of ... the
3 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
4 Health.” Cal. Lab. Code, § 226.7, subd. (b). “As used in this section, ‘recovery period’ means a
5 cooldown period afforded an employee to prevent heat illness.” Cal. Lab. Code, § 226.7, subd. (a).
6 “A rest or recovery period mandated pursuant to a state law ... shall be counted as hours worked,
7 for which there shall be no deduction from wages.” Cal. Lab. Code, § 226.7, subd. (d). “If an
8 employer fails to provide an employee a ... recovery period in accordance with a state law ... the
9 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
10 compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab.
11 Code, § 226.7, subd. (c).

12 35. Defendants employed Employees in high-risk outdoor places of employment
13 governed by Cal. Code Regs., tit. 8, § 3395, including in agriculture and the transportation or
14 delivery of agricultural products, including loading and/or unloading products. Pursuant to the
15 applicable regulation, “[w]hen the outdoor temperature in the work area exceeds 80 degrees
16 Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while
17 employees are present that are either open to the air or provided with ventilation or cooling. The
18 amount of shade present shall be at least enough to accommodate the number of employees on
19 recovery or rest periods, so that they can sit in a normal posture fully in the shade without having
20 to be in physical contact with each other. The shade shall be located as close as practicable to the
21 areas where employees are working. Subject to the same specifications, the amount of shade
22 present during meal periods shall be at least enough to accommodate the number of employees on
23 the meal period who remain onsite.” Cal. Code Regs., tit. 8, § 3395, subd. (d)(1).

24 36. “Employees shall be allowed and encouraged to take a preventative cool-down rest
25 in the shade when they feel the need to do so to protect themselves from overheating. Such access
26 to shade shall be permitted at all times. An individual employee who takes a preventative cool-
27 down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness;
28 (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until any

1 signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to
2 the time needed to access the shade.” Cal. Code Regs., tit. 8, § 3395, subd. (d)(3). “For purposes
3 of this section, preventative cool-down rest period has the same meaning as ‘recovery period’ in
4 Labor Code Section 226.7(a).” Cal. Code Regs., tit. 8, § 3395, subd. (e)(6).

5 37. “When temperatures reach 95 degrees or above, the employer shall ensure that the
6 employee takes a minimum ten-minute net preventative cool-down rest period every two hours.
7 The preventative cool-down rest period required by this paragraph may be provided concurrently
8 with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8
9 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal
10 or rest period thus resulting in no additional preventative cool-down rest period required in an
11 eight hour workday. If the workday will extend beyond eight hours, then an additional
12 preventative cool-down rest period will be required at the conclusion of the eighth hour of work;
13 and if the workday extends beyond ten hours, then another preventative cool-down rest period will
14 be required at the conclusion of the tenth hour and so on.” Cal. Code Regs., tit. 8, § 3395, subd.
15 (e)(6).

16 38. Throughout the Statutory Period, Defendants failed to allow or encourage shaded
17 recovery periods as required by law when temperatures exceeded eighty degrees and when
18 temperatures were eighty degrees and lower. Defendants also failed to ensure that Employees
19 took cool-down rest periods at any time, including when temperatures reached ninety-five degrees.
20 Defendants acts and omissions increased the risk of injury to Employees working outdoors who,
21 as a result, were more susceptible to industrial injuries. Defendants is subject to civil penalties for
22 its violation of § 226.7 and § 3395.

23 39. The Employees are entitled to all civil penalties available under the PAGA.

24 **FIFTH COUNT**

25 **Failure to Provide Compliant Rest Periods or Pay Rest Premiums**

26 **(By Plaintiff against All Defendants)**

27 40. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

41. Pursuant to Industrial Welfare Commission Wage Orders 7 and 14, employers must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid. An employer who fails to provide a duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

42. “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

43. Throughout the Statutory Period, Defendants maintained an illegal practice of not providing Employees with compliant 10-minute rest periods because Employees were not free of all duties or free to leave the premises.

44. The Employees are entitled to all civil penalties available under the PAGA.

SIXTH COUNT

Failure to Provide Compliant Meal Periods or Pay Meal Premiums

(By Plaintiff against All Defendants)

45. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

46. “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours

1 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not waived.” Cal. Lab. Code, § 512,
3 subd. (a).

4 47. Pursuant to Labor Code sections 226.7 and 512, Wage Order 7, and Wage Order
5 14, duty-free meal periods of no less than thirty (30) minutes are required for all non-exempt
6 employees who work at least five (5) hours in a work period per day. The employee must be free
7 to leave the employer’s premises. An employer may not employ an employee for a work period of
8 more than 10 hours per day without providing the employee with a second meal period of not less
9 than 30 minutes. Time records of meal periods must be kept. Meal periods must be paid when the
10 employee is not relieved of all duties or free to leave the premises. An employer who fails to
11 provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for
12 each day in which a duty-free meal period is not provided.

13 48. “If an employer fails to provide an employee a meal or rest or recovery period in
14 accordance with a state law, including, but not limited to, an applicable statute or applicable
15 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
16 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
17 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
18 each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code, § 226.7,
19 subd. (c).

20 49. “Any employer or other person acting on behalf of an employer who violates, or
21 causes to be violated, a section of this chapter or any provision regulating hours and days of work
22 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
24 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
25 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to an amount
27 sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

50. Throughout the Statutory Period, Employees were required to remain on the Employer's premises during meal periods. Defendants had an illegal policy and practice of prohibiting Employees from leaving its premises during meal periods and/or requiring Employees to obtain special permission before leaving the premises during their meal periods, creating a de facto rule and employer expectation that Employees would remain on the premises and be available to work during such breaks, or else be subject to disciplinary action.

51. The Employees are entitled to all civil penalties available under the PAGA.

SEVENTH COUNT

Inaccurate Wage Statements

(By Plaintiff against All Defendants)

52. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

53. “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd. (a).

54. “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3.

55. Throughout the Statutory Period, Defendants failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Rather than providing statements of actual time worked and a correct payment of wages based thereon, Defendants failed to capture and pay Employees for all time, and also failed to capture and pay premium pay for missed recovery, meal, and rest periods. Consequently, Defendants failed to provide Employees accurate itemized wages statements as required by Section 226.

56. The Employees are entitled to all civil penalties available under the PAGA.

EIGHTH COUNT

Untimely Payment of Wages

(By Plaintiff against All Defendants)

57. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

58. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

1 59. Generally, “[l]abor performed by a weekly-paid employee during any calendar
2 week and prior to or on the regular payday shall be paid for not later than the regular payday of the
3 employer for such weekly-paid employee falling during the following calendar week. Labor
4 performed by a weekly-paid employee during any calendar week and subsequent to the regular
5 payday shall be paid for not later than seven days after the regular payday of the employer for such
6 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

7 60. Special rules govern agricultural employees, however: “All wages, other than those
8 mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section
9 1140.4, are due and payable twice during each calendar month, on days designated in advance by
10 the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th
11 days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the
12 month during which the labor was performed. Labor performed between the 16th and the last day,
13 inclusive, of any calendar month shall be paid between the first and the seventh day of the
14 following month.” Cal. Lab. Code, § 205.5.

15 61. “In addition to, and entirely independent and apart from, any other penalty
16 provided in this article, every person who fails to pay the wages of each employee as provided in
17 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty
18 as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
19 employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred
20 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
21 withheld.” Cal. Lab. Code, § 210, subd. (a).

22 62. Rather than timely paying Employees all wages due within the periods set forth
23 above, throughout the Statutory Period, Defendants failed to timely pay Employees for all hours
24 worked and all premium wages.

25 63. The Employees are entitled to all civil penalties available under the PAGA.

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1 **NINTH COUNT**

2 **Failure to Pay Wages at Termination**

3 **(By Plaintiff against All Defendants)**

4 64. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 65. "If an employer discharges an employee, the wages earned and unpaid at the time
7 of discharge are due and payable immediately." Cal. Lab. Code, § 201, subd. (a). "If an employer
8 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
9 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
10 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
11 paid or until an action therefor is commenced; but the wages shall not continue for more than 30
12 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or
13 who refuses to receive the payment when fully tendered to him or her, including any penalty then
14 accrued under this section, is not entitled to any benefit under this section for the time during
15 which he or she so avoids payment." Cal. Lab. Code, § 203, subd. (a).

16 66. Throughout the Statutory Period, Defendants failed to pay Employees at least
17 minimum wage, overtime, and all premium wages for all time worked. These wages were owed
18 and due to those Employees, who were terminated at the time of their termination. Defendants did
19 not provide these payments to Employees at the time of termination or within a sufficient time of
20 resignation as required by law. Reiter Berry Farm's failure to timely pay these wages at the time
21 of termination, and failure to pay Employees' continued wages for the 30-day period, thereafter,
22 constitutes a violation of Sections 201 and 203.

23 67. The Employees are entitled to all civil penalties available under the PAGA.

24 **TENTH COUNT**

25 **Violation of Heat Illness Prevention Health-and-Safety Standards**

26 **(By Plaintiff against All Defendants)**

27 68. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

1 69. “Every employer and every employee shall comply with occupational safety and
2 health standards, with Section 25910 of the Health and Safety Code, and with all rules,
3 regulations, and orders pursuant to this division which are applicable to his own actions and
4 conduct.” Lab. Code 6407.

5 70. Among these rules, regulations, and orders is Title 8, Section 3395 of the California
6 Code of Regulations, which was applicable to Defendants and the Employees. Throughout the
7 Statutory Period, Defendants violated the following provisions of § 3395.

8 71. **“(c) Provision of water.** Employees shall have access to potable drinking water
9 meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not
10 limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of
11 charge. The water shall be located as close as practicable to the areas where employees are
12 working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be
13 provided in sufficient quantity at the beginning of the work shift to provide one quart per
14 employee per hour for drinking for the entire shift. ... The frequent drinking of water, as described
15 in subsection (h)(1)(C), shall be encouraged.”

16 72. Throughout the Statutory Period, Defendants failed to provide sufficient water to
17 Employees or encourage Employees to frequently take water breaks.

18 73. **“(e) High-heat procedures.** The employer shall implement high-heat procedures
19 when the temperature equals or exceeds 95 degrees Fahrenheit. These procedures shall include the
20 following to the extent practicable: (1) Ensuring that effective communication by voice,
21 observation, or electronic means is maintained so that employees at the work site can contact a
22 supervisor when necessary. An electronic device, such as a cell phone or text messaging device,
23 may be used for this purpose only if reception in the area is reliable. (2) Observing employees for
24 alertness and signs or symptoms of heat illness. The employer shall ensure effective employee
25 observation/monitoring by implementing one or more of the following: (A) Supervisor or designee
26 observation of 20 or fewer employees, or (B) Mandatory buddy system, or (C) Regular
27 communication with sole employee such as by radio or cellular phone, or (D) Other effective
28 means of observation. (3) Designating one or more employees on each worksite as authorized to

1 call for emergency medical services, and allowing other employees to call for emergency services
2 when no designated employee is available. (4) Reminding employees throughout the work shift to
3 drink plenty of water. (5) Pre-shift meetings before the commencement of work to review the high
4 heat procedures, encourage employees to drink plenty of water, and remind employees of their
5 right to take a cool-down rest when necessary. (6) For employees employed in agriculture, the
6 following shall also apply: When temperatures reach 95 degrees or above, the employer shall
7 ensure that the employee takes a minimum ten-minute net preventative cool-down rest period
8 every two hours. The preventative cool-down rest period required by this paragraph may be
9 provided concurrently with any other meal or rest period required by Industrial Welfare
10 Commission Order No. 14 (8 CCR 11140) if the timing of the preventative cool-down rest period
11 coincides with a required meal or rest period thus resulting in no additional preventative cool-
12 down rest period required in an eight hour workday. If the workday will extend beyond eight
13 hours, then an additional preventative cool-down rest period will be required at the conclusion of
14 the eighth hour of work; and if the workday extends beyond ten hours, then another preventative
15 cool-down rest period will be required at the conclusion of the tenth hour and so on.”

16 74. Defendants failed to implement any and all of the foregoing required procedures.

17 75. **“(f) Emergency Response Procedures.** The Employer shall implement effective
18 emergency response procedures including: (1) Ensuring that effective communication by voice,
19 observation, or electronic means is maintained so that employees at the work site can contact a
20 supervisor or emergency medical services when necessary. An electronic device, such as a cell
21 phone or text messaging device, may be used for this purpose only if reception in the area is
22 reliable. If an electronic device will not furnish reliable communication in the work area, the
23 employer will ensure a means of summoning emergency medical services. (2) Responding to signs
24 and symptoms of possible heat illness, including but not limited to first aid measures and how
25 emergency medical services will be provided. (A) If a supervisor observes, or any employee
26 reports, any signs or symptoms of heat illness in any employee, the supervisor shall take
27 immediate action commensurate with the severity of the illness. (B) If the signs or symptoms are
28 indicators of severe heat illness (such as, but not limited to, decreased level of consciousness,

1 staggering, vomiting, disorientation, irrational behavior or convulsions), the employer must
2 implement emergency response procedures. (C) An employee exhibiting signs or symptoms of
3 heat illness shall be monitored and shall not be left alone or sent home without being offered
4 onsite first aid and/or being provided with emergency medical services in accordance with the
5 employer's procedures. (3) Contacting emergency medical services and, if necessary, transporting
6 employees to a place where they can be reached by an emergency medical provider. (4) Ensuring
7 that, in the event of an emergency, clear and precise directions to the work site can and will be
8 provided as needed to emergency responders.”

9 76. Defendants failed to implement any and all of the foregoing required procedures.

10 77. **“(g) Acclimatization.** (1) All employees shall be closely observed by a supervisor
11 or designee during a heat wave. For purposes of this section only, ‘heat wave’ means any day in
12 which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least
13 ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.
14 (2) An employee who has been newly assigned to a high heat area shall be closely observed by a
15 supervisor or designee for the first 14 days of the employee's employment.”

16 78. Defendants failed to provide the required monitoring throughout the Statutory
17 Period.

18 79. **“(h) Training.** (1) Employee training. Effective training in the following topics
19 shall be provided to each supervisory and non-supervisory employee before the employee begins
20 work that should reasonably be anticipated to result in exposure to the risk of heat illness: (A) The
21 environmental and personal risk factors for heat illness, as well as the added burden of heat load
22 on the body caused by exertion, clothing, and personal protective equipment. (B) The employer's
23 procedures for complying with the requirements of this standard, including, but not limited to, the
24 employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well
25 as the employees' right to exercise their rights under this standard without retaliation. (C) The
26 importance of frequent consumption of small quantities of water, up to 4 cups per hour, when the
27 work environment is hot, and employees are likely to be sweating more than usual in the
28 performance of their duties. (D) The concept, importance, and methods of acclimatization

1 pursuant to the employer's procedures under subsection (i)(4). (E) The different types of heat
2 illness, the common signs and symptoms of heat illness, and appropriate first aid and/or
3 emergency responses to the different types of heat illness, and in addition, that heat illness may
4 progress quickly from mild symptoms and signs to serious and life threatening illness. (F) The
5 importance to employees of immediately reporting to the employer, directly or through the
6 employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers. (G) The
7 employer's procedures for responding to signs or symptoms of possible heat illness, including how
8 emergency medical services will be provided should they become necessary. (H) The employer's
9 procedures for contacting emergency medical services, and if necessary, for transporting
10 employees to a point where they can be reached by an emergency medical service provider. (I)
11 The employer's procedures for ensuring that, in the event of an emergency, clear and precise
12 directions to the work site can and will be provided as needed to emergency responders. These
13 procedures shall include designating a person to be available to ensure that emergency procedures
14 are invoked when appropriate. (2) Supervisor training. Prior to supervising employees performing
15 work that should reasonably be anticipated to result in exposure to the risk of heat illness effective
16 training on the following topics shall be provided to the supervisor: (A) The information required
17 to be provided by section (h)(1) above. (B) The procedures the supervisor is to follow to
18 implement the applicable provisions in this section. (C) The procedures the supervisor is to follow
19 when an employee exhibits signs or reports symptoms consistent with possible heat illness,
20 including emergency response procedures. (D) How to monitor weather reports and how to
21 respond to hot weather advisories.”

22 80. Defendants failed to provide the foregoing training to Employees.

23 81. “(i) **Heat Illness Prevention Plan.** The employer shall establish, implement, and
24 maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and
25 the language understood by the majority of the employees and shall be made available at the
26 worksite to employees and to representatives of the Division upon request. The Heat Illness
27 Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program
28 required by section 3203, and shall, at a minimum, contain: (1) Procedures for the provision of

1 water and access to shade. (2) The high heat procedures referred to in subsection (e). (3)
2 Emergency Response Procedures in accordance with subsection (f). (4) Acclimatization methods
3 and procedures in accordance with subsection (g).”

4 82. Defendants failed to establish, implement, and maintain an effective heat illness
5 prevention plan in accordance with law.

6 **PRAYER**

7 WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

- 8 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount not
9 less than \$1,000,000;
10 2. For reasonable costs and attorneys’ fees; and
11 3. For such other and further relief as the Court deems proper.

12 DATED: April 7, 2020

WORKWORLD LAW

13
14
15 By. 

RUBEN ESCOBEDO

16 Attorneys for STATE OF CALIFORNIA ex
17 rel. CHRISTOBAL PENA HERNANDEZ, as
18 Private Attorney General
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