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REFUGIO MUNOZ HERNANDEZ,
11 as Private Attorney General

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

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

14 STATE OF CALIFORNIA *ex rel.*
REFUGIO MUNOZ HERNANDEZ, as
15 Private Attorney General,

16 Plaintiff,

17 v.

18 COASTAL VINEYARD CARE
ASSOCIATES, a California corporation;
19 and DOES 1-25, inclusive,

20 Defendants.
21
22

Case No. 20CV02401

Assigned for All Purposes to:

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

Trial Date: None

Complaint filed:

23 COMES NOW Plaintiff STATE OF CALIFORNIA *ex rel.* REFUGIO MUNOZ
24 HERNANDEZ as Private Attorney General (“Plaintiff”), who asserts claims against COASTAL
25 VINEYARD CARE ASSOCIATES, a California corporation, and DOES 1 through 25, inclusive
26 (collectively “Defendants” or “Employers”) as follows:
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1 **INTRODUCTION**

2 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
3 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of the State of California for
4 approximately 1,000 similarly situated non-exempt current and former aggrieved employees, and
5 the People of the State of California (“Employees”) employed by Defendants at any time from April
6 13, 2019, through the resolution of this action (“Statutory Period”).

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

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

24 **JURISDICTION AND VENUE**

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

27 5. Venue is proper in this Court because this action arises from employment in Santa
28 Barbara County.

PARTIES

6. For all times relevant herein, REFUGIO MUNOZ HERNANDEZ was an adult individual residing in Santa Barbara County, California. Plaintiff 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 1,000 other aggrieved employees.

7. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant COASTAL VINEYARD CARE ASSOCIATES was and is a California corporation with its principal California place of business in Santa Barbara County, California.

8. 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.

9. 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.

10. 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.

11. Plaintiff is further informed and believes, and thereon alleges, 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

1 and wherever reference is made to individuals who are not named as defendants in this Complaint,
2 but were employees and/or agents of Defendants, such individuals at all relevant times acted on
3 behalf of Defendants named in this Complaint within the scope of their respective employment or
4 agency with Defendants.

5 **FIRST COUNT**

6 **Failure to Provide Minimum Wages Owed**

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

8 12. Plaintiff incorporates by reference and reallege each and every allegation contained
9 above, as though fully set forth herein.

10 13. Section 1197 provides that “[t]he minimum wage for employees fixed by the
11 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
12 and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after January
13 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Cal.
14 Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be less than the
15 amounts set forth in this subdivision (1) For any employer who employs 26 or more employees,
16 the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017,
17 inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December
18 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31,
19 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020,
20 inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12, subd. (b).

21 14. Pursuant to Section 1197.1, “(a) Any employer or other person acting either
22 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
23 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
24 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages
25 payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:
26 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee is underpaid. This amount shall be
28 in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to

1 Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each
2 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
3 underpaid employee for each pay period for which the employee is underpaid regardless of whether
4 the initial violation is intentionally committed. This amount shall be in addition to an amount
5 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
6 applicable penalties imposed pursuant to Section 203.”

7 15. Throughout the Statutory Period, Defendant failed to pay Employees at least
8 minimum wage for all time worked, including time during Employees’ meal periods where
9 Employees, including Mr. Hernandez, were required to remain at the worksite. If Employees left
10 or attempted to leave the worksite, they would be reprimanded. Supervisors advised Employees to
11 stay at the worksite, and if they needed something off of the ranch, the supervisor would get it for
12 the Employees. Because Defendant restricted Employees’ ability to leave during their meal periods,
13 Employees’ meal periods were on-duty, and required to be counted as “hours worked” and paid at
14 least minimum wage. Defendant paid zero dollars for Employees’ hours worked during meal
15 periods. Consequently, Defendant violated the foregoing minimum wage laws. Defendant is
16 therefore subject to civil penalties for its violations.

17 **SECOND COUNT**

18 **Failure to Pay Overtime Wages Owed**

19 **(By Plaintiffs against All Defendants)**

20 16. Plaintiffs incorporate by reference and reallege each and every allegation contained
21 above, as though fully set forth herein.

22 17. “The maximum hours of work and the standard conditions of labor fixed by the
23 commission shall be the maximum hours of work and the standard conditions of labor for
24 employees. The employment of any employee for longer hours than those fixed by the order or
25 under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198. Prior to
26 January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, “employees shall not
27 be employed more than ten (10) hours in any one workday or more than six (6) days in any
28 workweek unless the employee receives one and one-half (1 and 1/2) times such employee’s regular

1 rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours
2 on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked
3 over eight (8) on the seventh (7th) day of work in the workweek."

4 18. Effective January 1, 2019, for employers of more than 25 employees like
5 Defendant, Wage Order 14 provides that Employees shall not be employed more than nine and
6 one-half (9 1/2) hours per workday or fifty-five (55) 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 nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any
9 one workweek.

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

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

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

24 22. "Any employer or other person acting on behalf of an employer who violates, or
25 causes to be violated, a section of this chapter or any provision regulating hours and days of work
26 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
27 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
28 for which the employee was underpaid in addition to an amount sufficient to recover underpaid

1 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid in addition to an amount
3 sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

4 23. Employees incorporate the preceding sections herein. Throughout the Statutory
5 Period, Defendant paid zero dollars for hours worked during Employees’ meal periods. Because
6 Employees’ meal periods were improperly not counted as hours worked after January 1, 2019,
7 Employees also accrued additional overtime wages for hours in excess of 9.5 in their workdays,
8 and/or in excess of 55 in their workweeks, that were never paid to Employees; because Employees’
9 meal periods were improperly not counted as hours worked after January 1, 2020, Employees also
10 accrued additional overtime wages for hours in excess of 9 in their workdays, and/or in excess of
11 50 in their workweeks, that were never paid to Employees. Defendant is therefore subject to civil
12 penalties for its violations.

13 **THIRD COUNT**

14 **Failure to Pay or Provide for Recovery Periods**

15 **(By Plaintiffs against All Defendants)**

16 24. Plaintiffs incorporate by reference and reallege each and every allegation contained
17 above, as though fully set forth herein.

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

1 26. Pursuant to the applicable regulation, “[w]hen the outdoor temperature in the work
2 area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with
3 shade at all times while employees are present that are either open to the air or provided with
4 ventilation or cooling. The amount of shade present shall be at least enough to accommodate the
5 number of employees on recovery or rest periods, so that they can sit in a normal posture fully in
6 the shade without having to be in physical contact with each other. The shade shall be located as
7 close as practicable to the areas where employees are working. Subject to the same specifications,
8 the amount of shade present during meal periods shall be at least enough to accommodate the
9 number of employees on the meal period who remain onsite.” Cal. Code Regs., tit. 8, § 3395,
10 subd. (d)(1).

11 27. “Employees shall be allowed and encouraged to take a preventative cool-down rest
12 in the shade when they feel the need to do so to protect themselves from overheating. Such access
13 to shade shall be permitted at all times. An individual employee who takes a preventative cool-
14 down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness;
15 (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until
16 any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition
17 to the time needed to access the shade.” Cal. Code Regs., tit. 8, § 3395, subd. (d)(3). “For purposes
18 of this section, preventative cool-down rest period has the same meaning as ‘recovery period’ in
19 Labor Code Section 226.7(a).” Cal. Code Regs., tit. 8, § 3395, subd. (e)(6).

20 28. “When temperatures reach 95 degrees or above, the employer shall ensure that the
21 employee takes a minimum ten minute net preventative cool-down rest period every two hours.
22 The preventative cool-down rest period required by this paragraph may be provided concurrently
23 with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8
24 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal
25 or rest period thus resulting in no additional preventative cool-down rest period required in an
26 eight hour workday. If the workday will extend beyond eight hours, then an additional
27 preventative cool-down rest period will be required at the conclusion of the eighth hour of work;
28 and if the workday extends beyond ten hours, then another preventative cool-down rest period will

1 be required at the conclusion of the tenth hour and so on.” Cal. Code Regs., tit. 8, § 3395, subd.
2 (e)(6).

3 29. Throughout the Statutory Period, Defendant failed to allow or encourage
4 Employees including Mr. Hernandez to take shaded recovery periods as required by law when
5 temperatures exceeded eighty degrees and when temperatures were eighty degrees and lower.
6 Defendant also failed to ensure that Employees took cool-down rest periods at any time, including
7 when temperatures reached ninety-five degrees. Defendant maintained the same break schedule
8 no matter how hot it was, and failed to inform or encourage Employees that its policy was to allow
9 heat-recovery breaks as much as needed to avoid heat illness. Defendant is therefore subject to
10 civil penalties for its violation of § 226.7 and § 3395.

11 **FOURTH COUNT**

12 **Failure to Provide Compliant Meal Periods or Pay Meal Premiums**

13 **(By Plaintiffs against All Defendants)**

14 30. Plaintiffs incorporate by reference and reallege each and every allegation contained
15 above, as though fully set forth herein.

16 31. “An employer may not employ an employee for a work period of more than five
17 hours per day without providing the employee with a meal period of not less than 30 minutes, except
18 that if the total work period per day of the employee is no more than six hours, the meal period may
19 be waived by mutual consent of both the employer and employee. An employer may not employ an
20 employee for a work period of more than 10 hours per day without providing the employee with a
21 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
22 12 hours, the second meal period may be waived by mutual consent of the employer and the
23 employee only if the first meal period was not waived.” Cal. Lab. Code, § 512, subd. (a).

24 32. Pursuant to Labor Code sections 226.7 and 512, and Wage Order 14, duty-free meal
25 periods of no less than thirty (30) minutes are required for all non-exempt employees who work at
26 least five (5) hours in a work period per day. The employee must be free to leave the employer’s
27 premises. An employer may not employ an employee for a work period of more than 10 hours per
28 day without providing the employee with a second meal period of not less than 30 minutes. Time

1 records of meal periods must be kept. Meal periods must be paid when the employee is not relieved
2 of all duties or free to leave the premises. An employer who fails to provide a duty-free meal period
3 must pay the employee an additional one (1) hour regular pay for each day in which a duty-free
4 meal period is not provided.

5 33. "If an employer fails to provide an employee a meal or rest or recovery period in
6 accordance with a state law, including, but not limited to, an applicable statute or applicable
7 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
8 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
9 the employee one additional hour of pay at the employee's regular rate of compensation for each
10 workday that the meal or rest or recovery period is not provided." Cal. Lab. Code, § 226.7, subd.
11 (c).

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

20 35. Employees incorporate the preceding sections herein. Throughout the Statutory
21 Period, although Employees were entitled to a meal period within the first five (5) hours of work,
22 Defendant regularly scheduled Employees including Mr. Hernandez' first meal periods after such
23 time. Moreover, Defendant restricted Employees' ability to leave the worksite during their meal
24 periods in violation of the law. Nor did Defendant pay Employees a premium wage for any and all
25 noncompliant meal periods. Defendant is therefore subject to civil penalties for its violations.

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1 **FIFTH COUNT**

2 **Inaccurate Wage Statements**

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

4 36. Plaintiffs incorporate by reference and reallege each and every allegation contained
5 above, as though fully set forth herein.

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

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

27 39. Employees incorporate the preceding sections herein. Throughout the Statutory
28 Period, Defendant failed to furnish Employees including Mr. Hernandez with accurate itemized

1 statements at the time of each payment of wages showing the correct gross wages earned, correct
2 total hours worked, correct net wages earned, the corresponding correct number of hours worked at
3 each applicable hourly rate, and the address of the legal entity that employed Employees. Rather
4 than providing statements of actual time worked and a correct payment of wages based thereon,
5 Defendant failed to capture and pay Employees for all hours worked, including hours worked during
6 meal periods, and also failed to capture and pay premium pay for missed meal and rest periods.
7 Consequently, Defendant failed to provide Employees accurate itemized wages statements as
8 required by Section 226. Defendant is therefore subject to civil penalties for its violations.

9 **SIXTH COUNT**

10 **Failure to Maintain Records of Wage Statements**

11 **(By Plaintiffs against All Defendants)**

12 40. Plaintiffs incorporate by reference and reallege each and every allegation contained
13 above, as though fully set forth herein.

14 41. “An employer, semimonthly or at the time of each payment of wages, shall furnish
15 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
16 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
17 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
18 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
20 deductions made on written orders of the employee may be aggregated and shown as one item,
21 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
22 name of the employee and only the last four digits of his or her social security number or an
23 employee identification number other than a social security number, (8) the name and address of
24 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
25 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
26 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee and, beginning July
28 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of

1 pay and the total hours worked for each temporary services assignment. The deductions made
2 from payment of wages shall be recorded in ink or other indelible form, properly dated, showing
3 the month, day, and year, and a copy of the statement and the record of the deductions shall be
4 kept on file by the employer for at least three years at the place of employment or at a central
5 location within the State of California. For purposes of this subdivision, ‘copy’ includes a
6 duplicate of the itemized statement provided to an employee or a computer-generated record that
7 accurately shows all of the information required by this subdivision.” Lab. Code, § 226, subd. (a).

8 42. Throughout the Statutory Period, Defendant violated § 226(a) by failing to keep a
9 duplicate of Employees’ itemized statements provided to the Employees or a computer-generated
10 record that accurately shows all of the information required by the statute. Rather, Defendant
11 maintained a computer-generated record for Employees including Mr. Hernandez which failed to
12 indicate: (A) the inclusive dates of the periods for which the Employees were paid; (B) the name
13 of the Employees and only the last four digits of his or her social security number or an employee
14 identification number other than a social security number; and (C) the name and address of the
15 legal entity that is the employer; and (D) the name and address of the legal entity that secured the
16 services of Employer. Defendant is therefore subject to civil penalties for its violations.

17 **SEVENTH COUNT**

18 **Untimely Payment of Wages**

19 **(By Plaintiffs against All Defendants)**

20 43. Plaintiffs incorporate by reference and reallege each and every allegation contained
21 above, as though fully set forth herein.

22 44. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
23 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
24 calendar month, on days designated in advance by the employer as the regular paydays. Labor
25 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
26 between the 16th and the 26th day of the month during which the labor was performed, and labor
27 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
28 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

1 45. 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
3 the 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
6 such weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

7 46. 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 47. “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 48. Employees incorporate the preceding sections herein. Throughout the Statutory
23 Period, rather than timely paying Employees all wages due within the periods set forth above,
24 throughout Employees’ employment, Defendant failed to timely pay Employees including Mr.
25 Hernandez for all hours worked and all premium wages. Defendant is therefore subject to civil
26 penalties for its violations.

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EIGHTH COUNT

Failure to Pay Wages at Termination
(By Plaintiffs against All Defendants)

49. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

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

51. Employees incorporate the preceding sections herein. Throughout the Statutory Period, Defendant failed to pay Employees at least minimum wages, overtime wages, and all premium wages for all time worked. These wages were owed and due to those Employees who were terminated at the time of their termination. Defendant did not provide these payments to Employees including Mr. Hernandez at the time of termination or within a sufficient time of resignation as required by law. Defendant’s failure to timely pay these wages at the time of termination, and failure to pay Employees’ continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203. Defendant is therefore subject to civil penalties for these violations.

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1 **NINTH COUNT**

2 **Violation of Heat Illness Prevention Health and Safety Standards**

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

4 52. Plaintiffs incorporate by reference and reallege each and every allegation contained
5 above, as though fully set forth herein.

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

10 54. Among these rules, regulations, and orders is Title 8, Section 3395 of the California
11 Code of Regulations, which was applicable to Defendant and the Employees. Throughout the
12 Statutory Period, Defendant violated the following provisions of § 3395:

13 **(d) Access to shade.** (1) Shade shall be present when the temperature
14 exceeds 80 degrees Fahrenheit. When the outdoor temperature in the
15 work area exceeds 80 degrees Fahrenheit, the employer shall have and
16 maintain one or more areas with shade at all times while employees
17 are present that are either open to the air or provided with ventilation
18 or cooling. The amount of shade present shall be at least enough to
19 accommodate the number of employees on recovery or rest periods,
20 so that they can sit in a normal posture fully in the shade without
21 having to be in physical contact with each other. The shade shall be
22 located as close as practicable to the areas where employees are
23 working. Subject to the same specifications, the amount of shade
24 present during meal periods shall be at least enough to accommodate
25 the number of employees on the meal period who remain onsite. (2)
26 Shade shall be available when the temperature does not exceed 80
27 degrees Fahrenheit. When the outdoor temperature in the work area
28 does not exceed 80 degrees Fahrenheit employers shall either provide
shade as per subsection (d)(1) or provide timely access to shade upon
an employee's request. (3) Employees shall be allowed and
encouraged to take a preventative cool-down rest in the shade when
they feel the need to do so to protect themselves from
overheating. Such access to shade shall be permitted at all times. An
individual employee who takes a preventative cool-down rest (A)
shall be monitored and asked if he or she is experiencing symptoms
of heat illness; (B) shall be encouraged to remain in the shade; and
(C) shall not be ordered back to work until any signs or symptoms of
heat illness have abated, but in no event less than 5 minutes in addition
to the time needed to access the shade. (4) If an employee exhibits

1 signs or reports symptoms of heat illness while taking a preventative
2 cool-down rest or during a preventative cool-down rest period, the
3 employer shall provide appropriate first aid or emergency response
according to subsection (f) of this section. ...

4 Throughout the Statutory Period, Defendant failed to provide or encourage
5 Employees including Mr. Hernandez to obtain shade or recovery periods as required
6 by law when temperatures exceeded eighty degrees or when they were eighty degrees
7 or lower. Defendant maintained the same break schedule no matter how hot it was,
8 and failed to inform or encourage Employees that its policy was to allow heat-
9 recovery breaks as much as needed to avoid heat illness. Defendant is therefore
10 subject to civil penalties for its violation of § 226.7 and § 3395.

11 55. Throughout the Statutory Period, Defendant also violated the
12 following provisions of § 3395:

13 **(e) High-heat procedures.** The employer shall implement high-heat
14 procedures when the temperature equals or exceeds 95 degrees
15 Fahrenheit. These procedures shall include the following to the extent
16 practicable: (1) Ensuring that effective communication by voice,
17 observation, or electronic means is maintained so that employees at
18 the work site can contact a supervisor when necessary. An electronic
19 device, such as a cell phone or text messaging device, may be used
20 for this purpose only if reception in the area is reliable. (2) Observing
21 employees for alertness and signs or symptoms of heat illness. The
22 employer shall ensure effective employee observation/monitoring by
23 implementing one or more of the following: (A) Supervisor or
24 designee observation of 20 or fewer employees, or (B) Mandatory
25 buddy system, or (C) Regular communication with sole employee
26 such as by radio or cellular phone, or (D) Other effective means of
27 observation. (3) Designating one or more employees on each worksite
28 as authorized to call for emergency medical services, and allowing
other employees to call for emergency services when no designated
employee is available. (4) Reminding employees throughout the work
shift to drink plenty of water. (5) Pre-shift meetings before the
commencement of work to review the high heat procedures,
encourage employees to drink plenty of water, and remind employees
of their right to take a cool-down rest when necessary. (6) For
employees employed in agriculture, the following shall also apply:
When temperatures reach 95 degrees or above, the employer shall
ensure that the employee takes a minimum ten minute net
preventative cool-down rest period every two hours. The preventative
cool-down rest period required by this paragraph may be provided

1 concurrently with any other meal or rest period required by Industrial
2 Welfare Commission Order No. 14 (8 CCR 11140) if the timing of
3 the preventative cool-down rest period coincides with a required meal
4 or rest period thus resulting in no additional preventative cool-down
5 rest period required in an eight hour workday. If the workday will
6 extend beyond eight hours, then an additional preventative cool-down
7 rest period will be required at the conclusion of the eighth hour of
8 work; and if the workday extends beyond ten hours, then another
9 preventative cool-down rest period will be required at the conclusion
10 of the tenth hour and so on.

11 Defendant failed to implement any and all of the foregoing required
12 procedures and is therefore subject to civil penalties.

13 56. Throughout the Statutory Period, Defendant also violated the
14 following provisions of § 3395:

15 **(f) Emergency Response Procedures.** The Employer shall
16 implement effective emergency response procedures including:

17 (1) Ensuring that effective communication by voice, observation, or
18 electronic means is maintained so that employees at the work site can
19 contact a supervisor or emergency medical services when necessary.
20 An electronic device, such as a cell phone or text messaging device,
21 may be used for this purpose only if reception in the area is reliable.
22 If an electronic device will not furnish reliable communication in the
23 work area, the employer will ensure a means of summoning
24 emergency medical services. (2) Responding to signs and symptoms
25 of possible heat illness, including but not limited to first aid measures
26 and how emergency medical services will be provided. (A) If a
27 supervisor observes, or any employee reports, any signs or symptoms
28 of heat illness in any employee, the supervisor shall take immediate
action commensurate with the severity of the illness. (B) If the signs
or symptoms are indicators of severe heat illness (such as, but not
limited to, decreased level of consciousness, staggering, vomiting,
disorientation, irrational behavior or convulsions), the employer must
implement emergency response procedures. (C) An employee
exhibiting signs or symptoms of heat illness shall be monitored and
shall not be left alone or sent home without being offered onsite first
aid and/or being provided with emergency medical services in
accordance with the employer's procedures. (3) Contacting
emergency medical services and, if necessary, transporting
employees to a place where they can be reached by an emergency
medical provider. (4) Ensuring that, in the event of an emergency,
clear and precise directions to the work site can and will be provided
as needed to emergency responders.

1 Defendant failed to implement any and all of the foregoing required
2 procedures. Defendant is therefore subject to civil penalties for these violations.

3 57. Throughout the Statutory Period, Defendant also violated the
4 following provisions of § 3395:

5
6 **(g) Acclimatization.** (1) All employees shall be closely observed by
7 a supervisor or designee during a heat wave. For purposes of this
8 section only, 'heat wave' means any day in which the predicted high
9 temperature for the day will be at least 80 degrees Fahrenheit and at
10 least ten degrees Fahrenheit higher than the average high daily
temperature in the preceding five days. (2) An employee who has
been newly assigned to a high heat area shall be closely observed by
a supervisor or designee for the first 14 days of the employee's
employment.

11 Defendant failed to provide the required monitoring throughout Employees'
12 employment. Defendant is therefore subject to civil penalties for these violations.

13 58. Throughout the Statutory Period, Defendant also violated the
14 following provisions of § 3395:

15
16 **(h) Training.** (1) Employee training. Effective training in the
17 following topics shall be provided to each supervisory and non-
18 supervisory employee before the employee begins work that should
19 reasonably be anticipated to result in exposure to the risk of heat
20 illness: (A) The environmental and personal risk factors for heat
21 illness, as well as the added burden of heat load on the body caused
22 by exertion, clothing, and personal protective equipment. (B) The
23 employer's procedures for complying with the requirements of this
24 standard, including, but not limited to, the employer's responsibility
25 to provide water, shade, cool-down rests, and access to first aid as
26 well as the employees' right to exercise their rights under this standard
27 without retaliation. (C) The importance of frequent consumption of
28 small quantities of water, up to 4 cups per hour, when the work
environment is hot and employees are likely to be sweating more than
usual in the performance of their duties. (D) The concept, importance,
and methods of acclimatization pursuant to the employer's procedures
under subsection (i)(4). (E) The different types of heat illness, the
common signs and symptoms of heat illness, and appropriate first aid
and/or emergency responses to the different types of heat illness, and
in addition, that heat illness may progress quickly from mild
symptoms and signs to serious and life threatening illness. (F) The
importance to employees of immediately reporting to the employer,
directly or through the employee's supervisor, symptoms or signs of

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

23 Defendant failed to provide the foregoing training to Employees. Defendant
24 is therefore subject to civil penalties for these violations.

25 59. Throughout the Statutory Period, Defendant also violated the
26 following provisions of § 3395:

27 **(i) Heat Illness Prevention Plan.** The employer shall establish,
28 implement, and maintain, an effective heat illness prevention plan.
The plan shall be in writing in both English and the language
understood by the majority of the employees and shall be made
available at the worksite to employees and to representatives of the
Division upon request. The Heat Illness Prevention Plan may be
included as part of the employer's Illness and Injury Prevention
Program required by section 3203, and shall, at a minimum, contain:
(1) Procedures for the provision of water and access to shade. (2) The
high heat procedures referred to in subsection (e). (3) Emergency
Response Procedures in accordance with subsection (f).
(4) Acclimatization methods and procedures in accordance with
subsection (g).

Defendant failed to establish, implement, and maintain an effective heat
illness prevention plan in accordance with law. Defendant is therefore subject to

1 civil penalties for these violations.

2 **TENTH COUNT**

3 **Violation of Health and Safety Standards for Sanitary Facilities**

4 **(By Plaintiffs against All Defendants)**

5 60. Plaintiffs incorporate by reference and reallege each and every allegation contained
6 above, as though fully set forth herein.

7 61. “All employers shall comply with standards relating to sanitary facilities adopted
8 by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with
9 Section 140) of Division 1.” Cal. Lab. Code, § 2260. “Every factory, workshop, mercantile or
10 other establishment in which one or more persons are employed, shall be kept clean and free from
11 the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable
12 access, with a sufficient number of toilet facilities for the use of the employees. When there are
13 five or more employees who are not all of the same gender, a sufficient number of separate toilet
14 facilities shall be provided for the use of each sex, which shall be plainly so designated.” Cal.
15 Lab. Code 2350.

16 62. Defendant violated the foregoing by failing to adequately maintain clean toilets,
17 and failing to provide reasonable access to a sufficient number of toilet facilities for the use of
18 Employees.

19 63. Throughout the Statutory Period, Employer violated the following provisions of
20 applicable regulation, Cal. Code Regs., tit. 8, § 3457:

21 **(2) Toilet and handwashing facilities.** (A) Separate toilet facilities
22 for each sex shall be provided for each twenty (20) employees or
23 fraction thereof. One handwashing facility shall be provided for each
24 twenty (20) employees or fraction thereof....

25 Throughout the Statutory Period, Defendant failed to provide sufficient
26 toilets and handwashing facilities. Defendant provided only 1-2 toilet/handwashing
27 facilities for both men and women at worksites, although the number of workers
28 required more facilities to be compliant with the law. For example, at Mr.
Hernandez’s worksite, there were 2 toilets for 40 men and women, and sometimes

1 there was only 1 toilet.

2 64. Throughout the Statutory Period, Defendant also violated the
3 following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3457:

4 (D) The facilities shall be located within a one-quarter (1/4) mile walk
5 or within five (5) minutes, whichever is shorter.

6 (E) Where due to terrain it is not feasible to locate facilities as required
7 above, the facilities shall be located at the point closest to vehicular
8 access.

9 Defendant failed to comply with the foregoing requirement, requiring
10 Employees to walk excessive distances to use the restroom. Defendant placed the
11 portable facilities so that Employees doing some of the most grueling labor in the
12 field had to walk approximately 5-10 minutes each way, or approximately ½ mile
13 each way, if they wanted to access the facilities, depending on where the worker was.
14 Defendant could have been moved the facilities closer to the field workers at a point
15 where Employer had vehicular access, and it was feasible to do so, but failed to do
16 so.

17 65. Throughout the Statutory Period, Defendant also violated the
18 following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3457:

19 **(3) Maintenance standards:** ... [T]oilet facilities ... which are under
20 the control of the employer, shall be serviced and maintained by the
21 employer at all times in accordance with appropriate public health
22 sanitation practices, including the following: ... (B) Toilet facilities
23 shall be, at all times, operational, maintained in a clean and sanitary
condition, and kept in good repair. Written records of service and
maintenance shall be maintained and retained for two years. ...

24 Defendant violated this requirement, including by failing to clean portable toilets
25 sufficiently often as necessary to keep them in a sanitary condition. Defendant's
26 weekly cleaning of toilets was inadequate given the overuse of the toilets caused by
27 the insufficient supply.
28

1 66. Pursuant to Cal. Code Regs., tit. 8, § 3457, Defendant is subject to additional civil
2 penalties as provided by law for violations of these rules.

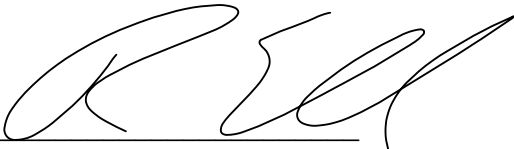
3 **PRAYER**

4 WHEREFORE, Plaintiff and Employees pray for judgment against Defendant, as follows:

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

9
10 DATED: July 22, 2020

WORKWORLD LAW

11
12 By: 
13 **RUBEN ESCOBEDO**
14 Attorney for STATE OF CALIFORNIA ex
15 rel. JUAN ZARAGOZA AND GLORIA
16 PRIETO-RAMOS, as Private Attorney
17 General
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