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YESENIA GARCIA and CESAR HERRERA,
11 as Private Attorneys General

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

14 STATE OF CALIFORNIA ex rel.
YESENIA GARCIA and CESAR
15 HERRERA, as Private Attorneys General,

16 Plaintiff,

17 v.

18 WONDERFUL CITRUS PACKING, LLC,
a Delaware limited liability company;
19 LEXUS FARM LABOR CONTRACTOR,
a California corporation; and DOES 1-25,
20 inclusive,

21 Defendants.
22

Case No. **20STCV37466**

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

23
24 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. YESENIA GARCIA and
25 CESAR HERRERA as Private Attorneys General (“Plaintiff”), who asserts claims against
26 WONDERFUL CITRUS PACKING, LLC, a Delaware limited liability company, LEXUS FARM
27 LABOR CONTRACTOR, a California corporation, and DOES 1 through 25, inclusive
28 (collectively “Defendants” or “Employer”) as follows:

1 **INTRODUCTION**

2 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
3 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of themselves, approximately 1,000
4 similarly situated current and former aggrieved employees employed by Employer between April
5 6, 2019 and the conclusion of the action (“Statutory Period”), and the People of the State of
6 California (collectively “Employees”).

7 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
8 permits an aggrieved employee to recover civil penalties set forth within the California Labor
9 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
10 penalties for violations of California Labor Code provisions that do not contain their own civil
11 penalties. Employees bring this civil action to recover civil penalties for the violations identified
12 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
13 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
14 are sought for violations committed against Employees of Employer.

15 3. Pursuant to Section 2699.3, subdivisions (a)(1) and (b)(1), Plaintiff gave proper
16 notice to the California Labor and Workforce Development Agency, the Division of Occupational
17 Safety and Health, and Defendants, of the specific provisions of the California Labor Code alleged
18 to have been violated, including the facts and theories to support the alleged violation. Neither the
19 LWDA nor the Division of Occupational Safety and Health inspected or investigated the
20 violations. With respect to those violations that were curable under Subdivisions (b)(1) and/or
21 (c)(1), the Employer failed to cure the violations within the time provided under PAGA. Plaintiff
22 and Employees are, therefore, entitled to all civil penalties pursuant to Sections 2699(a), and
23 pursuant to Section 2699(f), in addition to Plaintiff’s costs and attorneys’ fees.

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over this action pursuant to the California Constitution,
26 Article VI, §10.

27 5. Venue is proper in this Court because Defendant WONDERFUL CITRUS
28 PACKING, LLC resides in Los Angeles, CA.

1 **PARTIES**

2 6. For all times relevant herein, YESENIA GARCIA and CESAR HERRERA were
3 adults individual residing in Kern County, California. Ms. Garcia and Mr. Herrera are not suing in
4 their individual capacity; they are proceeding herein solely under the PAGA, on behalf of the State
5 of California for all aggrieved employees, including themselves and approximately 1,000 other
6 aggrieved employees.

7 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
8 alleges, that Defendant WONDERFUL CITRUS PACKING, LLC is a Delaware limited liability
9 company with its principal California place of business in Los Angeles, CA.

10 8. For all times relevant herein, Plaintiff is informed and believes, and on that basis
11 alleges, that Defendant LEXUS FARM LABOR CONTRACTOR is California corporation with
12 its principal California place of business in Bakersfield, CA.

13 9. Whenever in this Complaint reference is made to any act, deed, or conduct of
14 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
15 through one or more of its agents, employees, or representatives, who was actively engaged in the
16 management, direction, control, or transaction of the business and affairs of Defendants.

17 10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
18 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
19 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
20 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
21 as the identities of the Doe Defendants are ascertained.

22 11. Plaintiff is informed and believes, and based thereon alleges, that the Doe
23 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
24 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
25 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
26 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
27 to the extent of the liability of Defendants as alleged herein.

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

FIRST COUNT

Failure to Pay Minimum Wages Owed

(By Plaintiff against All Defendants)

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

14. 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).

15. 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

1 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
2 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
3 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
4 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
5 for each underpaid employee for each pay period for which the employee is underpaid. This
6 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
7 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
8 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
9 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
10 regardless of whether the initial violation is intentionally committed. This amount shall be in
11 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
12 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

13 16. Throughout the Statutory Period, Employer failed to pay Employees at least
14 minimum wage for all time worked, including time worked (e.g., 0.5 – 1.5 hours) prior to
15 Employees’ scheduled shifts when Employees were required to appear ready for work early to
16 either prepare or clean the Employer’s trees. The Employees were also regularly required by
17 Employer to wait for trees’ humidity levels to settle without being paid. All of the foregoing time
18 constituted “hours worked” which all of the Employees performed without pay. Employer paid
19 Employees zero dollars for this work and violated the foregoing statutes by doing so, in addition to
20 violating Labor Code § 226.2. The Employees were paid on a piece-rate basis, and were not paid
21 a separate wage as required for nonproductive cleaning or preparing of trees, or for waiting for
22 trees to be ready to harvest. Consequently, Employer violated the foregoing minimum wage laws
23 and § 226.2.

24 17. Employees are entitled to all civil penalties provided by law.

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27 ///

28

1 **SECOND COUNT**

2 **Failure to Pay Overtime Wages Owed**

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

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

6 19. "The maximum hours of work and the standard conditions of labor fixed by the
7 commission shall be the maximum hours of work and the standard conditions of labor for
8 employees. The employment of any employee for longer hours than those fixed by the order or
9 under conditions of labor prohibited by the order is unlawful." Cal. Lab. Code, § 1198. Prior to
10 January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, "employees shall not
11 be employed more than ten (10) hours in any one workday or more than six (6) days in any
12 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular
13 rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours
14 on the seventh (7th) day of work and double the employee's regular rate of pay for all hours
15 worked over eight (8) on the seventh (7th) day of work in the workweek."

16 20. Effective January 1, 2019, for employers of more than 25 employees like
17 Employer, Wage Order 14 provides that Employees shall not be employed more than nine and
18 one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
19 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
20 over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any
21 one workweek.

22 21. Starting January 1, 2020, Employees shall not be employed more than nine (9)
23 hours per workday or fifty (50) hours per workweek unless the employee receives one and one-
24 half (11/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in
25 any one workday or more than fifty (50) hours in any one workweek.

26 22. Starting January 1, 2021, Employees shall not be employed more than eight and
27 one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
28 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked

1 over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any
2 one workweek.

3 23. Starting January 1, 2022, Employees shall not be employed more than eight (8)
4 hours per workday or work in excess of forty (40) hours per workweek unless the employee
5 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
6 over eight (8) hours in any workday or more than forty (40) hours in any workweek and double
7 the employee's regular rate of pay for all hours worked over twelve (12) hours in any one
8 workday.

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

17
18 Throughout the Statutory Period, Employer failed to account for all of Employees' hours
19 worked and consequently failed to pay Employees at least minimum wage for all time worked.
20 As a result, Employees also accrued additional unpaid overtime wages for hours in excess of the
21 foregoing applicable overtime thresholds.

22 25. The Employees are entitled to all civil penalties available under the PAGA.

23 **THIRD COUNT**

24 **Inaccurate Wage Statements and Wage Statement Records**

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

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

28 27. "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

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

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

20 29. Throughout the Statutory Period, Employer failed to furnish Employees with
21 accurate itemized statements at the time of each payment of wages showing the correct gross
22 wages earned, correct total hours worked, correct net wages earned, the corresponding correct
23 number of hours worked at each applicable hourly rate, and (because Lexus Farm Labor
24 Contractor is a farm labor contractor, as defined in subdivision (b) of Section 1682) the name and
25 address of the legal entity that secured the services of the employer (Wonderful Citrus Packing,
26 LLC) which is located at 11444 W. Olympic Blvd. 10th Fl. Los Angeles, CA 90064, and not at the
27 Delano facility as indicated in Employees’ wage statements. Rather than providing statements of
28 actual time worked and a correct payment of wages based thereon, Employer failed to capture and

1 pay Employees for all hours worked. Consequently, Employer failed to provide Employees
2 accurate itemized wages statements as required by Section 226.

3 30. Throughout the Statutory Period, Employer also violated subdivisions (a), (b), and
4 (c) of Section 226 by failing to maintain or produce upon Employees' request either a duplicate of
5 the itemized statements provided to Employees or a computer-generated record that accurately
6 shows all of the required information, including the name and address of the legal entity that
7 secured the services and only the last four digits of Employees' Social Security number. As for
8 recordkeeping, Employer also failed to keep accurate records of all hours worked in violation of
9 Labor Code §§ 1174 and 1198 (incorporating the applicable IWC Wage Order which requires
10 accurate records of hours worked).

11 31. The Employees are entitled to all civil penalties available under the PAGA.

12 **FOURTH COUNT**

13 **Untimely Payment of Wages**

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

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

17 33. Generally, "[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
18 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
19 calendar month, on days designated in advance by the employer as the regular paydays. Labor
20 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
21 between the 16th and the 26th day of the month during which the labor was performed, and labor
22 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
23 between the 1st and 10th day of the following month." Cal. Lab. Code, § 204, subd. (a).

24 34. Generally, "[l]abor performed by a weekly-paid employee during any calendar
25 week and prior to or on the regular payday shall be paid for not later than the regular payday of the
26 employer for such weekly-paid employee falling during the following calendar week. Labor
27 performed by a weekly-paid employee during any calendar week and subsequent to the regular
28

1 payday shall be paid for not later than seven days after the regular payday of the employer for such
2 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

3 35. Special rules govern agricultural employees, however: “All wages, other than those
4 mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section
5 1140.4, are due and payable twice during each calendar month, on days designated in advance by
6 the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th
7 days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the
8 month during which the labor was performed. Labor performed between the 16th and the last day,
9 inclusive, of any calendar month shall be paid between the first and the seventh day of the
10 following month.” Cal. Lab. Code, § 205.5.

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

18 37. Rather than timely paying Employees all wages due within the periods set forth
19 above, throughout the Statutory Period, Employer failed to timely pay Employees for all hours
20 worked.

21 38. The Employees are entitled to all civil penalties available under the PAGA.

22 **FIFTH COUNT**

23 **Failure to Pay Wages at Termination**

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

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

27 40. “If an employer discharges an employee, the wages earned and unpaid at the time
28 of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer

1 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
2 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
3 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
4 paid or until an action therefor is commenced; but the wages shall not continue for more than 30
5 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or
6 who refuses to receive the payment when fully tendered to him or her, including any penalty then
7 accrued under this section, is not entitled to any benefit under this section for the time during
8 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

9 41. Throughout the Statutory Period, Employer failed to pay Employees at least
10 minimum wage and overtime for all time worked. These wages were owed and due to Employees
11 at the time of their termination. Employer did not provide these payments to Employees at the
12 time of termination or within a sufficient time of resignation as required by law. Employer’s
13 failure to timely pay these wages at the time of termination, and failure to pay Employees’
14 continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

15 42. The Employees are entitled to all civil penalties available under the PAGA.

16 **SIXTH COUNT**

17 **Failure to Provide Proper Ladders and Training**

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

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

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

25 45. Throughout the Statutory Period, Employer violated the following provisions of
26 applicable regulation, Cal. Code Regs., tit. 8, § 3276: “**(d) Selection.** (1) Ladders shall be selected
27 and their use restricted to the purpose for which the ladder is designed. Single-rail ladders shall not
28 be used. (A) Scaffolds or other worker positioning equipment shall be used when work cannot be

1 safely done from ladders. (B) Portable ladders are generally designed for one-person use to meet
2 the requirements of the person, the task, and the environment. When selecting a ladder for use,
3 consideration shall be given to the ladder length or height required, the working load, the duty
4 rating, worker position to the task to be performed, and the frequency of use to which the ladder
5 will be subjected.”

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

14 47. **“(e) Care, Use, Inspection and Maintenance of Ladders. ... (15) Climbing and**
15 **Working on Ladders. (A) The employee shall climb or work with the body near the middle of the**
16 **step or rung and shall not overreach from this position. When necessary to avoid overreaching, the**
17 **employee shall descend and reposition the ladder. When it is not practical to work with the body**
18 **near the middle of the step or rung, the ladder shall be secured to the top support, and the**
19 **employee shall be protected by a personal fall protection system in accordance with Article 36 of**
20 **the High-Voltage Electrical Safety Orders, Article 24 of the Construction Safety Orders, Article**
21 **12 of the General Industry Safety Orders, or Article 1 of the Telecommunication Safety Orders.**
22 **Operations or conditions not specifically covered by Article 36 of the High-Voltage Electrical**
23 **Safety Orders, Article 12 of the General Industry Safety Orders, or Article 1 of the**
24 **Telecommunication Safety Orders shall comply with the fall protection provisions of Article 24 of**
25 **the Construction Safety Orders. (B) Employees shall be prohibited from carrying equipment or**
26 **materials which prevent the safe use of ladders.”**

27 48. Throughout the Statutory Period, Employer’s practices and instructions precluded
28 Employees from maintaining safe positioning on ladders as required by the foregoing regulation.

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

18 50. Throughout the Statutory Period, Employer failed to provide training that addressed
19 each of the foregoing topics. Employer is subject to additional civil penalties as provided by law.

20 51. The Employees are entitled to all civil penalties available under the PAGA.

21 **SEVENTH COUNT**

22 **Failure to Establish, Implement, and Maintain Effective Injury Prevention Program**

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

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

26 53. “Every employer shall establish, implement, and maintain an effective injury
27 prevention program. The program shall be written, except as provided in subdivision (e), and shall
28 include, but not be limited to, the following elements: (1) Identification of the person or persons

1 responsible for implementing the program. (2) The employer's system for identifying and
2 evaluating workplace hazards, including scheduled periodic inspections to identify unsafe
3 conditions and work practices. (3) The employer's methods and procedures for correcting unsafe
4 or unhealthy conditions and work practices in a timely manner. (4) An occupational health and
5 safety training program designed to instruct employees in general safe and healthy work practices
6 and to provide specific instruction with respect to hazards specific to each employee's job
7 assignment. (5) The employer's system for communicating with employees on occupational health
8 and safety matters, including provisions designed to encourage employees to inform the employer
9 of hazards at the worksite without fear of reprisal. (6) The employer's system for ensuring that
10 employees comply with safe and healthy work practices, which may include disciplinary action."
11 Lab. Code, 6401.7, subd. (a). "The employer shall correct unsafe and unhealthy conditions and
12 work practices in a timely manner based on the severity of the hazard." Lab. Code, 6401.7, subd.
13 (b).

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

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

27 56. "Records of the steps taken to implement and maintain the Program shall include:
28 (1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to

1 identify unsafe conditions and work practices, including person(s) conducting the inspection, the
2 unsafe conditions and work practices that have been identified and action taken to correct the
3 identified unsafe conditions and work practices. These records shall be maintained for at least one
4 (1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for
5 each employee, including employee name or other identifier, training dates, type(s) of training,
6 and training providers. This documentation shall be maintained for at least one (1) year.” Cal.
7 Code Regs., tit. 8, § 3203, subd. (b).

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

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

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

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1 **EIGHTH COUNT**

2 **Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes**

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

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

6 61. By committing the acts and omissions described in the preceding sections
7 throughout the Statutory Period, Employer also violated Labor Code, §§ 6400, 6401, 6402, 6403,
8 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces, practices,
9 and processes to its Employees. Employer is subject to additional civil penalties as provided by
10 law.

11 62. The Employees are entitled to all civil penalties available under the PAGA.

12 **PRAYER**

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

- 14 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount not
15 less than \$5,000,000;
16 2. For reasonable costs and attorneys' fees; and
17 3. For such other and further relief as the Court deems proper.

18 DATED: September 29, 2020

WORKWORLD LAW

20
21 By: 

RUBEN ESCOBEDO

22 Attorneys for YESENIA GARCIA and
23 CESAR HERRERA, as Private Attorneys
24 General
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