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County of Santa Barbara
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6 Attorney for Plaintiffs RAMIRO VASQUEZ,
7 ANTHONY LOPEZ, and JOSE ESPINO,
8 Individually and as Private Attorneys General

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA BARBARA – COOK DIVISION

11 RAMIRO VASQUEZ, ANTHONY LOPEZ,
12 and JOSE ESPINO, Individually and as
13 Private Attorneys General,

13 Plaintiffs,

14 vs.

15 CULLIGAN SAN PASO CO., a corporation;
16 and DOES 1 through 25, inclusive,

17 Defendants.

CASE NO: 20CV04236

Assigned for All Purposes to:

**COMPLAINT FOR DAMAGES AND
PENALTIES**

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

Trial Date: None

Complaint filed:

JURY TRIAL DEMANDED

20 Come now RAMIRO VASQUEZ, ANTHONY LOPEZ, and JOSE ESPINO (collectively
21 “Employees”), who individually and on behalf of the State of California assert claims against
22 CULLIGAN SAN PASO CO., a corporation, and Does 1 through 25, inclusive, (collectively
23 “Employer”) as follows:

INTRODUCTION

25 1. Employees are filing this action in their individual capacity to seek restitution,
26 damages, statutory penalties, and other remedies for Defendants’ violations of the California
27 Labor Code and Business & Professions Code occurring from April 6, 2016, through the
28 conclusion of this action (“4-Year Statutory Period”). The acts, omissions, and practices of

1 Employer as alleged herein constitute unlawful and unfair business acts and practices within the
2 meaning of California Business & Professions Code section 17200, *et seq.* Throughout the 4-Year
3 Statutory Period, Employer has engaged in unlawful and unfair business acts and practices,
4 including failure to pay wages owed, and failure to provide required meal, rest, and recovery
5 periods without paying the required premiums, all in violation of the statutes and regulations
6 referenced herein. As a result of the conduct described below, Employer has been, and will be,
7 unjustly enriched at the expense of Employees by the retention of a significant sum of dollars in
8 wages earned/incurred and wrongfully withheld from Employees. Employees seek an order from
9 this Court requiring Employer to disgorge all ill-gotten gains and awarding Employees full
10 restitution of all monies wrongfully acquired by Employer, plus attorneys' fees pursuant to
11 California Code of Civil Procedure section 1021.5.

12 2. In addition to bringing this action in their individual capacities, Employees also
13 bring this action for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"),
14 Labor Code sections 2698, *et seq.*, as private attorneys general on behalf of the State of California
15 for themselves, approximately more than 50 similarly situated current and former aggrieved
16 employees employed by Employer between April 6, 2019 and the conclusion of this action ("1-
17 Year Statutory Period"), and the People of the State of California (hereinafter collectively
18 "Employees"). PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
19 permits an aggrieved employee to recover civil penalties set forth within the California Labor
20 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
21 penalties for violations of California Labor Code provisions that do not contain their own civil
22 penalties.

23 3. Employees bring this civil action to recover civil penalties for the violations
24 identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as
25 those civil penalties specifically set forth within the text of the California Labor Code. Those civil
26 penalties are sought for violations committed against Employees of Employer. Pursuant to Section
27 2699.3, Plaintiffs gave proper notice to the California Labor and Workforce Development Agency,
28 the California Division of Occupational Safety and Health, and Defendants of the specific

1 provisions of the California Labor Code alleged to have been violated, including the facts and
2 theories to support the alleged violation. Plaintiffs incorporate said Notice of Claims by this
3 reference as if fully set forth herein. The LWDA and Cal/OSHA neither inspected nor
4 investigated the violations. With respect to those violations alleged herein that were curable under
5 Subdivision (c)(1), the Employer failed to cure the violations within the time provided under
6 PAGA. Employees are, therefore, entitled to all civil penalties pursuant to Sections 2699(a), and
7 pursuant to Section 2699(f), in addition to Plaintiffs' costs and attorneys' fees.

8 **JURISDICTION AND VENUE**

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

11 2. Venue is proper in this Court because this action arises from Employees'
12 employment by Defendants in Northern Santa Barbara County.

13 **PARTIES**

14 3. For all times relevant herein, RAMIRO VASQUEZ was an adult individual
15 residing in the State of California.

16 4. For all times relevant herein, ANTHONY LOPEZ was an adult individual residing
17 in the State of California.

18 5. For all times relevant herein, JOSE ESPINO was an adult individual residing in
19 Santa Barbara County, California.

20 6. For all times relevant herein, Defendant CULLIGAN SAN PASO CO. was and is a
21 California corporation with its principal place of business in Santa Maria, CA.

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

26 8. Plaintiffs are ignorant of the true names and capacities, whether individual,
27 corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive,
28 and therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiffs

will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants are ascertained. Plaintiffs are informed and believe, and based thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

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

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages Owed

(By All Employees against All Employer(s))

10. Employees incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

11. 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

1 more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December
2 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to
3 December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to
4 December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to
5 December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12,
6 subd. (b).

7 12. Pursuant to Section 1197.1, “(a) Any employer or other person acting either
8 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
9 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
10 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
11 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
12 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
13 for each underpaid employee for each pay period for which the employee is underpaid. This
14 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
15 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
16 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
17 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
18 regardless of whether the initial violation is intentionally committed. This amount shall be in
19 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
20 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

21 13. Throughout the 4-Year Statutory Period, Employer gave Employees job duties that
22 precluded them from taking off-duty meal periods. For example, Mr. Vasquez, Mr. Lopez, and
23 Mr. Espino worked for Employer during the Statutory Period as drivers, and Employer assigned
24 them routes and responsibilities that required them to work continuously from the start of their
25 workday through the end of their workday. If Employees had wanted to take a meal period, they
26 would have been required to work overtime, which was strongly discouraged by Employer. Thus,
27 Employees were given a choice. They could take off-duty meal periods, work overtime to
28 complete their stops (or otherwise fail to complete their assigned stops), and face discipline. Or

1 they could work through meal periods to meet the Employer's requirements and expectations
2 during regular, non-overtime hours. By its policies and practices, the Employer discouraged
3 Employees from taking timely off-duty meal periods. And the Employer knew the Employees
4 were working through their meal periods. For example, the Employer monitored Mr. Vasquez,
5 Mr. Lopez, and Mr. Espino's vehicles through GPS. If a vehicle was stopped for more than
6 several minutes, the Employer would reprimand the Employees. Although the Employer was
7 aware that it was, in effect, requiring the Employees to work through their meal periods, the
8 Employer nonetheless required the Employees to clock out for at least 30 minutes to create the
9 appearance that they were off-duty. Employer in effect deducted meal period time from
10 Employees' pay when this time should have been counted as "hours worked." Throughout
11 Employees' employment, Employer failed to pay Employees at least minimum wage for all time
12 worked, which must be paid at a rate of not less than minimum wage pursuant to California law.
13 Employer paid zero dollars for minutes worked by Employees during their meal periods.
14 Consequently, Employer violated the foregoing minimum wage laws.

15 14. Accordingly, Employees are entitled to recover the amount of their unpaid wages
16 pursuant Labor Code sections 200, 500, 510, and 1198, among others, for work performed
17 throughout Plaintiffs' course of employment, which is to be determined according to proof at the
18 time of trial.

19 15. Pursuant to Labor Code sections 218.6, 1194, 1194.2, and Civil Code section 3289,
20 among other sources of law, Plaintiffs are entitled to recover liquidated damages, the unpaid
21 balance of wages owed, interest, attorneys' fees, expenses, and costs of suit.

22 16. Employer is also liable to Employees for civil penalties under the PAGA.

23 **SECOND CAUSE OF ACTION**

24 **Failure to Pay Overtime Wages Owed**

25 **(By All Employees against All Employer(s))**

26 17. Employees incorporate by reference and realleges each and every allegation
27 contained above, as though fully set forth herein.

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

5 19. Pursuant to the applicable Industrial Welfare Commission Wage Order, employees
6 shall not be employed more than eight (8) hours in any workday or more than 40 hours in any
7 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular
8 rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor
9 constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6)
10 days in any workweek is permissible provided the employee is compensated for such overtime at
11 not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
12 worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first
13 eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b)
14 Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any
15 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day
16 of work in a workweek. (c) The overtime rate of compensation required to be paid to a nonexempt
17 full-time salaried employee shall be computed by using the employee's regular hourly salary as
18 one-fortieth (1/40) of the employee's weekly salary.

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

27 21. Throughout the 4-Year Statutory Period, Employer failed to pay Employees all
28 overtime wages for hours worked during meal periods in excessive of overtime and double

1 overtime thresholds. Employees regularly worked 8 or more hours per day and more than 40
2 hours each workweek, and Employer failed to pay Employees overtime and/or double overtime for
3 said hours worked as required by law.

4 22. Accordingly, Employees are entitled to recover the amount of their unpaid wages
5 pursuant Labor Code sections 200, 500, 510, and 1198, among others, for work performed
6 throughout Plaintiffs' course of employment, which is to be determined according to proof at the
7 time of trial.

8 23. Pursuant to Labor Code sections 218.6, 1194, 1194.2, and Civil Code section 3289,
9 among other sources of law, Plaintiffs are entitled to recover liquidated damages, the unpaid
10 balance of wages owed, interest, attorneys' fees, expenses, and costs of suit.

11 24. Employer is also liable to Employees for civil penalties under the PAGA.

12 **THIRD CAUSE OF ACTION**

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

14 **(By All Employees against All Employer(s))**

15 25. Employees incorporate by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

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

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

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

20 29. Throughout the 4-Year Statutory Period, Employer failed to allow or encourage
21 shaded recovery periods as required by law when temperatures exceeded eighty degrees and when
22 temperatures were eighty degrees and lower. Employees are informed and believe that Employer
23 had no policy or procedures to comply with § 3395. Employer also failed to ensure effective
24 employee observation/monitoring as required by law. Employees work outdoors, many of whom
25 driving in non-air conditioned trucks during the Statutory Period, loading and unloading goods
26 outdoors, and performing other outdoor work where heat recovery periods are needed, especially
27 in light of Employer’s failure to maintain air conditioning in all of Employees’ delivery trucks and
28 especially for those drivers who work . Employees complained about the lack of air conditioning

1 in trucks, and the Employer unreasonably delayed remedying the matter. Employer also failed to
2 conduct meetings on heat illness and failed to encourage or ensure Employees to take heat
3 recovery periods at the required intervals as required by law. Employees sometimes feel dizzy due
4 to heat, long hours, and inadequate breaks. Employer is subject to civil penalties for its violation
5 of § 226.7 and § 3395.

6 30. Employees are entitled to all premium wages, interest, and penalties as provided by
7 law.

8 31. Employer is also liable to Employees for civil penalties under the PAGA.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Provide Timely Rest Periods**

11 **(By All Employees against All Employer(s))**

12 32. Employees incorporate by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

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

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

35. Throughout the 4-Year Statutory Period, Employer maintained an illegal practice of not providing Employees with timely and compliant first and second sanctioned rest periods. While it was Employer's formal policy to authorize and permit rest periods, Employees cannot take a timely off-duty first or second rest period because of Employer's excessive service expectations placed on drivers, coupled with Employer's complaints about overtime. 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 and second rest periods as required by law throughout their Employment.

36. Employees are entitled to all premium wages, interest, and penalties as provided by law.

37. Employer is also liable to Employees for civil penalties under the PAGA.

FIFTH CAUSE OF ACTION

Untimely Payment of Wages

(By All Employees against All Employer(s))

38. Employees incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

39. 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).

40. “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

1 each employee. (2) For each subsequent violation, or any willful or intentional violation, two
2 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
3 unlawfully withheld. Cal. Lab. Code, § 210, subd. (a).

4 41. Rather than timely paying Employees all minimum, overtime, and premium wages
5 due within the periods set forth above, throughout the 1-Year Statutory Period, Employer failed to
6 timely pay Employees for all minimum, overtime, and premium wages earned as required by law.

7 42. Employer is liable to Employees for civil penalties under the PAGA.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Keep Accurate Records of Hours Worked**

10 **(By All Employees against All Employer(s))**

11 43. Employees incorporate by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 44. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a
14 central location in the state or at the plants or establishments at which employees are employed,
15 payroll records showing the hours worked daily by and the wages paid to, and the number of
16 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
17 respective plants or establishments.” “Any person employing labor who willfully fails to maintain
18 the records required by subdivision (c) of Section 1174 or accurate and complete records required
19 by subdivision (d) of Section 1174, or to allow any member of the commission or employees of
20 the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a
21 civil penalty of five hundred dollars (\$500).” Cal. Lab. Code, § 1174.5.

22 45. Throughout the 1-Year Statutory Period, Employer failed to keep accurate records
23 showing the hours worked daily by Employees.

24 46. Employer also liable to Employees for civil penalties under the PAGA.

25 **SEVENTH CAUSE OF ACTION**

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

27 **(By All Employees against All Employer(s))**

1 47. Employees incorporate by reference and realleges each and every allegation
2 contained above, as though fully set forth herein.

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

10 49. “An employer, semimonthly or at the time of each payment of wages, shall furnish
11 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
12 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
13 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
14 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
15 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
16 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
17 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security number or an
19 employee identification number other than a social security number, (8) the name and address of
20 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
21 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
22 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee....” Cal. Lab. Code, §
24 226, subd. (a).

25 50. “An employer that is required by this code or any regulation adopted pursuant to
26 this code to keep the information required by subdivision (a) shall afford current and former
27 employees the right to inspect or copy records pertaining to their employment, upon reasonable
28 request to the employer.” Cal. Lab. Code, § 226, subd. (b). “An employer who receives a written

1 or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or
2 former employee shall comply with the request as soon as practicable, but no later than 21
3 calendar days from the date of the request.” Cal. Lab. Code, § 226, subd. (c).

4 51. “Any employer who violates subdivision (a) of Section 226 shall be subject to a
5 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
6 initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
7 citation, for which the employer fails to provide the employee a wage deduction statement or fails
8 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in
9 this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3. An
10 employer who violates subdivisions (b) or (c) of Section 226 is also subject to additional civil
11 penalties under Section 2699(f).

12 52. Throughout the 1-Year Statutory Period, Employer violated subdivisions (a), (b),
13 and (c) of Section 226 by failing to issue, maintain, or produce upon Employees’ request either a
14 duplicate of the itemized statements provided to Employees or a computer-generated record that
15 accurately shows all of the required information. As a result of the foregoing violations, the wage
16 statements issued to Employees inaccurately stated their gross wages earned, total hours worked,
17 net wages earned, and all applicable hourly rates in effect during each pay period and the
18 corresponding number of hours worked at each hourly rate by the Employees. Additionally,
19 independent of the foregoing violations, the Employer’s wage statements failed to indicate the
20 inclusive dates of the period for which the employee is paid, and the correct name and address of
21 the legal entity that is the employer.

22 53. Employees were injured [Lab. Code § 226(e)(2)(B)], and Employer owes
23 Employees statutory penalties, attorneys’ fees, costs, and interest as permitted by law.

24 54. Employees are also entitled to civil penalties under the PAGA.

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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Pay Wages at Termination**

3 **(By All Employees against All Employer(s))**

4 55. Employees incorporate by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

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

16 57. Throughout the past three years and/or during the 1-Year Statutory Period,
17 Employer failed to pay Employees minimum, overtime, and premium wages earned. These wages
18 were owed and due to Employees at the time of their termination. Employer willfully did not
19 provide full payment of these wages to Employees at the time of termination. Employer's failure
20 to timely pay these wages at the time of termination, and failure to pay Employees' continued
21 wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

22 58. The Employer owes the Employees statutory penalties.

23 59. Employees are also entitled to civil penalties under the PAGA.

24 **NINTH CAUSE OF ACTION**

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

26 **(By All Employees against All Employer(s))**

27 60. Employees incorporate by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

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

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

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

16 64. Throughout the 1-Year Statutory Period, Employer failed to provide sufficient
17 water to Employees or encourage Employees to frequently take water breaks. To the contrary,
18 Employees were encouraged to work without breaks whenever possible, without regard to their
19 well-being. Employees were also required to either bring their own water or pay the Employer to
20 purchase its water.

21 65. **“(d) Access to shade.** (1) Shade shall be present when the temperature exceeds 80
22 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees
23 Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while
24 employees are present that are either open to the air or provided with ventilation or cooling. The
25 amount of shade present shall be at least enough to accommodate the number of employees on
26 recovery or rest periods, so that they can sit in a normal posture fully in the shade without having
27 to be in physical contact with each other. The shade shall be located as close as practicable to the
28 areas where employees are working. Subject to the same specifications, the amount of shade

1 present during meal periods shall be at least enough to accommodate the number of employees on
2 the meal period who remain onsite. (2) Shade shall be available when the temperature does not
3 exceed 80 degrees Fahrenheit. When the outdoor temperature in the work area does not exceed 80
4 degrees Fahrenheit employers shall either provide shade as per subsection (d)(1) or provide timely
5 access to shade upon an employee's request. (3) Employees shall be allowed and encouraged to
6 take a preventative cool-down rest in the shade when they feel the need to do so to protect
7 themselves from overheating. Such access to shade shall be permitted at all times. An individual
8 employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is
9 experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C)
10 shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in
11 no event less than 5 minutes in addition to the time needed to access the shade. (4) If an employee
12 exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest or
13 during a preventative cool-down rest period, the employer shall provide appropriate first aid or
14 emergency response according to subsection (f) of this section. ...”

15 66. Throughout the 1-Year Statutory Period, Employer failed to provide or encourage
16 shade or recovery periods as required by law when temperatures exceeded eighty degrees or when
17 they were eighty degrees or lower.

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

1 call for emergency medical services, and allowing other employees to call for emergency services
2 when no designated employee is available. (4) Reminding employees throughout the work shift to
3 drink plenty of water. (5) Pre-shift meetings before the commencement of work to review the high
4 heat procedures, encourage employees to drink plenty of water, and remind employees of their
5 right to take a cool-down rest when necessary.”

6 68. Employer failed to implement any and all of the foregoing required procedures.
7 Employer was subject to these requirements because Employees transport and deliver heavy
8 materials (e.g., water containers), and their employment includes loading and unloading these
9 heavy materials outdoors.

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

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

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

10 72. Employer failed to provide the required monitoring throughout the 1-Year
11 Statutory Period.

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

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

16 74. Employer failed to provide the foregoing training to Employees.

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

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

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

1 **TENTH CAUSE OF ACTION**

2 **Failure to Maintain and Repair Vehicles**

3 **(By All Employees against All Employer(s))**

4 78. Employees incorporate by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

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

10 80. "Trucks and buses used primarily or regularly for the transportation of employees
11 shall meet the following requirements: (1) be constructed or accommodated for that purpose...."
12 Cal. Code Regs., tit. 8, §3702(a). "On every motor vehicle used for the transportation of
13 employees the lamps, brakes, horn, mirrors, windshields, turn signals, and other equipment
14 affecting the safety of passengers shall be kept in good repair." Cal. Code Regs., tit. 8, §3702(b).
15 "Every motor vehicle used primarily for the transportation of employees shall be equipped with
16 handholds, adequate steps, stirrups, or other similar devices so placed and arranged that the
17 employees can safely mount or dismount the vehicle." Cal. Code Regs., tit. 8, §3702(c).

18 81. Employer violated the foregoing provisions with respect to its delivery trucks,
19 which were primarily and regularly utilized by Employer to transport Employees. Employer failed
20 to keep its delivery trucks in good repair, including by not limited to failure to repair air
21 conditioning and broken side-view mirror(s) which affected driver safety. Broken components
22 and other faulty equipment existed on Employer's aging delivery trucks, creating illegal health and
23 safety risks for Employees. The Employer discounted the Employees' complaints regarding these
24 issues, prioritizing profit over safety.

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

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ELEVENTH CAUSE OF ACTION

Requiring Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes
(By All Employees against All Employer(s))

83. Employees incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

84. In addition to the foregoing acts and omissions, the Employer required Employees to carry unsafe and excessively heavy loads to keep the pace set by the Employer for the completion of tasks. For example, when drivers informed the Employer that they could not deliver bottles as quickly as the Employer required, the Employer instructed and required the Employees to carry two bottles at a time while delivering to customers. Some of the Employees were injured as a result, and the Employer would hypocritically reprimand Employees for carrying two bottles at a time. By committing the acts and omissions described in the preceding sections throughout the Statutory Period, as well as requiring unsafe lifting, Employer also violated Labor Code, §§ 6400, 6401, 6402, 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces, practices, and processes to its Employees.

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

PRAYER

WHEREFORE, Employees pray for judgment against Employer, as follows:

1. For restitution and compensatory damages in favor of Employees in an amount not less than \$150,000;
2. For statutory penalties in favor of Employees in an amount not less than \$50,000;
3. For civil penalties in favor of the State of California and Employees pursuant to Labor Code sections 2698, *et seq.* in an amount not less than \$500,000;
4. For reasonable costs and attorneys' fees; and
5. For such other and further relief as the Court deems proper.

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DEMAND FOR JURY TRIAL

Employees demand a trial by jury in this matter.

DATED: December 16, 2020

WORKWORLD LAW CORP.
A Professional Corporation

By:



RUBÉN ESCOBEDO

Attorneys for Plaintiffs RAMIRO VASQUEZ,
ANTHONY LOPEZ, and JOSE ESPINO,
Individually and as Private Attorneys General