



WORKWORLD LAW

July 11, 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

Wonderful Citrus Packing, LLC
11444 W. Olympic Blvd. 10th Fl.
Los Angeles, CA 90064

Lexus Farm Labor Contractor
1301 Shattuck Ave.
Bakersfield, CA 93305

Re: Yesenia Garcia and Cesar Herrera'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 Wonderful Citrus Packing, LLC and Lexus Farm Labor Contractor (collectively "Employer"):

WorkWorld Law Corp. represents Yesenia Garcia and Cesar Herrera, who intend to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of themselves, approximately 1,000 similarly situated current and former aggrieved employees employed by Employer between April 6, 2019 and the conclusion of the action ("Statutory Period"), and the People of the State of California (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 failed to pay Employees at least minimum wage for all time worked, including time worked (e.g., 0.5 – 1.5 hours) prior to Employees’ scheduled shifts when Employees were required to appear ready for work early to either prepare or clean the Employer’s trees. The Employees were also regularly required by Employer to wait for trees’ humidity levels to settle without being paid. All of the foregoing time constituted “hours worked” which all of the Employees performed without pay. Employer paid Employees zero dollars for this work and violated the foregoing statutes by doing so, in addition to violating

Labor Code § 226.2. The Employees were paid on a piece-rate basis, and were not paid a separate wage as required for nonproductive cleaning or preparing of trees, or for waiting for trees to be ready to harvest. Consequently, Employer violated the foregoing minimum wage laws and § 226.2.

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. Prior to January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, “employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days 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 ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee’s regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.”

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

Starting January 1, 2020, Employees shall not be employed more than nine (9) hours per workday or fifty (50) hours per 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 nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

Starting January 1, 2021, Employees shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per 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 eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

Starting January 1, 2022, Employees shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per 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 eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee’s regular rate of pay for all hours worked over twelve (12) hours in any one workday.

“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 failed to account for all of Employees’ hours worked and consequently failed to pay Employees at least minimum wage for all time worked. As a result, Employees also accrued additional unpaid overtime wages for hours in excess of the foregoing applicable overtime thresholds.

C. Inaccurate Wage Statements and Wage Statement Records

“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).

“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.

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned, correct total hours worked, correct net wages earned, the corresponding correct number of hours worked at each applicable hourly rate, and (because Lexus Farm Labor Contractor 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 (Wonderful Citrus Packing, LLC) which is located at 11444 W. Olympic Blvd. 10th Fl. Los Angeles, CA 90064, and not at the Delano facility as indicated in Employees’ wage statements. Rather than providing statements of actual time worked and a correct payment of wages based thereon, Employer failed to capture and pay Employees for all

hours worked. Consequently, Employer failed to provide Employees accurate itemized wages statements as required by Section 226.

Throughout the Statutory Period, Employer also violated subdivisions (a), (b), and (c) of Section 226 by failing to 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 secured the services and only the last four digits of Employees' Social Security number. As for recordkeeping, Employer also failed to keep accurate records of all hours worked in violation of Labor Code §§ 1174 and 1198 (incorporating the applicable IWC Wage Order which requires accurate records of hours worked).

D. 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).

Generally, "[l]abor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week." Cal. Lab. Code, § 204b.

Special rules govern agricultural employees, however: "All wages, other than those mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are due and payable twice during each calendar month, on days designated in advance by the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the month during which the labor was performed. Labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid between the first and the seventh day of the following month." Cal. Lab. Code, § 205.5.

"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, 205, 205.5, and 1197.5, shall be subject to a civil 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 wages due within the periods set forth above, throughout Employees' employment, Employer failed to timely pay Employees for all hours worked.

E. 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 secludes 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 at least minimum wage and overtime for all time worked. These wages were owed and due to Employees at the time of their termination. Employer did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by law. 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 and 203.

F. Failure to Provide Proper Ladders and Training

"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.

Throughout the Statutory Period, Employer violated the following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3276:

"(d) Selection. (1) Ladders shall be selected and their use restricted to the purpose for which the ladder is designed. Single-rail ladders shall not be used. (A) Scaffolds or other worker positioning equipment shall be used when work cannot be safely done from ladders. (B) Portable ladders are generally designed for one-person use to meet the requirements of the person, the task, and the environment. When selecting a ladder for use, consideration shall be given to the ladder length or height required, the working load, the duty rating, worker position to the task to be performed, and the frequency of use to which the ladder will be subjected."

Throughout Employees' employment, Employees were subjected to working conditions that exposed them to hazards from improperly selected ladders which were inappropriate for picking fruit from Employer's trees. Employer required Employees to use insufficiently short ladders that required them to overreach to pick fruit, which they were required to do by hand. Employer is required to provide taller ladders or other mechanisms to allow for Employees to safely reach and pick the fruit. Employees regularly complained about the overly short ladders and unsafe working conditions, which caused many Employees to fall, and Employer failed to remedy the improper ladder selection.

“(e) Care, Use, Inspection and Maintenance of Ladders. ... (15) Climbing and Working on Ladders. (A) The employee shall climb or work with the body near the middle of the step or rung and shall not overreach from this position. When necessary to avoid overreaching, the employee shall descend and reposition the ladder. When it is not practical to work with the body near the middle of the step or rung, the ladder shall be secured to the top support, and the employee shall be protected by a personal fall protection system in accordance with Article 36 of the High-Voltage Electrical Safety Orders, Article 24 of the Construction Safety Orders, Article 12 of the General Industry Safety Orders, or Article 1 of the Telecommunication Safety Orders. Operations or conditions not specifically covered by Article 36 of the High-Voltage Electrical Safety Orders, Article 12 of the General Industry Safety Orders, or Article 1 of the Telecommunication Safety Orders shall comply with the fall protection provisions of Article 24 of the Construction Safety Orders. (B) Employees shall be prohibited from carrying equipment or materials which prevent the safe use of ladders.”

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer's practices and instructions precluded Employees from maintaining safe positioning on ladders as required by the foregoing regulation.

“(f) Employee Training. Before an employee uses a ladder, the employee shall be provided training in the safe use of ladders, unless the employer can demonstrate that the employee is already trained in ladder safety as required by this subsection. Supervisors of employees who routinely use ladders shall also be provided ladder safety training, unless the employer can demonstrate that the supervisor is already trained in ladder safety as required by this subsection. The training may be provided as part of the employer's Injury and Illness Prevention Program required by Section 3203. The training shall address the following topics, unless the employer can demonstrate a topic is not applicable to the safe use of ladders in the employer's workplace. (1) Importance of using ladders safely, including: frequency and severity of injuries related to falls from ladders. (2) Selection, including: types of ladders, proper length, maximum working loads, and electrical hazards. (3) Maintenance, inspection, and removal of damaged ladders from service. (4) Erecting ladders, including: footing support, top support, securing, and angle of inclination. (5) Climbing and working on ladders, including: user's position and points of contact with the ladder. (6) Factors contributing to falls, including: haste, sudden movement, lack of attention, footwear, and user's physical condition. (7) Prohibited uses, including: uses other than designed, climbing on cross bracing, maximum lengths, and minimum overlap of extension ladder sections.”

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to provide training that addressed each of the foregoing topics. Employer is subject to additional civil penalties as provided by law.

G. Failure to Establish, Implement, and Maintain Effective Injury Prevention Program

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

“The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.” Lab. Code, 6401.7, subd. (c). “The employer shall keep appropriate records of steps taken to implement and maintain the program.” Lab. Code, 6401.7, subd. (d). The standards board shall adopt a standard setting forth the employer’s duties under this section....” Lab. Code, 6401.7, subd. (e)(1).

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

“Records of the steps taken to implement and maintain the Program shall include: (1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to identify unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe conditions and work practices that have been identified and action taken to correct the identified unsafe conditions and work practices. These records shall be maintained for at least one (1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of

training, and training providers. This documentation shall be maintained for at least one (1) year." Cal. Code Regs., tit. 8, § 3203, subd. (b).

Employees incorporate the foregoing sections herein. Throughout the Statutory Period, Employer failed to establish, implement, and maintain an effective injury prevention program. Employer failed to perform periodic inspections to identify unsafe conditions and work practices, particularly those concerning the unsafe use of ladders, and failed to provide occupational health and safety training designed to instruct Employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each Employee's job assignment (again, especially regarding the use of ladders); Employer failed to provide such training to Employees.

There was ineffective communication between Employees and Employer on occupational health and safety matters regarding the use of ladders. Employees complained to management that the ladders and work required on them were unsafe, but the Employer either ignored the Employees' complaints or conveyed that Employees could quit if they did not like the working conditions.

Employer failed to provide adequate meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees regarding health and safety conditions and workplace injury reporting.

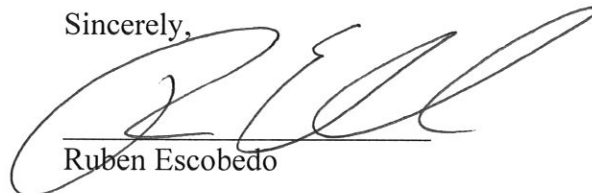
H. Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes

Employees incorporate the preceding sections herein. By committing the acts and omissions described in the preceding sections throughout Employees' employment, Employer also violated Labor Code, §§ 6400, 6401, 6302, 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces, practices, and processes to its Employees. 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.

Rubén Escobedo