

RUBEN ESCOBEDO (SBN 277866)
WORKWORLD LAW CORP.
A Professional Corporation
731 S. Lincoln Street
Santa Maria, CA 93458
Telephone: (805) 335-2476
Facsimile: (805) 892-6213
Email: ruben@workworldlaw.com

Attorney for Plaintiff, ROBIN BOGUE

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SAN LUIS OBISPO SUPERIOR COURT
BY Carol L. McGulrk
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO**

ROBIN BOGUE,

Plaintiff,

v.

DANA ADOBE NIPOMO AMIGOS, INC.
dba DANA CULTURAL CENTER, a
corporation; and DOES 1-25, inclusive,

Defendants.

Case No. 20CV-0255

*Assigned for All Purposes to:
Hon. Ginger E. Garrett – Dept. 2*

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES**

Trial Date: None

Complaint filed: May 14, 2020

COMES NOW Plaintiff ROBIN BOGUE (“Plaintiff”), who asserts claims against DANA ADOBE NIPOMO AMIGOS, INC. dba DANA CULTURAL CENTER, a corporation, and DOES 1 through 25, inclusive (collectively “Defendants”) as follows:

INTRODUCTION

1. Plaintiff brings this action in her individual capacity and under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of the State of California for all current and former aggrieved employees employed by Defendant (“Employees”) at any time from one year prior to Plaintiff’s PAGA claim 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 Defendants 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 San Luis Obispo County.

PARTIES

6. For all times relevant herein except as otherwise specified, ROBIN BOGUE was an adult individual residing in San Luis Obispo County, California.

7. For all times relevant herein, Defendant DANA ADOBE NIPOMO AMIGOS, INC. dba DANA CULTURAL CENTER was and is a California corporation with its principal California place of business in Nipomo, 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 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.

COMMON FACTS

12. On or about September 17, 2018, Defendant hired Plaintiff as its Director. Defendant classified Plaintiff as an “exempt” position.

1 13. After Plaintiff was hired, however, Defendant gave Plaintiff numerous non-exempt
2 responsibilities, ranging from coordinating events to performing maintenance functions. Plaintiff
3 was even required to perform janitorial functions. Over time, Defendant placed more and more
4 non-exempt job responsibilities on Plaintiff, expecting her to not only manage Defendant, but also
5 operate it on the ground floor. Defendant failed to give Plaintiff the actual authority necessary to
6 qualify as an exempt employee. Plaintiff was primarily engaged in non-exempt job duties until
7 she was terminated on December 11, 2019.

8 14. As a result of Defendant's misclassification of Plaintiff, Defendant committed a
9 host of derivative violations of the California Labor Code, including a failure to pay overtime
10 wages, failure to timely pay these wages on a bi-weekly basis, failure to pay these wages at
11 termination, failure to provide meal and rest periods, failure to keep records of hours worked, and
12 failure to provide accurate itemized wage statements.

13 15. Defendant also committed violations of the Labor Code which were independent of
14 Defendant's misclassification of Plaintiff. This includes Defendant's failure to pay Plaintiff all
15 wages due at termination, failure to provide Plaintiff a day of rest in the workweek, failure to issue
16 proper itemized wage statements, a various violations of Cal-OSHA.

17 16. Plaintiff has filed this action for damages and penalties to deter Defendant's
18 continuing violations of the California Labor Code.

19 **FIRST CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages Owed**

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

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

24 18. "The maximum hours of work and the standard conditions of labor fixed by the
25 commission shall be the maximum hours of work and the standard conditions of labor for
26 employees. The employment of any employee for longer hours than those fixed by the order or
27 under conditions of labor prohibited by the order is unlawful." Cal. Lab. Code, § 1198. Pursuant
28 to the applicable Industrial Welfare Commission Wage Order, employees shall not be employed

1 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
2 employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
3 worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work.
4 Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is
5 permissible provided the employee is compensated for such overtime at not less than: (a) One and
6 one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8)
7 hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the
8 seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate
9 of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in
10 excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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

19 20. Throughout the Statutory Period and throughout Plaintiff's employment with
20 Defendants, Plaintiff regularly worked more than eight (8) hours in the workday, more than 40
21 hours in the workweek, and more than six days in the workweek, but Defendants failed to pay
22 Plaintiff wages at the applicable overtime and/or double-overtime rate to which she was entitled.

23 21. In addition, other Employees also worked more hours each day and workweek
24 above applicable overtime thresholds without receiving overtime pay at the required rates.

25 22. Accordingly, Plaintiff is entitled to recover the amount of his unpaid overtime
26 wages pursuant Labor Code sections 200, 500, 510, and 1198, among others, for work performed
27 throughout Plaintiff's course of employment, which is to be determined according to proof at the
28 time of trial.

23. Pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510, 1194, 1194.2, and Civil Code section 3289, among other sources of law, Plaintiff is entitled to recover penalties, the unpaid balance of wages owed, overtime compensation, interest, attorneys' fees, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Compliant Rest Periods or Pay Rest Premiums

(By Plaintiff against All Defendants)

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

25. 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).

26. “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).

27. Throughout the Statutory Period and Plaintiff's employment, Defendants maintained an illegal practice of not providing Plaintiff with compliant 10-minute rest periods where she was free of all duties and free to leave the premises.

28. Plaintiff is entitled to all premium wages, interest, and penalties as provided by law.

THIRD CAUSE OF ACTION

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

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

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

5 30. “An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less than 30 minutes,
7 except that if the total work period per day of the employee is no more than six hours, the meal
8 period may be waived by mutual consent of both the employer and employee. An employer may
9 not employ an employee for a work period of more than 10 hours per day without providing the
10 employee with a second meal period of not less than 30 minutes, except that if the total hours
11 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
12 employer and the employee only if the first meal period was not waived.” Cal. Lab. Code, § 512,
13 subd. (a).

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

23 32. “If an employer fails to provide an employee a meal or rest or recovery period in
24 accordance with a state law, including, but not limited to, an applicable statute or applicable
25 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
26 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
27 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
28

1 each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code, § 226.7,
2 subd. (c).

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

11 34. Throughout the Statutory Period and Plaintiff’s employment, Defendants
12 maintained an illegal practice of not providing Employees, including Plaintiff, with compliant 30-
13 minute meal periods where Employees were free of all duties and free to leave the premises.

14 35. In addition, other Employees also worked more than five hours in the workday
15 without receiving required meal periods.

16 36. Plaintiff is entitled to all premium wages, interest, and penalties as provided by
17 law.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Keep Accurate Records of Employees’ Hours Worked and Meal Periods**

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

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

23 38. “Every person employing labor in this state shall: ... (d) Keep, at a central location
24 in the state or at the plants or establishments at which employees are employed, payroll records
25 showing the hours worked daily by and the wages paid to, and the number of piece-rate units
26 earned by and any applicable piece rate paid to, employees employed at the respective plants or
27 establishments. These records shall be kept in accordance with rules established for this purpose
28

1 by the commission, but in any case, shall be kept on file for not less than three years.” Lab. Code,
2 § 1174, subd. (d).

3 39. Moreover, the applicable IWC Wage Order requires employers to keep accurate
4 information regarding their employees, including time records showing when the employee begins
5 and ends each work period. Meal periods, split shift intervals and total daily hours worked shall
6 also be recorded.

7 40. Throughout the Statutory Period and Plaintiff’s employment, Defendants failed to
8 accurately record and keep payroll records showing the hours worked daily by Employees,
9 including Plaintiff, for the minimum period of three years, failed to keep accurate information
10 showing when Employees began and ended each work period, and failed to keep accurate records
11 of Employees’ meal periods.

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

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Issue and Keep Records of Wage Statements**

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

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

18 43. “Every employer shall, semimonthly or at the time of each payment of wages,
19 furnish each of his or her employees, either as a detachable part of the check, draft, or voucher
20 paying the employee s wages, or separately when wages are paid by personal check or cash, an
21 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
22 the employee, except for any employee whose compensation is solely based on a salary and who is
23 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
25 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
26 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
27 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer ... , and (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee and,
4 beginning July 1, 2013, if the employer is a temporary services employer as defined in Section
5 201.3, the rate of pay and the total hours worked for each temporary services assignment.” Cal.
6 Lab. Code, § 226, subd. (a). “The deductions made from payment of wages shall be recorded in
7 ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the
8 statement and the record of the deductions shall be kept on file by the employer for at least three
9 years at the place of employment or at a central location within the State of California. For
10 purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
11 employee or a computer-generated record that accurately shows all of the information required by
12 this subdivision.” Cal. Lab. Code, § 226, subd. (a).

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

19 45. Throughout the Statutory Period and Plaintiff’s employment, Defendants
20 knowingly and intentionally failed to furnish Employees with accurate itemized statements at the
21 time of each payment of wages showing the correct gross wages earned, correct total hours
22 worked, correct net wages earned, the corresponding correct number of hours worked at each
23 applicable hourly rate, all deductions, the inclusive dates of the period for which the employee is
24 paid, the name of the employee and only the last four digits of his or her social security number or
25 an employee identification number other than a social security number, and the name and address
26 of the legal entity that is the employer. Defendants also failed to keep records of the wage
27 statements or electronic data reflecting all of the foregoing items.

28

1 46. The Employees, including Plaintiff, suffered a presumptive injury as a result of the
2 foregoing violations.

3 47. Plaintiff is entitled to all penalties provided by law.

4 **SIXTH CAUSE OF ACTION**

5 **Violation of Day-of-Rest Statutes**

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

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

9 49. Labor Code section 551 provides: “**Every** person employed in any occupation of
10 labor is entitled to one day’s rest therefrom in seven.” (Emphasis added.) Labor Code section 552
11 states that: “No employer of labor shall cause his employees to work more than six days in seven.”
12 An employer that violates these provisions is subject to additional penalties under Labor Code
13 section 558(a)(2) and the PAGA.

14 50. Throughout Plaintiff’s employment, Defendant violated the foregoing provisions
15 and placed such demanding job responsibilities on Plaintiff that she was required to work seven
16 days a week for several weeks during her employment without a day of rest.

17 51. Plaintiff is entitled to additional civil penalties as provided by law.

18 **SEVENTH CAUSE OF ACTION**

19 **Failure to Reimburse Expenses**

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

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

23 53. At all relevant times, California Labor Code Section 2802 provides that employers
24 reimburse employees for expenditures and costs the employee must incur to perform his or her
25 job, or that are made because of the employer’s instructions.

26 54. Defendants requiring Plaintiff to incur employment-related expenses, including
27 vehicle use, mileage, repair, and maintenance expenses.

28 55. Plaintiff was not properly reimbursed for the above-referenced expenses.

1 56. Plaintiff seeks all damages and remedies available under the California Labor
2 Code.

3 **EIGHTH CAUSE OF ACTION**

4 **Violation of Health-and-Safety Standards**

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

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

8 58. “Every employer shall establish, implement, and maintain an effective injury
9 prevention program. The program shall be written, except as provided in subdivision (e), and shall
10 include, but not be limited to, the following elements: (1) Identification of the person or persons
11 responsible for implementing the program. (2) The employer’s system for identifying and
12 evaluating workplace hazards, including scheduled periodic inspections to identify unsafe
13 conditions and work practices. (3) The employer’s methods and procedures for correcting unsafe
14 or unhealthy conditions and work practices in a timely manner. (4) An occupational health and
15 safety training program designed to instruct employees in general safe and healthy work practices
16 and to provide specific instruction with respect to hazards specific to each employee’s job
17 assignment. (5) The employer’s system for communicating with employees on occupational health
18 and safety matters, including provisions designed to encourage employees to inform the employer
19 of hazards at the worksite without fear of reprisal. (6) The employer’s system for ensuring that
20 employees comply with safe and healthy work practices, which may include disciplinary action.”
21 Lab. Code, 6401.7, subd. (a). “The employer shall correct unsafe and unhealthy conditions and
22 work practices in a timely manner based on the severity of the hazard.” Lab. Code, 6401.7, subd.
23 (b).

24 59. “The employer shall train all employees when the training program is first
25 established, all new employees, and all employees given a new job assignment, and shall train
26 employees whenever new substances, processes, procedures, or equipment are introduced to the
27 workplace and represent a new hazard, and whenever the employer receives notification of a new
28 or previously unrecognized hazard.” Lab. Code, 6401.7, subd. (c). “The employer shall keep

1 appropriate records of steps taken to implement and maintain the program.” Lab. Code, 6401.7,
2 subd. (d). The standards board shall adopt a standard setting forth the employer’s duties under this
3 section....” Lab. Code, 6401.7, subd. (e)(1).

4 60. To substantially comply with Section 6401.7, the employer must provide adequate
5 “meetings, training programs, posting, written communications, a system of anonymous
6 notification by employees about hazards, labor/management safety and health committees, or any
7 other means that ensures communication with employees.” Cal. Code Regs., tit. 8, § 3203, subd.
8 (a)(3).

9 61. “Records of the steps taken to implement and maintain the Program shall include:
10 (1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to
11 identify unsafe conditions and work practices, including person(s) conducting the inspection, the
12 unsafe conditions and work practices that have been identified and action taken to correct the
13 identified unsafe conditions and work practices. These records shall be maintained for at least one
14 (1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for
15 each employee, including employee name or other identifier, training dates, type(s) of training,
16 and training providers. This documentation shall be maintained for at least one (1) year.” Cal.
17 Code Regs., tit. 8, § 3203, subd. (b).

18 62. Throughout the Statutory Period, Defendants subjected all Employees, including
19 Plaintiff, to working conditions that exposed them to hazards from the lack of a legally mandated
20 injury prevention program. Defendants were subject to all of the foregoing requirements with
21 regard to all of their operations. Defendants failed to establish, implement, and maintain an
22 effective injury prevention program. Defendants failed to perform periodic inspections to identify
23 unsafe conditions and work practices, and failed to provide occupational health and safety training
24 designed to instruct Employees in general safe and healthy work practices and to provide specific
25 instruction with respect to hazards specific to each Employee’s job assignment; Defendants failed
26 to provide such training to Employees, including Plaintiff.

27 63. Defendants also failed to keep appropriate records of steps taken to implement and
28 maintain its program and comply with regulations set by the standards board. Defendants failed to

1 provide adequate meetings, training programs, posting, written communications, a system of
2 anonymous notification by employees about hazards, labor/management safety and health
3 committees, or any other means that ensures communication with Employees, including Plaintiff,
4 regarding health and safety conditions and workplace injury reporting.

5 64. Defendants also failed to keep records of steps taken to implement and maintain a
6 compliant program, including adequate records of scheduled and periodic inspections to identify
7 unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe
8 conditions and work practices that have been identified, and action taken to correct the identified
9 unsafe conditions and work practices, and documentation of required safety and health training for
10 each of the Employees, including each employee's name or other identifier, training dates, type(s)
11 of training, and training providers.

12 65. Among the health and safety risks that Defendants failed to address, Defendants
13 required Employees to travel on a road where the Employees must maneuver down an unsafe
14 embankment. When using the road, Employees are at risk of tip-over, serious injury, and death.

15 66. By committing the acts and omissions described above, Defendants also violated
16 Labor Code, §§ 6400, 6401, 6302, 6403, 6404 by requiring and permitting unsafe work, and
17 failing to provide safe workplaces, practices, and processes to its Employees.

18 67. Defendants are subject to additional civil penalties as provided by law.

19 **NINTH CAUSE OF ACTION**

20 **Failure to Pay Wages at Termination**

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

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

24 69. "If an employer discharges an employee, the wages earned and unpaid at the time
25 of discharge are due and payable immediately." Cal. Lab. Code, § 201, subd. (a). "If an employer
26 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
27 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
28 wages of the employee shall continue as a penalty from the due date thereof at the same rate until

1 paid or until an action therefor is commenced; but the wages shall not continue for more than 30
2 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or
3 who refuses to receive the payment when fully tendered to him or her, including any penalty then
4 accrued under this section, is not entitled to any benefit under this section for the time during
5 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

6 70. Defendant terminated Plaintiff on December 11, 2019, and Plaintiff communicated
7 her understanding and intention that her employment was terminated as of that date. Despite
8 Plaintiff’s numerous requests, however, Defendant knowingly and intentionally failed to issue any
9 payment to Plaintiff until January 17, 2019, when it cut Plaintiff’s final paycheck.

10 71. In addition to failing to pay Plaintiff’s other wages at the time of termination,
11 Defendants also failed to pay Plaintiff all vested vacation pay as required by Labor Code section
12 227.3.

13 72. Plaintiff is entitled to all penalties available under the law.

14 **PRAYER**

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

- 16 1. For compensatory damages and prejudgment interest according to proof;
17 2. For all statutory and civil penalties according to proof;
18 3. For reasonable costs and attorneys’ fees; and
19 4. For such other and further relief as the Court deems proper.

20 DATED: July 20, 2020

WORKWORLD LAW CORP.
A Professional Corporation

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22
23 By: 
24 **RUBEN ESCOBEDO**
25 Attorney for Plaintiff, ROBIN BOGUE
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27
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