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Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
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By: Norma Willoughby, Deputy

6 Attorney for Plaintiff, VERONICA GONZALEZ,
7 PERLA GONZALEZ, and ANICETO SIERRA
8 HERNANDEZ, Individually, and on Behalf of
9 Other Members of the Public Similarly Situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SANTA BARBARA – COOK DIVISION

11 VERONICA GONZALEZ, PERLA
12 GONZALEZ, and ANICETO SIERRA
13 HERNANDEZ, Individually, and on Behalf of
14 Other Members of the Public Similarly
15 Situated,

16 Plaintiff,

17 vs.

17 LILY'S GREEN GARDEN, INC., a
18 corporation; and DOES 1 through 25,
19 inclusive,

20 Defendants.

CASE NO: 20CV02776

*Assigned for All Purposes to:
Hon. Jed Beebe – Dept. SM4*

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR:
(1) FAILURE TO PAY WAGES OWED;
(2) FAILURE TO PROVIDE OR PAY
FOR RECOVERY PERIODS;
(3) FAILURE TO PROVIDE MEAL-AND-
REST PERIODS;
(4) INACCURATE WAGE
STATEMENTS;
(5) WAITING TIME PENALTIES;
(6) UNFAIR COMPETITION; AND
(7) FAILURE TO PRODUCE
EMPLOYMENT RECORDS UPON
REQUEST**

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

Trial Date: None

Complaint filed: August 27, 2020

JURY TRIAL DEMANDED

1 Come now VERONICA GONZALEZ, PERLA GONZALEZ, and ANICETO SIERRA
2 HERNANDEZ (“Plaintiff”), who individually and on behalf of other members of the public
3 similarly situated asserts claims against LILY’S GREEN GARDEN, INC., and Does 1 through 25,
4 inclusive, (collectively “Defendants”) as follows:

5 **JURISDICTION AND VENUE**

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

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

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

14 4. Venue is proper in this Court because this action arises from Plaintiff’s labor
15 contracted for and/or provided in Santa Barbara County and LILY’S GREEN GARDEN, INC. is
16 domiciled in Northern Santa Barbara County.

17 **PARTIES**

18 5. Plaintiff is domiciled in, and at all times mentioned in this complaint was
19 domiciled in, Santa Barbara County, California. Plaintiff worked in trimming plants and other
20 positions for Defendants during the Statutory Period.

21 6. LILY’S GREEN GARDEN, INC. is a California corporation qualified to do
22 business in California. On information and belief, Plaintiff alleges that at all relevant times
23 referenced herein Defendants did and continue to transact business in California.

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

8. 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 have been ascertained.

9. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of LILY'S GREEN GARDEN, INC., and of each other; that LILY'S GREEN GARDEN, INC. 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.

10. Plaintiff is further informed and believes, and thereon alleges, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by LILY'S GREEN GARDEN, INC. or Defendants, 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 employments.

CLASS ACTION ALLEGATIONS

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

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

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

Any and all persons who are or were employed as non-exempt employees by Lily's Green Garden, Inc. in the state of California

1 from April 6, 2016 until resolution of this lawsuit (“4-Year
2 Statutory Period”) (collectively, the “Class Members”).

3 14. The proposed Piece-Rate Subclass is comprised of and defined as:

4 All Class Members who were paid on a piece-rate basis during the
5 4-Year Statutory Period (collectively, the “Piece-Rate Subclass
6 Members”).

7 15. The proposed Recovery Period Subclass is comprised of and defined as:

8 All Class Members who worked at an outdoor place of
9 employment in any workday during the 4-Year Statutory Period
10 (collectively, the “Recovery Period Subclass Members”).

11 16. The proposed Termination Subclass is comprised of and defined as:

12 All Class Members who were discharged or resigned from April 6,
13 2017 until the resolution of this lawsuit (“3-Year Statutory
14 Period”) (collectively, the “Termination Subclass Members”).

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

16 All Class Members who were discharged or resigned from April 6,
17 2019 until the resolution of this lawsuit (“1-Year Statutory
18 Period”) (collectively, the “Paystub Subclass Members”).

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

21 a. **Numerosity:** The members of the Class and Subclasses are so numerous that
22 joinder of all Class Members and Subclass Members would be unfeasible and impractical. The
23 membership of the entire Class and Subclasses is unknown to Plaintiff at this time; however, the
24 Class is estimated to be greater than 500 individuals. The identity of such membership is readily
25 ascertainable by inspection of Defendants’ employment records.

26 b. **Typicality:** Plaintiff is qualified to and will fairly and adequately protect the
27 interests of each Class Member and Subclass Member with whom she has a well-defined
28 community of interest. Plaintiff’s claims herein alleged are typical of those claims which could be
alleged by any Class Member and/or Subclass Member, and the relief sought is typical of the relief
which would be sought by each of the Class Members and/or Subclass Members in separate
actions. All Class Members and Subclass Members have been similarly harmed by being denied
minimum, overtime, and/or premium wages, payment of wages at or near the time of separation,

1 and noncompliant wage statements due to Defendants' policies and companywide practices.

2 Further, Defendants benefited from the same type of unfair and/or wrongful acts as to each Class
3 Member and Subclass Member.

4 **c. Adequacy:** Plaintiff is qualified to, and will fairly and adequately, protect the
5 interests of each Class Member and Subclass Member with whom she has a well-defined
6 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges she
7 has an obligation to make known to the Court any relationships, conflicts, or differences with any
8 Class Member and/or Subclass Member. Plaintiff's attorneys and the proposed Class and Subclass
9 counsel are versed in the rules governing class action discovery, certification, and settlement and
10 experienced in handling such matters.

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

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

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

27 a. Whether Defendants maintained a policy or practice depriving Class and Subclass
28 Members minimum and overtime wages for nonproductive and rest time in accordance with §

1 226.2;

2 b. Whether Defendants maintained a policy or practice denying Class and Subclass
3 Members meal, rest, and recovery periods wherein employees were free to leave the premises as
4 required by California law;

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

7 d. Whether Defendants' conduct was knowing, intentional, and/or willful;

8 e. Whether Defendants provided Class and Subclass Members with wage statements in
9 compliance with § 226;

10 f. Whether Defendants' attempted repayment of wages and penalties in 2020 were
11 sufficient to make Class and Subclass Members whole, and the additional amount owed to Class
12 and Subclass Members; and

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

15 **FIRST CAUSE OF ACTION**

16 **(For Failure to Pay Wages Owed)**

17 **By Plaintiff, Class Members, and Piece-Rate Subclass Members Against All Defendants**

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

20 21. "Labor Code sections 221, 222, and 223 govern an employer's obligation to pay
21 'wages,' a term that is defined to include piece-rate compensation as well as hourly pay.
22 Averaging piece-rate wages over total hours worked results in underpayment of employee wages
23 required 'by contract' under Labor Code section 223, as well as an improper collection of wages
24 paid to an employee under Labor Code section 221...." *Gonzalez v. Downtown LA Motors, LP*
25 (2013) 215 Cal.App.4th 36, 50.

26 22. These two statutes provide the following: "It shall be unlawful for any employer to
27 collect or receive from an employee any part of wages theretofore paid by said employer to said
28 employee." Cal. Lab. Code, § 221. "Where any statute or contract requires an employer to

maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Cal. Lab. Code, § 223.

23. Throughout the Statutory Period, the Class Members were compensated based upon the number of “pieces” harvested. Defendants’ policy and practices averaged Class Members’ piece-rate wages for productive time over total hours worked, which undercompensated Class Members for nonproductive time, including but not limited to time waiting in line to check in for work at the start of the work day, and time where Class Members are engaged to be waiting for productive work to be ready, rest periods, on-duty meal periods, communication with supervisors, traveling between work sites, attending meetings and obtaining instruction, time for toilet breaks and water breaks, putting on protective gear, cleaning work areas, weighing plants, maintaining and sharpening tools, waiting for additional equipment, weather disruptions, and other nonproductive time that should have been captured and paid as “hours worked.” Defendants systematically underestimated, undervalued, and underreported Class Members’ nonproductive time, and over-relied upon and improperly averaged Class Members’ productive piece-wages in an attempt to cover nonproductive time and misrepresent to Class Members that they were being paid for all hours worked, when in reality they were being fully paid only for productive time. Defendants paid nothing for the large majority of Class Members’ nonproductive time throughout the Statutory Period. Consequently, Defendants violated Labor Code sections 221 and 223.

24. Defendants also maintained an illegal practice of not paying piece-rate Class Members separately for all non-productive time, rest periods, and on-duty meal periods at the appropriate rates as required by law, including § 226.2.

25. Throughout the Statutory Period, Defendants failed to pay Class and Subclass Members at least minimum wage for all time worked, including nonproductive time, rest periods, and on-duty meal periods which must be paid at a rate of not less than minimum wage pursuant to California law. Defendants paid zero dollars for the large majority of Class Members’ nonproductive time and rest periods. Consequently, Defendants violated California’s minimum wage laws.

26. For example, because Class Members’ nonproductive and rest period time were

improperly not counted as hours worked prior to January 1, 2019, Class Members also accrued additional overtime wages for hours in excess of 10 in their workdays, and/or in excess of 60 in their workweeks, that were never paid to Class Members. Because Class Members' nonproductive and rest period time were improperly not counted as hours worked after January 1, 2019, Class Members also accrued additional overtime wages for hours in excess of 9.5 in their workdays, and/or in excess of 55 in their workweeks, that were never paid to Class Members (and the same is true post-January 1, 2020, where Class Members were entitled to but not paid all overtime wages owed for days where more than 9 hours were worked).

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

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

SECOND CAUSE OF ACTION

(For Failure to Provide or Pay for Recovery Periods)

By Plaintiff, Class Members, and Recovery Period Subclass Members against All Defendants

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

30. “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.

1 Code, § 226.7, subd. (c).

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

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

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

1 and if the workday extends beyond ten hours, then another preventative cool-down rest period will
2 be required at the conclusion of the tenth hour and so on.” Cal. Code Regs., tit. 8, § 3395, subd.
3 (e)(6).

4 34. Throughout the Statutory Period, Defendants failed to allow or encourage shaded
5 recovery periods as required by law when temperatures exceeded eighty degrees and when
6 temperatures were eighty degrees and lower. Defendants also failed to ensure that Class Members
7 took cool-down rest periods at any time, including when temperatures reached ninety-five degrees.

8 35. As a proximate result of the aforementioned violations, Plaintiff, Class, and
9 Subclass Members have been damaged in an amount according to proof at time of trial.

10 36. Pursuant to California Labor Code § 226.7 and the IWC Wage Orders, Plaintiff,
11 Class, and Subclass Members are entitled to recover one hour of premium pay for each day in
12 which a recovery period was not provided in accordance with state law.

13 **THIRD CAUSE OF ACTION**

14 **(For Failure to Provide Meal-and-Rest Periods)**

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

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

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

23 39. In addition, “[a]n employer may not employ an employee for a work period of
24 more than five hours per day without providing the employee with a meal period of not less than
25 30 minutes, except that if the total work period per day of the employee is no more than six hours,
26 the meal period may be waived by mutual consent of both the employer and employee. An
27 employer may not employ an employee for a work period of more than 10 hours per day without
28 providing the employee with a second meal period of not less than 30 minutes, except that if the

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

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

13 41. Throughout the Statutory Period, Defendants maintained an illegal practice of not
14 providing Class Members with sanctioned 10-minute rest periods, which were controlled and
15 ordered by managers. Class Members’ first rest periods were routinely provided late, interrupted,
16 or not provided at all, and Class Members were not free of all duties or free to leave the premises.
17 Additionally, Defendants failed to provide Class Members with a compliant second rest period for
18 the majority of their employment.

19 42. In addition, pursuant to the applicable regulation, “[w]hen the outdoor temperature
20 in the work area exceeds 80 degrees Fahrenheit ... [t]he amount of shade present shall be at least
21 enough to accommodate the number of employees on ... rest periods, so that they can sit in a
22 normal posture fully in the shade without having to be in physical contact with each other. The
23 shade shall be located as close as practicable to the areas where employees are working.” Cal.
24 Code Regs., tit. 8, § 3395, subd. (d)(1).

25 43. Although Defendants provided rest periods, the Defendants required the Class
26 Members to remain on the premises, rendering such time “on duty,” whereas the law requires rest
27 periods where the Class Members are relieved of all duties and free to leave the premises.

28 44. As a proximate result of the aforementioned violations, Plaintiff and Class

1 Members have been damaged in an amount according to proof at time of trial.

2 45. Pursuant to California Labor Code § 226.7 and the IWC Wage Orders, Plaintiff and
3 Class Members are entitled to recover one hour of premium pay for each day in which a compliant
4 rest period was not provided, and an additional hour of premium pay for each day in which a
5 compliant meal period was not provided.

6 **FOURTH CAUSE OF ACTION**

7 **(For Inaccurate Wage Statements)**

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

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

11 47. California Labor Code §226(a) sets forth reporting requirements for employers
12 when they pay wages: “Every employer shall ... at the time of each payment of wages, furnish
13 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
14 (2) total hours worked by the employee ... (5) net wages earned ... and (9) all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours worked at each hourly
16 rate by the employee....”

17 48. In addition, § 226.2 provides that the “itemized statement required by subdivision
18 (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state
19 the following, to which the provisions of Section 226 shall also be applicable: (A) The total hours
20 of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for
21 those periods during the pay period. (B) Except for employers paying compensation for other
22 nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time,
23 as determined under paragraph (5), the rate of compensation, and the gross wages paid for that
24 time during the pay period.”

25 49. California Labor Code §226(e) provides: “An employee suffering injury as a result
26 of a knowing and intentional failure by “an employer to comply with subdivision (a) shall be
27 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
28 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a

1 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 shall be entitled to an award of costs and reasonable attorney's fees."

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

17 51. Throughout the 1-Year Statutory Period, and on Defendants' final payment of
18 wages to Paystub Subclass Members at or near the time of their discharge or resignation,
19 Defendants knowingly and intentionally failed, and continue to fail to furnish Plaintiff and
20 Paystub Subclass Members, complete and accurate wage statements upon each payment of wages
21 in violation of California Labor Code §226(a). Rather than providing statements of actual time
22 worked and a correct payment of wages based thereon, Defendants failed to capture and pay Class
23 Members for nonproductive time, rest periods, and on-duty meal periods, and also failed to
24 capture and pay premium pay for missed meal and rest periods. Defendants also failed to provide
25 itemized statements that accurately listed the total hours of compensable rest and recovery periods,
26 the rate of compensation, and the gross wages paid for those periods during the pay period, or the
27 total hours of other nonproductive time worked, the rate of compensation, and the gross wages
28 paid for that time during the pay period as required by § 226.2. Defendants failed to keep accurate

1 records of Class Members' nonproductive time and failed to otherwise make reasonable estimates
2 of nonproductive time worked during Class Members' pay periods. Consequently, Defendants
3 failed to provide Class Members accurate itemized wages statements and keep accurate records as
4 required by Sections 226 and 226.2.

5 52. Plaintiff and Paystub Subclass Members were injured by these failures because,
6 among other things, these failures led them to believe that they were not entitled to be paid wages
7 for all work performed although they were so entitled, they were required to perform mathematical
8 computations to analyze whether wages paid, in fact, compensated for all work performed and
9 sales made, and they were not able to determine from the wage statements alone one or more of
10 the items required to be provided. Defendants' failure to comply with California Labor Code
11 §226(a) also hindered Plaintiff and Paystub Subclass Members from determining the amounts of
12 wages actually owed to them.

13 53. Defendants will continue these illegal practices until such time as it is forced to pay
14 penalties in compliance with California Labor Code §226(e).

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

18 **FIFTH CAUSE OF ACTION**

19 **(For Waiting Time Penalties)**

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

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

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

1 employer willfully fails to pay compensation promptly upon discharge, as required by California
2 Labor Code §§201 and 202, the employer is liable for waiting time penalties in the form of
3 continued compensation for up to thirty work days.

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

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

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

14 **SIXTH CAUSE OF ACTION**

15 **(For Unfair Competition)**

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

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

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

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

26 63. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
27 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
28 practices of failing to pay Plaintiff and Class Members wages, among the other statutory violations

1 alleged herein, during the Statutory Period violates the California Labor Code, including but not
2 limited to California Labor Code §§1198, 1182.12, 1197, 1198, 510, 512, 201-202, 221-223,
3 226.2, 226.7, 201-202, and 204.

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

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

11 SEVENTH CAUSE OF ACTION

12 (For Failure to Produce Employment Records Upon Request)

13 By Plaintiff and against All Defendants

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

16 67. "Every current and former employee, or his or her representative, has the right to
17 inspect and receive a copy of the personnel records that the employer maintains relating to the
18 employee's performance or to any grievance concerning the employee. (b) (1) The employer shall
19 make the contents of those personnel records available for inspection to the current or former
20 employee, or his or her representative, at reasonable intervals and at reasonable times, but not later
21 than 30 calendar days from the date the employer receives a written request, unless the current or
22 former employee, or his or her representative, and the employer agree in writing to a date beyond
23 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar
24 days from the employer's receipt of the written request." Lab. Code, § 1198.5, subds. (a) and (b).

25 68. "An employer that is required by this code or any regulation adopted pursuant to
26 this code to keep the information required by [§ 226] subdivision (a) shall afford current and
27 former employees the right to inspect or receive a copy of records pertaining to their employment,
28 upon reasonable request to the employer. The employer may take reasonable steps to ensure the

1 identity of a current or former employee. If the employer provides copies of the records, the actual
2 cost of reproduction may be charged to the current or former employee. (c) An employer who
3 receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b)
4 pertaining to a current or former employee shall comply with the request as soon as practicable,
5 but no later than 21 calendar days from the date of the request. A violation of this subdivision is an
6 infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an
7 affirmative defense for an employer in any action alleging a violation of this subdivision. An
8 employer may designate the person to whom a request under this subdivision will be made.” Lab.
9 Code, § 226, subs. (b) and (c).

10 69. Defendants violated these provisions by failing to allow Plaintiff timely access to
11 all records which she is entitled to inspect, including Plaintiff’s time records, payroll records, and
12 wage statement records. Defendants failed to produce such records in response to Plaintiff’s
13 requests made under the foregoing provisions, including multiple requests made by Ms.
14 Gonzalez’s counsel. Defendants are subject to statutory penalties as provided by law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, Class Members, and Subclass Members pray for judgment
17 against Defendants, as follows:

18 **a. Class Certification**

- 19 1. That this action be certified as a class action with respect to the First through Sixth
- 20 Causes of Action;
- 21 2. That Plaintiff be appointed as representative(s) of the Class and Subclasses; and
- 22 3. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

23 **b. On the First through Sixth Causes of Action**

- 24 1. For compensatory damages in an amount not less than \$2,000,000;
- 25 2. For pre-judgment interest on any unpaid wage compensation due from the day that
- 26 such amounts were due according to proof;
- 27 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
- 28 interest thereon pursuant to California Labor Code § 1194.2;

4. For statutory penalties pursuant to California Labor Code § 203;
5. For restitution and disgorgement pursuant to Business & Professions Code §§ 17200, *et seq.*;
6. For an injunction and declaratory relief correcting the above practices, including revision of policies and issuance of corrected wage statements in accordance with § 226, and prohibiting the practices alleged above;
7. For reasonable attorneys' fees pursuant to §§ 218.5 and 1194;
8. For reasonable costs; and
9. For such other and further relief as the Court deems proper.

c. On the Seventh Cause of Action

1. For statutory penalties pursuant to §§ 226 and 1198.5;
2. For injunctive relief requiring compliance with these statutes;
3. For reasonable costs and attorneys' fees; and
4. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

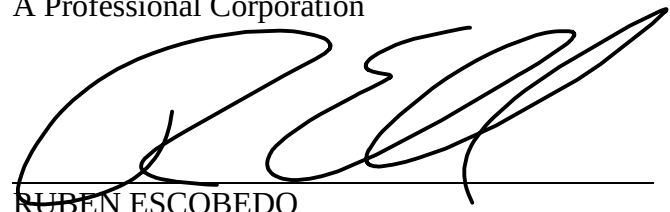
Plaintiff demands a trial by jury on all claims in this matter.

DATED: October 27, 2020

WORKWORLD LAW CORP.

A Professional Corporation

By:


RUBEN ESCOBEDO

Attorneys for Plaintiff, VERONICA GONZALEZ, PERLA GONZALEZ, and ANICETO SIERRA HERNANDEZ, Individually, and on Behalf of Other Members of the Public Similarly Situated