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10 Attorney for Plaintiff, LUKE GRABEEL,
Individually, and on Behalf of Other Members of the
11 Public Similarly Situated and the State of California

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN LUIS OBISPO
15

16 LUKE GRABEEL, Individually, and on
17 Behalf of Other Members of the Public
Similarly Situated,
18
19 Plaintiff,

20 vs.

21 PAPICH CONSTRUCTION COMPANY,
INC., a corporation; and DOES 1 through 25,
22 inclusive,
23 Defendants.

CASE NO: 20CV-0501

Assigned for All Purposes to:

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
PENALTIES**

[Unlimited Civil Case – Exceeds \$25,000]

Trial Date: None

Complaint filed:

JURY TRIAL DEMANDED

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27 Comes now LUKE GRABEEL (“Plaintiff”), who individually and on behalf of other
28 members of the public similarly situated and the State of California asserts claims against

**ELECTRONICALLY
FILED**

9/25/2020 7:42 PM

SAN LUIS OBISPO SUPERIOR COURT
BY Carol L. McGuirk
Carol L. McGuirk, Deputy Clerk

1 PAPICH CONSTRUCTION COMPANY, INC., a corporation, and Does 1 through 25, inclusive,
2 (collectively “Defendants”) as follows:

3 **JURISDICTION AND VENUE**

4 1. This class action is brought pursuant to California Code of Civil Procedure § 382.
5 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits
6 of the California Superior Court and will be established according to proof at trial.

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

9 3. This Court has jurisdiction over Defendants because, upon information and belief,
10 each defendant is either a resident of California, has sufficient minimum contacts in California, or
11 otherwise intentionally avails itself of the California labor market.

12 4. Venue is proper in this Court because this action arises from Plaintiff’s labor
13 contracted for and/or provided in San Luis Obispo County and Defendants are domiciled in this
14 County.

15 **PARTIES**

16 5. Plaintiff is domiciled in, and at all times mentioned in this complaint was
17 domiciled in, Santa Barbara County, California. Plaintiff worked as a driver for Defendants
18 during the Statutory Period.

19 6. PAPICH CONSTRUCTION COMPANY, INC. is a California corporation
20 qualified to do business in California. On information and belief, Plaintiff alleges that at all
21 relevant times referenced herein Defendants did and continue to transact business in California.

22 7. Whenever in this complaint reference is made to any act, deed, or conduct of
23 PAPICH CONSTRUCTION COMPANY, INC., the allegation means that PAPICH
24 CONSTRUCTION COMPANY, INC. engaged in the act, deed, or conduct by or through one or
25 more of its officers, directors, agents, employees, or representatives, who was actively engaged in
26 the management, direction, control, or transaction of the ordinary business and affairs of PAPICH
27 CONSTRUCTION COMPANY, INC.

28 8. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,

1 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
2 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
3 amend this complaint to insert the true names and capacities of the Doe Defendants at such time as
4 the identities of the Doe Defendants have been ascertained.

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

12 10. Plaintiff is further informed and believes, and thereon alleges, that at all times
13 herein material, each Defendant was completely dominated and controlled by its co-Defendants
14 and each was the alter ego of the other. Whenever and wherever reference is made in this
15 complaint to any conduct by PAPICH CONSTRUCTION COMPANY, INC. or Defendants, such
16 allegations and references shall also be deemed to mean the conduct of each of the Defendants,
17 acting individually, jointly, and severally. Whenever and wherever reference is made to
18 individuals who are not named as Defendants in this complaint, but were employees and/or agents
19 of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this
20 complaint within the scope of their respective employments.

21 **CLASS ACTION ALLEGATIONS**

22 11. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
23 other persons similarly situated, and thus, seeks class certification under California Code of Civil
24 Procedure § 382.

25 12. All claims alleged herein arise under California law for which Plaintiff seeks relief
26 as authorized by California law.

27 13. The proposed Class is comprised of and defined as:

28 Any and all persons who are or were employed as drivers or
similar field positions by PAPICH CONSTRUCTION

1 COMPANY, INC. in the state of California from April 6, 2016
2 until resolution of this lawsuit ("Statutory Period") (collectively,
3 the "Class Members").

4 14. The proposed Termination Subclass is comprised of and defined as:

5 All Class Members who were discharged or resigned from April 6,
6 2017 until the resolution of this lawsuit (collectively, the
7 "Termination Subclass Members").

8 15. The proposed Paystub Subclass is comprised of and defined as:

9 All Class Members who were actively employed at any time from
10 April 6, 2019 until the resolution of this lawsuit (collectively, the
11 "Paystub Subclass Members").

12 16. There is a well-defined community of interest in this litigation and the Class and
13 Subclass Members are easily ascertainable as set forth below:

14 a. **Numerosity:** The members of the Class and Subclasses are so numerous that
15 joinder of all Class Members and Subclass Members would be unfeasible and impractical. The
16 membership of the entire Class and Subclasses is unknown to Plaintiff at this time; however, the
17 Class is estimated to be greater than 100 individuals. The identity of such membership is readily
18 ascertainable by inspection of Defendants' employment records.

19 b. **Typicality:** Plaintiff is qualified to, and will fairly and adequately protect the
20 interests of each Class Member and Subclass Member with whom he has a well-defined
21 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be
22 alleged by any Class Member and/or Subclass Member, and the relief sought is typical of the relief
23 which would be sought by each of the Class Members and/or Subclass Members in separate
24 actions. All Class Members and Subclass Members have been similarly harmed by being denied
25 pay for on-duty meal periods, rest periods and premium wages, accurate wage statements, and
26 payment of wages at or near the time of separation due to Defendants' policies and companywide
27 practices. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
28 each Class Member and Subclass Member.

c. **Adequacy:** Plaintiff is qualified to, and will fairly and adequately protect the
interests of each Class Member and Subclass Member with whom he has a well-defined

1 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges he
2 has an obligation to make known to the Court any relationships, conflicts, or differences with any
3 Class Member and/or Subclass Member. Plaintiff's attorneys and the proposed Class and Subclass
4 counsel are versed in the rules governing class action discovery, certification, and settlement and
5 experienced in handling such matters.

6 **d. Superiority:** The nature of this action makes the use of class action adjudication
7 superior to other methods. A class action will achieve economies of time, effort, judicial resources,
8 and expense compared to separate lawsuits. The prosecution of separate actions by individual
9 members of the Class and/or Subclass would create a risk of inconsistent and/or varying
10 adjudications with respect to the individual Class Members and/or Subclass Members, establishing
11 incompatible standards of conduct for the Defendants and resulting in the impairment of the Class
12 Members' and/or Subclass Members' rights and the disposition of their interests through actions to
13 which they were not parties.

14 **e. Public Policy Considerations:** Employers in the state of California violate
15 employment and labor laws every day. Current employees are fearful of retaliation from their
16 employer. Former employees are fearful of bringing actions because they believe their former
17 employers may damage their future endeavors through negative references and/or other means.
18 The nature of this action allows for the protection of current and former employees' rights without
19 fear for retaliation or damage.

20 17. There are common questions of law and fact as to the Class and Subclass that
21 predominate over questions affecting only individual members including, but not limited to:

22 a. Whether Defendants maintained a policy or practice of requiring Class Members to work
23 through meal-and-rest periods without pay;

24 b. Whether Defendants had a policy providing rest periods to Class Members;

25 c. Whether Defendants maintained a policy or practice that discouraged or otherwise
26 impeded off-duty meal-and-rest periods;

27 d. Whether Defendants failed to comply with the wage reporting requirements of the Labor
28 Code, including, but not limited to, Labor Code § 226;

1 e. Whether Defendants failed to timely pay Class Members all wages owed at or near the
2 time of their separation from employment as required by Labor Code §§ 201-202;

3 f. Whether Defendants' conduct was knowing, intentional, and/or willful; and

4 g. The appropriate amount of statutory damages and/or monetary penalties resulting from
5 Defendants' violations of California law.

6 **CLASS ACTION CLAIMS**

7 **FIRST CAUSE OF ACTION**

8 **(For Failure to Pay Wage for On-Duty Meal Periods)**

9 **By Plaintiff and Class Members Against All Defendants**

10 18. Plaintiff incorporates by reference and reallege each and every allegation contained
11 above, as though fully set forth herein.

12 19. Throughout the Statutory Period, Plaintiff and Class Members were entitled to
13 payment of at least minimum wages for all hours worked and were entitled to overtime wages for
14 hours worked in excess of applicable overtime thresholds.

15 20. Throughout the Statutory Period, Defendants gave Plaintiff and Class Members job
16 duties that precluded them from taking off-duty meal periods. For example, Mr. Grabeel worked
17 for Defendants during the Statutory Period as a driver, and Defendants assigned him routes and
18 responsibilities that required him to work continuously from the start of his workday through the
19 end of his workday. If Plaintiff and Class Members had wanted to take a meal period, they would
20 have been required to work additional overtime, which was strongly discouraged by Defendants,
21 to the point that Defendants would edit Plaintiff and Class Members' time cards to deduct hours in
22 violation of § 221. Thus, Plaintiff and Class Members were given a choice. They could take off-
23 duty meal periods, work overtime to complete their stops (or otherwise fail to complete their
24 assigned stops), and face discipline and/or deductions from their employer. Or they could work
25 through meal periods to meet the Defendants' requirements and expectations. By its policies and
26 practices, the Defendants discouraged Plaintiff and Class Members from taking timely off-duty
27 meal periods. And the Defendants knew the Plaintiff and Class Members were working through
28 their meal periods. Although the Defendants were aware that it was, in effect, requiring the

1 Plaintiff and Class Members to work through their meal periods, the Defendants nonetheless
2 required the Plaintiff and Class Members to clock out for at least 30 minutes to create the
3 appearance that they were off-duty. Defendants in effect deducted meal period time from Plaintiff
4 and Class Members' pay when this time should have been counted as "hours worked." Throughout
5 the Statutory Period, Defendants failed to pay Plaintiff and Class Members at least minimum wage
6 for all time worked, which must be paid at a rate of not less than minimum wage pursuant to
7 California law. Defendants paid zero dollars for minutes worked by Plaintiff and Class Members
8 during their meal periods. Defendants also failed to pay premium wages owed for Plaintiff and
9 Class Members' on-duty meal periods. Consequently, Defendants violated the foregoing
10 minimum wage laws, § 221, and § 226.7.

11 21. As a result of the foregoing violations, Defendants also failed to pay Plaintiff and
12 Class Members all overtime wages for hours worked during meal periods in excessive of overtime
13 and double overtime thresholds. Plaintiff and Class Members regularly worked 8 or more hours
14 per day and more than 40 hours each workweek, and Defendants failed to pay Plaintiff and Class
15 Members overtime and/or double overtime for said hours worked as required by law.

16 22. As a proximate result of the aforementioned violations, Plaintiff and Class
17 Members have been damaged in an amount according to proof at time of trial.

18 23. Plaintiff and Class Members are entitled to unpaid minimum wages, overtime
19 wages, and liquidated damages pursuant to Labor Code §§ 200, 500, 510, 1194, 1194.2, 1198, *et*
20 *seq.* in addition to interest, attorneys' fees, and costs.

21 **SECOND CAUSE OF ACTION**

22 **(For Failure to Provide Rest Periods and Premium Wages)**

23 **By Plaintiff and Class Members against All Defendants**

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

26 25. Pursuant to Industrial Welfare Commission Wage Order 7, employers must provide
27 non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours worked or
28 major fraction thereof. Duty-free rest periods must be paid. An employer who fails to provide a

1 duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day
2 in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

3 26. Throughout the Statutory Period, Defendants maintained an illegal practice of not
4 providing Plaintiff and Class Members with timely and compliant first, second, and third
5 sanctioned rest periods. While it was Defendants' formal policy to authorize and permit rest
6 periods, Plaintiff and Class Members cannot take a timely off-duty rest period because of
7 Defendants' excessive service expectations placed on Plaintiff and Class Members, coupled with
8 Defendants' complaints about overtime. For example, Defendants issued a memorandum to
9 Plaintiff and Class Members stating "Below you will find a break down of the time it should
10 reasonably take to complete three rounds of interplant ... Fueling .25 [hours] ... Loading .5
11 [hours] ... Unloading .5 [hours] ... Inspections .25 [hours] ... Break .5 [hours] ... Drive time 9
12 [hours] ... Total 11 Hours...." In reality, zero rest periods were authorized or permitted to drivers.
13 Defendants' written policies concerning breaks do not reflect the true policy and practice of
14 Defendants. Defendants have also failed to pay Plaintiff and Class Members an extra hour of pay
15 for not providing compliant rest breaks. Thus, Plaintiff and Class Members were not provided
16 compliant first, second, and third rest periods as required by law throughout their Employment.

17 27. As a proximate result of the aforementioned violations, Plaintiff and Class
18 Members have been damaged in an amount according to proof at time of trial.

19 28. Plaintiff and Class Members are entitled to premium wages pursuant to Labor Code
20 § 226.7, in addition to interest and costs.

21 **THIRD CAUSE OF ACTION**

22 **(For Inaccurate Wage Statements)**

23 **By Plaintiff and Paystub Subclass Members Against All Defendants**

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

26 30. California Labor Code §226(a) sets forth reporting requirements for employers
27 when they pay wages: "Every employer shall ... at the time of each payment of wages, furnish
28 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,

1 (2) total hours worked by the employee ... (5) net wages earned ... and (9) all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours worked at each hourly
3 rate by the employee....”

4 31. California Labor Code §226(e) provides: “An employee suffering injury as a result
5 of a knowing and intentional failure by “an employer to comply with subdivision (a) shall be
6 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
7 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
8 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
9 shall be entitled to an award of costs and reasonable attorney’s fees.”

10 32. California Labor Code §226(e)(2)(B) provides: An employee is deemed to suffer
11 injury for purposes of this subdivision if the employer fails to provide accurate and complete
12 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and
13 the employee cannot promptly and easily determine from the wage statement alone one or more of
14 the following: (i) The amount of the gross wages or net wages paid to the employee during the pay
15 period or any of the other information required to be provided on the itemized wage statement
16 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the
17 employer made from gross wages to determine the net wages paid to the employee during the pay
18 period. Nothing in this subdivision alters the ability of the employer to aggregate deductions
19 consistent with the requirements of item (4) of subdivision (a). (iii) The name and address of the
20 employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
21 1682, the name and address of the legal entity that secured the services of the employer during the
22 pay period. (iv) The name of the employee and only the last four digits of his or her social security
23 number or an employee identification number other than a social security number.”

24 33. From April 6, 2019, through the present, Defendants knowingly and intentionally
25 failed, and continue to fail to furnish Plaintiff and Paystub Subclass Members, complete and
26 accurate wage statements upon each payment of wages in violation of California Labor Code
27 §226(a). The wage statements issued to Plaintiff and Paystub Subclass Members inaccurately
28 stated their gross wages earned, total hours worked, net wages earned, and all applicable hourly

1 rates in effect during each pay period and the corresponding number of hours worked at each
2 hourly rate by employees.

3 34. Plaintiff and Paystub Subclass Members were injured by these failures because,
4 among other things, these failures led them to believe that they were not entitled to be paid wages
5 for all work performed although they were so entitled, they were required to perform mathematical
6 computations to analyze whether wages paid, in fact, compensated for all work performed and
7 sales made, and they were not able to determine from the wage statements alone one or more of
8 the items required to be provided. Defendants' failure to comply with California Labor Code
9 §226(a) also hindered Plaintiff and Paystub Subclass Members from determining the amounts of
10 wages actually owed to them.

11 35. Defendants will no doubt continue these illegal practices until such time as it is
12 forced to pay penalties in compliance with California Labor Code §226(e).

13 36. Plaintiff and Paystub Subclass Members, are entitled to recover statutory penalties,
14 interest, injunctive relief, and attorneys' fees and costs pursuant to California Labor Code §226(e)
15 and (h).

16 **FOURTH CAUSE OF ACTION**

17 **(For Waiting Time Penalties)**

18 **By Plaintiff and Termination Subclass Members Against All Defendants**

19 37. Plaintiff incorporates by reference and reallege each and every allegation contained
20 above, as though fully set forth herein.

21 38. California Labor Code §§ 201 and 202 require an employer who discharges an
22 employee to pay compensation due and owing to said employee immediately upon discharge and
23 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
24 and payable not later than seventy-two hours thereafter, unless the employee has given seventy
25 two hours' previous notice of his or her intention to quit in which case the employee is entitled to
26 his or her wages on their last day of work. California Labor Code § 203 provides that if an
27 employer willfully fails to pay compensation promptly upon discharge, as required by California
28 Labor Code §§201 and 202, the employer is liable for waiting time penalties in the form of

1 continued compensation for up to thirty work days.

2 39. During the relevant time period, Defendants willfully failed and refused, and
3 continues to willfully fail and refuse, to pay Plaintiff and Termination Subclass Members their
4 wages, earned and unpaid, either at the time of discharge, or within seventy-two hours of their
5 voluntarily leaving Defendants' employ.

6 40. Defendants' willful failure to pay Plaintiff and Termination Subclass Members
7 their wages earned and unpaid at the time of discharge, or within seventy-two hours of their
8 voluntarily leaving Defendants' employ, violates California Labor Code §§ 201 and 202.

9 41. As a result, Defendants are liable to Plaintiff and Termination Subclass Members
10 for waiting time penalties pursuant to California Labor Code § 203, in an amount according to
11 proof at the time of trial.

12 **FIFTH CAUSE OF ACTION**

13 **(For Unfair Competition)**

14 **By Plaintiff and Class Members against All Defendants**

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

17 43. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
18 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
19 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of California Code of Civil Procedure §1021.5.

21 44. Defendants' policies, activities, and actions as alleged herein are violations of
22 California law and constitute unlawful business acts and practices in violation of California
23 Business and Professions Code §§ 17200, *et seq.*

24 45. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
25 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
26 practices of failing to pay Plaintiff and Class Members minimum wages, overtime wages, and
27 premium wages, among the other statutory violations alleged herein, during the Statutory Period
28 violates the California Labor Code, including California Labor Code §§1198, 1182.12, 1197, 512,

1 226.7, 221-223, 201-202, 204, and 226.

2 46. Plaintiff and Class Members have been personally aggrieved by Defendants'
3 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
4 property.

5 47. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff,
6 Class Members, and Subclass Members are entitled to restitution of the wages and expenses
7 withheld and benefits wrongfully retained by Defendants throughout the Statutory Period; an
8 award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5, and an award of
9 costs.

10 **SIXTH CAUSE OF ACTION**

11 **(For Civil Penalties under the Private Attorneys General Act of 2004 ["PAGA"])**

12 **By Plaintiff and Employees against All Defendants**

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

15 49. On or about July 31, 2020, Plaintiff filed a PAGA Notice of Claims with the
16 LWDA (Case No. LWDA-CM- 800885-20) asserting various violations of the Labor Code, as
17 reflected in Exhibit 1. Plaintiff incorporates the entirety of the State's file in Case No. LWDA-
18 CM- 800885-20 and Exhibit 1, and all facts and theories asserted therein, as though fully set forth
19 herein.

20 50. The government agencies to whom the violations were addressed did not
21 investigate and the time for them to do so has expired or will soon expire. With respect to any and
22 all violations that were curable under the PAGA (if any), Defendants failed to cure the violations.
23 Plaintiff has exhausted or will exhaust all administrative procedures under the PAGA.

24 51. Defendants are liable to the Employees as set forth in Exhibit 1 for all civil
25 penalties available under the PAGA.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, Class Members, and Subclass Members pray for judgment
28 against Defendants, as follows:

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a. Class Certification

- 1. That this action be certified as a class action with respect to the First through Fifth causes of action;
- 2. That Plaintiff be appointed as representative(s) of the Class and Subclasses;
- 3. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

b. On the First through Sixth Causes of Action

- 1. For compensatory damages in an amount not less than \$2,000,000;
- 2. For pre-judgment interest on any unpaid minimum wage and premium wage compensation due from the day that such amounts were due according to proof;
- 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to California Labor Code § 1194.2;
- 4. For statutory penalties pursuant to California Labor Code §§ 203 and 226(e);
- 5. For restitution and disgorgement pursuant to Business & Professions Code §§ 17200, *et seq.*;
- 6. For reasonable attorneys’ fees pursuant to §§ 218.5 and 1194;
- 7. For reasonable costs; and
- 8. For such other and further relief as the Court deems proper.

c. On the Sixth Cause of Action

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

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this matter.

DATED: September 25, 2020

WORKWORLD LAW CORP.

A Professional Corporation

By: _____



RUBEN ESCOBEDO

Attorneys for Plaintiff, LUKE GRABEEL,
Individually, and on Behalf of Other Members of
the Public Similarly Situated and the State of
California

EXHIBIT 1



WORKWORLD LAW

July 31, 2020

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VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

CALIFORNIA DIVISION OF
OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., Rm. 9516
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

Papich Construction Company, Inc.
398 Sunrise Terrace
Arroyo Grande, CA 93420

**Re: Luke Grabeel's Notice of Claims - Labor Code Private Attorneys General
Act of 2004, California Labor Code §§ 2698, *et seq.***

To the California Labor and Workforce Development Agency, the California Division of Occupational Safety and Health, and Papich Construction Company, Inc.:

WorkWorld Law Corp. represents Luke Grabeel, who hereby issues the following Notice of Claims and intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of themselves, approximately more than 50 similarly situated current and former aggrieved employees employed by Papich Construction Company, Inc. ("Employer") between April 6, 2019 and the resolution of the action ("Statutory Period") as drivers and other non-exempt employees, and the People of the State of California (hereinafter collectively "Employees").

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 intend to bring a 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 penalties are sought for violations committed against Employees of Employer.

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Minimum Wages Owed

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).

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

Throughout the Statutory Period, Employer gave Employees job duties that precluded them from taking off-duty meal periods. For example, Mr. Grabeel worked for Employer during the Statutory Period as a driver, and Employer assigned him routes and responsibilities that required him to work continuously from the start of his workday through the end of his workday. If Employees had wanted to take a meal period, they would have been required to work additional overtime, which was strongly discouraged by Employer, to the point that Employer would edit Employees’ time cards to deduct hours in violation of § 221. Thus, Employees were given a choice. They could take off-duty meal periods, work overtime to complete their stops (or otherwise fail to complete their assigned stops), and face discipline and/or deductions from their

Employer. Or they could work through meal periods to meet the Employer's requirements and expectations. By its policies and practices, the Employer discouraged Employees from taking timely off-duty meal periods. And the Employer knew the Employees were working through their meal periods. Although the Employer was aware that it was, in effect, requiring the Employees to work through their meal periods, the Employer nonetheless required the Employees to clock out for at least 30 minutes to create the appearance that they were off-duty. Employer in effect deducted meal period time from Employees' pay when this time should have been counted as "hours worked." Throughout Employees' employment, Employer failed to pay Employees at least minimum wage for all time worked, which must be paid at a rate of not less than minimum wage pursuant to California law. Employer paid zero dollars for minutes worked by Employees during their meal periods. Consequently, Employer violated the foregoing minimum wage laws, § 221, and § 226.7.

B. Failure to Pay Overtime Wages Owed

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Cal. Lab. Code, § 1198.

Pursuant to Industrial Welfare Commission Wage Order 7, employees

shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

“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).

Employees incorporate the preceding section herein. Throughout the Statutory Period, Employer failed to pay Employees all overtime wages for hours worked during meal periods in excessive of overtime and double overtime thresholds. Employees regularly worked 8 or more hours per day and more than 40 hours each workweek, and Employer failed to pay Employees overtime and/or double overtime for said hours worked as required by law.

C. Failure to Provide or Pay for Recovery Periods

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

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

“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.” Cal. Code Regs., tit. 8, § 3395, subd. (d)(3). “For purposes of this section, preventative cool-down rest period has the same meaning as ‘recovery period’ in Labor Code Section 226.7(a).” Cal. Code Regs., tit. 8, § 3395, subd. (e)(6).

Throughout the Statutory Period, Employer failed to allow or encourage shaded recovery periods as required by law when temperatures exceeded eighty degrees and when temperatures were eighty degrees and lower. Employees are informed and believe that Employer had no policy or procedures to comply with § 3395. Employer also failed to ensure effective employee observation/monitoring as required by law. Employees work outdoors, many of whom driving in non-air conditioned trucks during the Statutory Period, loading and unloading goods outdoors, and performing other outdoor work where heat recovery periods are needed. Employer also failed to conduct meetings on heat illness and failed to encourage or ensure Employees to take heat recovery periods at the required intervals as required by law. Employees sometimes feel dizzy due to heat, long hours, and inadequate breaks. Employer is subject to civil penalties for its violation of § 226.7 and § 3395.

D. Failure to Provide Timely Rest Periods

Pursuant to Industrial Welfare Commission Wage Order 7, 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).

“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).

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer maintained an illegal practice of not providing Employees with timely and compliant first, second, and third sanctioned rest periods. While it was Employer’s formal policy to authorize and permit rest periods, Employees cannot take a timely off-duty rest period because of Employer’s excessive service expectations placed on drivers and Employees, coupled with Employer’s complaints about overtime. For example, Employer issued a memorandum to Employees stating “Below you will find a break down of the time it should reasonably take to complete three rounds of interplant ... Fueling .25 [hours] ... Loading .5 [hours] ... Unloading .5 [hours] ... Inspections .25 [hours] ... Break .5 [hours] ... Drive time 9 [hours] ... Total 11 Hours...” In reality, zero rest periods were authorized or permitted to drivers. Employer’s written policies concerning breaks do not reflect the true policy and practice of Employer. Employer has also failed to pay Employees an extra hour of pay for not providing compliant

meal and rest breaks. Thus, Employees were not provided compliant first, second, and third rest periods as required by law throughout their Employment.

E. Untimely Payment of Wages

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).

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. Cal. Lab. Code, § 210, subd. (a).

Employees incorporate the preceding sections herein. Rather than timely paying Employees all minimum, overtime, and premium wages due within the periods set forth above, throughout the Statutory Period, Employer failed to timely pay Employees for all minimum, overtime, and premium wages earned as required by law. Employer also failed to timely pay holiday pay as was promised to Employees, including Mr. Grabeel, to induce Employees to continue to work.

F. Failure to Keep Accurate Records of Hours Worked

Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, 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.” “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).” Cal. Lab. Code, § 1174.5.

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to keep accurate records showing the hours worked daily by Employees.

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G. Failure to Issue and Keep Records of Wage Statements

California Labor Code section 226, subdivision (a) mandates that employers issue accurate itemized statements semimonthly or at the time of each payment of wages, and that "a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."

"An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if 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 as provided in subdivision (j), (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, (6) the inclusive dates of the period for which the employee is paid, (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, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, 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...." Cal. Lab. Code, § 226, subd. (a).

"An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer." Cal. Lab. Code, § 226, subd. (b). "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request." Cal. Lab. Code, § 226, subd. (c).

"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. An employer who violates subdivisions (b) or (c) of Section 226 is also subject to additional civil penalties under Section 2699(f).

Employees incorporate the preceding sections herein. As a result of the foregoing violations, the wage statements issued to Employees inaccurately stated their gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during

each pay period and the corresponding number of hours worked at each hourly rate by the Employees. Moreover, independent of the violation alleged in previous sections, throughout the Statutory Period Employer violated subdivisions (a), (b), and (c) of Section 226 by failing to issue, maintain, or produce upon Employees' request either a duplicate of the itemized statements provided to Employees or a computer-generated record that accurately shows all of the required information, including the name and address of the legal entity that is the employer.

H. Failure to Pay Wages at Termination

"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).

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees minimum, overtime, and premium wages earned, and also vacation pay and holiday pay that Employer had promised to pay but never did. These wages were owed and due to Employees at the time of their termination. Employer did not provide full payment of these wages to Employees at the time of termination. Employer'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, 203, and 227.3.

I. Violation of Heat Illness Prevention Health-and-Safety Standards

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

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

(c) Provision of water. Employees shall have access to potable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied,

it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. ... The frequent drinking of water, as described in subsection (h)(1)(C), shall be encouraged.

Throughout the Statutory Period, Employer failed to provide sufficient water to Employees or encourage Employees to frequently take water breaks. To the contrary, Employees were encouraged to work without breaks whenever possible, without regard to their well-being.

(d) Access to shade. (1) Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other. The shade shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the amount of shade present during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite. (2) Shade shall be available when the temperature does not exceed 80 degrees Fahrenheit. When the outdoor temperature in the work area 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 signs or reports symptoms of heat illness while taking a preventative cool-down rest or during a preventative cool-down rest period, the employer shall provide appropriate first aid or emergency response according to subsection (f) of this section. ...

Throughout Employees' employment, Employer failed to provide or encourage shade or recovery periods as required by law when

temperatures exceeded eighty degrees or when they were eighty degrees or lower.

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

Employer failed to implement any and all of the foregoing required procedures. Employer was subject to these requirements because Employees' employment includes loading and unloading these heavy materials outdoors.

(f) Emergency Response Procedures. The Employer shall implement effective emergency response procedures including: (1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable. If an electronic device will not furnish reliable communication in the work area, the employer will ensure a means of summoning emergency medical services. (2) Responding to signs and symptoms of possible heat illness, including but not limited to first aid measures and how emergency medical services will be provided. (A) If a supervisor observes, or any employee reports, any signs or symptoms 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.

Employer failed to implement any and all of the foregoing required procedures.

(g) Acclimatization. (1) All employees shall be closely observed by a supervisor or designee during a heat wave. For purposes of this section only, 'heat wave' means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at 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.

Employer failed to provide the required monitoring throughout Employees' employment.

(h) Training. (1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness: (A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment. (B) The employer's procedures for complying with the requirements of this standard, including, but not limited to, the employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation. (C) The importance of frequent consumption of 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 heat illness in themselves, or in co-workers. (G) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary. (H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider. (I) The employer's procedures for 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. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate. (2) Supervisor training. Prior to supervising employees performing work that should reasonably be anticipated to result in exposure to the risk of heat illness effective training on the following topics shall be provided to the supervisor: (A) The information required to be provided by section (h)(1) above. (B) The procedures the supervisor is to follow to implement the applicable provisions in this section. (C) The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures. (D) How to monitor weather reports and how to respond to hot weather advisories.

Employer failed to provide the foregoing training to Employees.

(i) Heat Illness Prevention Plan. The employer shall establish, 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).

***Employer failed to establish, implement, and maintain an effective
heat illness prevention plan in accordance with law.***

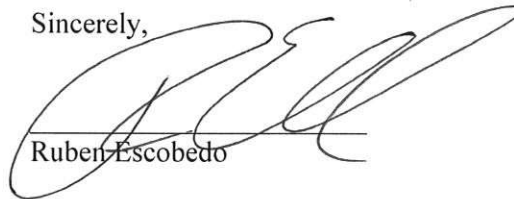
Cal. Code Regs., tit. 8, § 3395.

Employer is subject to additional civil penalties as provided by law.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruben Escobedo', written over a horizontal line.

Ruben Escobedo