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Attorney for Plaintiff, STATE OF CALIFORNIA
ex rel. TERESA GUZMAN, as Private Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN – METROPOLITAN DIVISION

STATE OF CALIFORNIA ex rel.
TERESA GUZMAN, as Private Attorney
General,

Plaintiff,

v.

GRIMMWAY ENTERPRISES, INC., a
corporation; TORRES FARM LABOR
CONTRACTOR, INC., a corporation; and
DOES 1-25, inclusive,

Defendants.

Case No. BCV-21-100380

Assigned for All Purposes to:

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

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

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. TERESA GUZMAN, as
Private Attorney General (“Plaintiff”), who asserts claims against Defendants GRIMMWAY
ENTERPRISES, INC., TORRES FARM LABOR CONTRACTOR, INC., and DOES 1 through
25, inclusive (collectively “Employer” or “Defendants”) as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.* A PAGA action is a “type of *qui tam* action” in which the plaintiff proceeds on behalf of the State of California and shares in the recovery of civil penalties; it “is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state*....” *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381-382, 386. “[T]he State is the real party in interest.” *Id.*, at 387.

2. Accordingly, Ms. Guzman is not suing in her individual capacity; she is proceeding herein solely under the PAGA on behalf of herself, approximately 500 similarly situated current and former aggrieved employees employed by Employer at Grimmway’s facility located at 6301 S. Zerker Road, Shafter, CA 93263 between April 6, 2019 and the conclusion of the action (“Statutory Period”), and the People of the State of California (collectively “Employees”).

3. 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. Plaintiff brings this civil action to recover civil penalties for the violations identified below. Those civil penalties are sought for violations committed against Employees of Defendant.

4. Plaintiff brings this action for violations of occupational health-and-safety provisions of the California Labor Code. Defendants subjected Employees to these violations, some of which caused injury while some of which did not necessarily cause injury. This action does not seek compensation for any injury, however; the PAGA provides for civil penalties, not for injuries to employees, but for violations of the California Labor Code.

5. PAGA includes three provisions setting forth different exhaustion procedures, depending on the type of Labor Code violation alleged: (1) Section 2699.3(a); (2) Section 2699.3(b); and (3) Section 2699.3(c).

- 1 • **2699.3(a)**'s exhaustion procedure applies to Labor Code provisions listed in Section
2 2699.5. This Complaint does not allege a violation listed in Section 2699.5 and is
3 therefore not governed by the exhaustion procedure set forth at Section 2699.3(a).
- 4 • **2699.3(b)**'s exhaustion procedure applies to health-and-safety laws contained in Division 5
5 of the Labor Code (Lab. Code, §§ 6300-9104). To the extent this Complaint alleges
6 violations of Division 5, those parts of the Complaint are governed by the exhaustion
7 procedure set forth at **Section 2699.3(b)**, which in this case also incorporate the exhaustion
8 procedure set forth in the next subdivision of the statute, Section 2699.3(c).
- 9 • **2699.3(c)**'s exhaustion procedure applies in two scenarios:
 - 10 (i.) If the State does not investigate a 2699.3(b) violation within "three working
11 days after receipt of a complaint charging a serious violation," or within "14
12 calendar days after receipt of a complaint charging a nonserious violation"
13 as required by Section 6309(a).¹
 - 14 (ii.) All other Labor Code violations not listed in Section 2699.5 and not
15 contained within Division 5 of the Labor Code.

16 Under 2699.3(c), "[t]he employer may cure the alleged violation within 33 calendar days
17 of the postmark date of the [PAGA] notice sent by the aggrieved employee or representative. The
18 employer shall give written notice within that period of time by certified mail to the aggrieved
19 employee or representative and by online filing with the agency if the alleged violation is cured,
20 including a description of actions taken, and no civil action pursuant to Section 2699 may
21 commence. If the alleged violation is not cured within the 33-day period, the employee may
22 commence a civil action pursuant to Section 2699." Lab. Code, § 2699.3, subd. (c)(2)(A).

23 6. Pursuant to Section 2699.3, Plaintiff gave proper notice to the California Labor and
24 Workforce Development Agency, the Division of Occupational Safety and Health, and Defendant,
25

26 ¹ "If the division fails to inspect or investigate the alleged violation as provided by Section
27 6309, the provisions of subdivision [2699.3](c) shall apply to the determination of the alleged
28 violation." Lab. Code, § 2699.3, subd. (b)(2)(B).

1 of the specific provisions of the California Labor Code alleged to have been violated, including the
2 facts and theories to support the alleged violation. A copy of Plaintiff's PAGA notice of claims is
3 attached hereto as **Exhibit 1**.

4 7. Neither the LWDA nor the Division of Occupational Safety and Health inspected
5 or investigated the violations within the time provided by law. Additionally, with respect to those
6 violations that were curable under Subdivisions (b)(1) and/or (c)(1), Defendant failed to invoke its
7 option to cure the violations within the time provided under PAGA.

8 8. To the extent the LWDA or Division of Occupational Safety and Health should
9 have issued a citation for any violations subject to Subdivision (b)(1), Employees also request an
10 order issuing such citation(s).

11 9. Plaintiff and Employees are, therefore, entitled to all available civil penalties, in
12 addition to Plaintiff's costs and attorneys' fees.

13 **JURISDICTION AND VENUE**

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

16 11. Venue is proper in this Court because this action arises from Defendant's
17 employment in Kern County, and both Plaintiff and Defendants reside in Kern County.

18 **PARTIES**

19 12. For all times relevant herein, TERESA GUZMAN was an adult individual residing
20 in Kern County, California. Ms. Guzman is not suing in her individual capacity; she is proceeding
21 herein solely under the PAGA on behalf of the State of California for all aggrieved employees,
22 including himself.

23 13. For all times relevant herein, Defendant GRIMMWAY ENTERPRISES, INC., was
24 and is a California corporation with its principal California place of business in Arvin, Kern
25 County, CA.

26 14. For all times relevant herein, TORRES FARM LABOR CONTRACTOR, INC.,
27 was and is a California corporation with its principal California place of business in Bakersfield,
28 Kern County, CA.

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

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

17. Plaintiff is informed and believes, and based thereon alleges, 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.

18. 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 CAUSE OF ACTION

Failure to Provide Reasonably Clean Floors with Adequate Slip Protection

(By Plaintiff against All Defendants)

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

20. “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.

21. Throughout the Statutory Period, Employer violated the following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3273: “Permanent floors and platforms shall be free of dangerous projections or obstructions, maintained in good repair, and reasonably free of oil, grease, or water. Where the type of operation necessitates working on slippery floors, such surfaces shall be protected against slipping by using mats, grates, cleats, or other methods which provide equivalent protection. Where wet processes are used drainage shall be maintained and false floors, platforms, mats, or other dry standing places provided.” Cal. Code Regs., tit. 8, § 3273, subd. (a).

22. Throughout the Statutory Period, Employees including Ms. Guzman were subjected to working conditions by Employer that exposed them to excessively slippery and wet working conditions with no or inadequate drainage, and no or inadequate slip protection, in violation of the foregoing provisions. Due to the nature of Employer's operation, carrots regularly fell on the floor at the Zerker Road facility. Employer's processes left carrots and liquids on the floor for excessive periods of time, causing many Employees to slip due to excessive moisture and a lack of warning signs, among other things. Employer failed to hire adequate staff to perform necessary cleaning to keep floors clear of carrots and slippery material, or otherwise implement processes that would comply with § 3273 (and also § 3362). Employees' complaints regarding these conditions were ignored.

23. Defendants are subject to civil penalties as provided by law.

SECOND CAUSE OF ACTION

Failure to Provide Adequate Hand Protection

(By Plaintiff against All Defendants)

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

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

7 26. “Employers shall select, provide and require employees to use appropriate hand
8 protection when employee's hands are exposed to hazards such as those from skin absorption of
9 harmful substances, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns,
10 radioactive materials, and harmful temperature extremes.” Cal. Code Regs., tit. 8, § 3384, subd.
11 (a).

12 27. Throughout the Statutory Period, Employees including Ms. Guzman were subjected
13 to working conditions by Employer that exposed their hands to hazards such as those from cuts,
14 lacerations, punctures, and skin absorption of harmful substances, pesticides, chemicals, and the
15 cold -- oftentimes subfreezing -- temperatures in which the Employees work. In violation of its
16 legal duty, Employer failed to select, provide, and require Employees to wear appropriate hand
17 protection. Employer provided Employees with thin plastic gloves that failed to keep Employees’
18 hands warm and protected from the cold and/or refrigerated indoor environment in which they
19 worked. Employer charged \$1 for the appropriate thicker gloves that would keep Employees’
20 hands warm and sufficiently protected. Many declined to purchase the thicker gloves and used the
21 gloves provided by Employer.

22 28. The plastic gloves provided and required by the Employer also required multiple
23 changes throughout the day. They would rip and need replacement. But the Employer’s
24 representative in charge of distributing the gloves would complain about torn gloves and
25 discourage Employees from seeking replacements, consequently encouraging Employees to work
26 with ripped gloves which further reduced their efficacy. Employees’ complaints regarding these
27 conditions were ignored.

28 29. Defendants are subject to civil penalties as provided by law.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Personal Protective Equipment**

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

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

6 31. "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 32. Title 8, Sections 5095, 5096, 5097, 5098, 5099, and 5100 of the California Code of
11 Regulations applied to Employer and the Employees. Throughout the Statutory Period, Many of
12 the Employees have suffered hearing loss as a result of excessive noise levels within the Zerker
13 Road facility without adequate sound protection in place. Employer violated the above-referenced
14 regulations by failing to conduct the required assessment of potential injury caused by excessively
15 loud processes within the Zerker Road facility and the appropriateness of Personal Protective
16 Equipment to mitigate the effects of excessive noise, and failing to conduct the required
17 monitoring, training, and recordkeeping. Ms. Guzman is informed and believes that noise levels
18 exceeded those listed in Table N-1 of § 5096, but Employer failed to implement feasible
19 administrative or engineering controls to reduce noise levels or otherwise provide suitable
20 Personal Protective Equipment.

21 33. Defendants are subject to civil penalties as provided by law.

22 **FOURTH CAUSE OF ACTION**

23 **Failure to Effectively Train Employees on Chemical Hazards**

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

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

27 35. "Every employer and every employee shall comply with occupational safety and
28 health standards, with Section 25910 of the Health and Safety Code, and with all rules,

1 regulations, and orders pursuant to this division which are applicable to his own actions and
2 conduct.” Lab. Code 6407.

3 36. Among these rules, regulations, and orders is Title 8, Section 5194 of the California
4 Code of Regulations, which was applicable to Employer and the Employees. Throughout the
5 Statutory Period, Employer violated the following provisions of §§ 5194(b) and (h):

6 37. (b)(1): “This section requires manufacturers or importers to classify the hazards of
7 chemicals which they produce or import, and all employers to provide information to their
8 employees about the hazardous chemicals to which they may be exposed, by means of a hazard
9 communication program, labels and other forms of warning, safety data sheets, and information
10 and training.”

11 38. (h)(1): “Employers shall provide employees with effective information and training
12 on hazardous chemicals in their work area at the time of their initial assignment, and whenever a
13 new chemical hazard is introduced into their work area. ... (2) Information and training shall
14 consist of at least the following topics: (A) Employees shall be informed of the requirements of
15 this section. (B) Employees shall be informed of any operations in their work area where
16 hazardous chemicals are present. (C) Employees shall be informed of the location and availability
17 of the written hazard communication program, including the list(s) of hazardous chemicals and
18 safety data sheets required by this section. (D) Employees shall be trained in the methods and
19 observations that may be used to detect the presence or release of a hazardous chemical in the
20 work area (such as monitoring conducted by the employer, continuous monitoring devices, visual
21 appearance or odor of hazardous chemicals when being released, etc.). (E) Employees shall be
22 trained in the physical, health, simple asphyxiation, combustible dust and pyrophoric gas hazards,
23 as well as hazards not otherwise classified, of the chemicals in the work area, and the measures
24 they can take to protect themselves from these hazards, including specific procedures the employer
25 has implemented to protect employees from exposure to hazardous chemicals, such as appropriate
26 work practices, emergency procedures, and personal protective equipment to be used. (F)
27 Employees shall be trained in the details of the hazard communication program developed by the
28 employer, including an explanation of the labels received on shipped containers and the workplace

1 labeling system used by their employer and the safety data sheet, and how employees can obtain
2 and use the appropriate hazard information.”

3 39. Throughout the Statutory Period, Employer failed to provide effective training to
4 Employees including Ms. Guzman on hazardous chemicals in their work area at the time of their
5 initial assignment, and whenever a new chemical hazard is introduced into their work area. For
6 example, Grimmway uses bleach, ammonia, and other chemical agents in its carrot processing
7 operations. Employees regularly felt sick from chemical inhalation and exposure. Because they
8 were not properly trained, Employees did not know what to do to protect themselves when
9 working around these dangerous chemicals. They would cover their face and nose as best as they
10 could (only sanitation workers were supplied goggles) to protect themselves.

11 40. Employer did not provide any information to Employees regarding the
12 requirements of § 5194 or their rights under § 5194. Employer failed to train Employees in the
13 methods and observations that may be used to detect the presence or release of a hazardous
14 chemical in the work area (such as monitoring conducted by the employer, continuous monitoring
15 devices, visual appearance or odor of hazardous chemicals when being released, etc.), including
16 the hazards from the use of bleach, ammonia, and other chemicals Employees were required to
17 handle and/or otherwise work around.

18 41. “Employees shall be trained in the physical, health, simple asphyxiation,
19 combustible dust and pyrophoric gas hazards, as well as hazards not otherwise classified, of the
20 chemicals in the work area, and the measures they can take to protect themselves from these
21 hazards, including specific procedures the employer has implemented to protect employees from
22 exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and
23 personal protective equipment to be used.” Employer failed to provide any training regarding the
24 measures Employees can take to protect themselves and appropriate work practices to avoid
25 injury. Employees were required to self-train themselves by trial and error, resulting in increased
26 risks of injury to Employees in violation of the law, without a proper understanding of the health
27 consequences.

28 42. Defendants are subject to civil penalties as provided by law.

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

22 45. "The employer shall train all employees when the training program is first
23 established, all new employees, and all employees given a new job assignment, and shall train
24 employees whenever new substances, processes, procedures, or equipment are introduced to the
25 workplace and represent a new hazard, and whenever the employer receives notification of a new
26 or previously unrecognized hazard." Lab. Code, 6401.7, subd. (c). "The employer shall keep
27 appropriate records of steps taken to implement and maintain the program." Lab. Code, 6401.7,
28

1 subd. (d). The standards board shall adopt a standard setting forth the employer's duties under this
2 section....” Lab. Code, 6401.7, subd. (e)(1).

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

8 47. “Records of the steps taken to implement and maintain the Program shall include:
9 (1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to
10 identify unsafe conditions and work practices, including person(s) conducting the inspection, the
11 unsafe conditions and work practices that have been identified and action taken to correct the
12 identified unsafe conditions and work practices. These records shall be maintained for at least one
13 (1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for
14 each employee, including employee name or other identifier, training dates, type(s) of training,
15 and training providers. This documentation shall be maintained for at least one (1) year.” Cal.
16 Code Regs., tit. 8, § 3203, subd. (b).

17 48. Employees incorporate the foregoing sections herein. Throughout the Statutory
18 Period, Employer failed to establish, implement, and maintain an effective injury prevention
19 program. Employer failed to perform periodic inspections to identify unsafe conditions and work
20 practices, particularly those concerning slip protection, hand protection, sound protection, and
21 chemical exposure protection, and failed to provide occupational health and safety training
22 designed to instruct Employees in general safe and healthy work practices and to provide specific
23 instruction with respect to hazards specific to each Employee's job assignment (again, especially
24 regarding slip protection, hand protection, sound protection, and chemical exposure protection);
25 Employer failed to provide such training to Employees.

26 49. There was ineffective communication between Employees and Employer on
27 occupational health and safety matters regarding slip protection, hand protection, sound protection,
28 and chemical exposure protection. Employees complained to management about each of these

1 problems existing in Grimmway's facility but the Employer either ignored the Employees'
2 complaints or conveyed that Employees could quit if they did not like the working conditions.

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

7 51. Defendants are subject to civil penalties as provided by law.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Provide or Maintain Adequate Sanitary Facilities**

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

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

13 53. "Every employer and every employee shall comply with occupational safety and
14 health standards, with Section 25910 of the Health and Safety Code, and with all rules,
15 regulations, and orders pursuant to this division which are applicable to his own actions and
16 conduct." Lab. Code 6407. "All employers shall comply with standards relating to sanitary
17 facilities adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6
18 (commencing with Section 140) of Division 1." Cal. Lab. Code, § 2260. "Every factory,
19 workshop, mercantile or other establishment in which one or more persons are employed, shall be
20 kept clean and free from the effluvia arising from any drain or other nuisance, and shall be
21 provided, within reasonable access, with a sufficient number of toilet facilities for the use of the
22 employees. When there are five or more employees who are not all of the same gender, a
23 sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall
24 be plainly so designated." Cal. Lab. Code 2350.

25 54. Throughout the Statutory Period, Employer failed violated the foregoing by failing
26 to adequately maintain clean toilets, and failing to provide reasonable access to a sufficient
27 number of toilet facilities for the use of Employees who were not all the same gender. Despite
28 employing approximately 100-200 Employees at any given time, Employer regularly provided

1 only approximately 7 functioning toilets (5 were out of order). There was also an insufficient
2 number of available lavatories for handwashing.

3 55. The toilets were overused and not maintained as much as they needed.
4 Grimmway's facility is aging and is in need of significant repairs. Many -- if not most -- of the
5 toilet stalls were regularly out of service. They regularly lacked toilet paper, soap, and hand
6 towels for proper sanitation. Employees commonly were required to stand and wait in long lines
7 to use the facilities during valuable break periods during which Employees were supposed to be
8 free to rest. Worse yet, Employer punished the Employees for their own lack of sufficient toilet
9 stalls and disciplined and/or reprimanded Employees for taking too long in the toilet.

10 56. Employees were not free to use the toilets whenever the needed to; Employees
11 were required to have others cover their work while they used the restroom, which was not always
12 feasible. All of this was no accident. It was designed by Grimmway to discourage Employees
13 from using the toilets in violation of the foregoing statutes (in addition to violating Title 8, Cal.
14 Code Regs., §§ 3364 and 3366).

15 57. Defendants are subject to civil penalties as provided by law.

16 **SEVENTH CAUSE OF ACTION**

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

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

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

21 59. By committing the acts and omissions described in the preceding sections
22 throughout Employees' employment, Employer also violated Labor Code, §§ 6400, 6401, 6402,
23 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces,
24 practices, and processes to its Employees. Employer is subject to additional civil penalties as
25 provided by law.

26 60. Defendants are subject to civil penalties as provided by law.

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PRAYER

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

1. For all civil penalties provided by law and according to proof;
2. For reasonable costs and attorneys' fees under the PAGA and Code of Civil Procedure section 1021.5; and
3. For such other and further relief as the Court deems proper.

DATED: February 22, 2021

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorney for Plaintiff, STATE OF
CALIFORNIA ex rel. TERESA GUZMAN,
as Private Attorney General

EXHIBIT 1



WORKWORLD LAW

August 10, 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

GRIMMWAY ENTERPRISES, INC.
11001 RIVER RUN BLVD., SUITE 102
BAKERSFIELD, CA 93311

TORRES FARM LABOR CONTRACTOR, INC.
360 TORO CT
BAKERSFIELD CA 93307

Re: Teresa Guzman's Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

To the California Division of Occupational Safety and Health; and Grimmway Enterprises, Inc. and Torres Farm Labor Contractor, Inc. (collectively "Employer"):

WorkWorld Law Corp. represents Teresa Guzman, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of herself, approximately 500 similarly situated current and former aggrieved employees employed by Employer at Grimmway's facility located at 6301 S. Zerker Road, Shafter, CA 93263 between April 6, 2019 and the conclusion of the action ("Statutory Period"), and the People of the State of California (collectively "Employees").

Ms. Guzman worked as a carrot grader at the Zerker Road facility. The occupational safety and health violations alleged herein occurred throughout the statute of limitations period and are continuing, starting April 6, 2019 through the present, and including the dates when Ms. Guzman worked for the Employer (6/12/2019 – 03/17/2020).

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 Provide Reasonably Clean Floors with Adequate Slip Protection

“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, § 3273: “Permanent floors and platforms shall be free of dangerous projections or obstructions, maintained in good repair, and reasonably free of oil, grease, or water. Where the type of operation necessitates working on slippery floors, such surfaces shall be protected against slipping by using mats, grates, cleats, or other methods which provide equivalent protection. Where wet processes are used drainage shall be maintained and false floors, platforms, mats, or other dry standing places provided.” Cal. Code Regs., tit. 8, § 3273, subd. (a).

Throughout the Statutory Period, Employees including Ms. Guzman were subjected to working conditions by Employer that exposed them to excessively slippery and wet working conditions with no or inadequate drainage, and no or inadequate slip protection, in violation of the foregoing provisions. Due to the nature of Employer’s operation, carrots regularly fell on the floor at the Zerker Road facility. Employer’s processes left carrots and liquids on the floor for excessive periods of time, causing many Employees to slip due to excessive moisture and a lack of warning signs, among other things. Employer failed to hire adequate staff to perform necessary cleaning to keep floors clear of carrots and slippery material, or otherwise implement processes that would comply with § 3273 (and also § 3362). Employees’ complaints regarding these conditions were ignored.

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B. Failure to Provide Adequate Hand Protection

"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.

"Employers shall select, provide and require employees to use appropriate hand protection when employee's hands are exposed to hazards such as those from skin absorption of harmful substances, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes." Cal. Code Regs., tit. 8, § 3384, subd. (a).

Throughout the Statutory Period, Employees including Ms. Guzman were subjected to working conditions by Employer that exposed their hands to hazards such as those from cuts, lacerations, punctures, and skin absorption of harmful substances, pesticides, chemicals, and the cold -- oftentimes subfreezing -- temperatures in which the Employees work. In violation of its legal duty, Employer failed to select, provide, and require Employees to wear appropriate hand protection. Employer provided Employees with thin plastic gloves that failed to keep Employees' hands warm and protected from the cold and/or refrigerated indoor environment in which they worked. Employer charged \$1 for the appropriate thicker gloves that would keep Employees' hands warm and sufficiently protected. Many declined to purchase the thicker gloves and used the gloves provided by Employer.

The plastic gloves provided and required by the Employer also required multiple changes throughout the day. They would rip and need replacement. But the Employer's representative in charge of distributing the gloves would complain about torn gloves and discourage Employees from seeking replacements, consequently encouraging Employees to work with ripped gloves which further reduced their efficacy. Employees' complaints regarding these conditions were ignored.

C. Failure to Provide Personal Protective Equipment

"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.

Title 8, Sections 5095, 5096, 5097, 5098, 5099, and 5100 of the California Code of Regulations applied to Employer and the Employees. Throughout the Statutory Period, Many of the Employees have suffered hearing loss as a result of excessive noise levels within the Zerker Road facility without adequate sound protection in place. Employer violated the above-referenced regulations by failing to conduct the required assessment of potential injury caused by excessively loud processes within the Zerker Road facility and the appropriateness of Personal Protective Equipment to mitigate the effects of excessive noise, and failing to conduct the required monitoring, training, and recordkeeping. Ms. Guzman is informed and believes that

noise levels exceeded those listed in Table N-1 of § 5096, but Employer failed to implement feasible administrative or engineering controls to reduce noise levels or otherwise provide suitable Personal Protective Equipment.

D. Failure to Effectively Train Employees on Chemical Hazards

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

Among these rules, regulations, and orders is Title 8, Section 5194 of the California Code of Regulations, which was applicable to Employer and the Employees. Throughout the Statutory Period, Employer violated the following provisions of §§ 5194(b) and (h):

(b)(1): “This section requires manufacturers or importers to classify the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazardous chemicals to which they may be exposed, by means of a hazard communication program, labels and other forms of warning, safety data sheets, and information and training.”

(h)(1): “Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard is introduced into their work area. ... (2) Information and training shall consist of at least the following topics: (A) Employees shall be informed of the requirements of this section. (B) Employees shall be informed of any operations in their work area where hazardous chemicals are present. (C) Employees shall be informed of the location and availability of the written hazard communication program, including the list(s) of hazardous chemicals and safety data sheets required by this section. (D) Employees shall be trained in the methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.). (E) Employees shall be trained in the physical, health, simple asphyxiation, combustible dust and pyrophoric gas hazards, as well as hazards not otherwise classified, of the chemicals in the work area, and the measures they can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used. (F) Employees shall be trained in the details of the hazard communication program developed by the employer, including an explanation of the labels received on shipped containers and the workplace labeling system used by their employer and the safety data sheet, and how employees can obtain and use the appropriate hazard information.”

Throughout the Statutory Period, Employer failed to provide effective training to Employees including Ms. Guzman on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard is introduced into their work area. For

example, Grimmway uses bleach, ammonia, and other chemical agents in its carrot processing operations. Employees regularly felt sick from chemical inhalation and exposure. Because they were not properly trained, Employees did not know what to do to protect themselves when working around these dangerous chemicals. They would cover their face and nose as best as they could (only sanitation workers were supplied goggles) to protect themselves.

Employer did not provide any information to Employees regarding the requirements of § 5194 or their rights under § 5194. Employer failed to train Employees in the methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.), including the hazards from the use of bleach, ammonia, and other chemicals Employees were required to handle and/or otherwise work around.

“Employees shall be trained in the physical, health, simple asphyxiation, combustible dust and pyrophoric gas hazards, as well as hazards not otherwise classified, of the chemicals in the work area, and the measures they can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.” Employer failed to provide any training regarding the measures Employees can take to protect themselves and appropriate work practices to avoid injury. Employees were required to self-train themselves by trial and error, resulting in increased risks of injury to Employees in violation of the law, without a proper understanding of the health consequences.

E. 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 slip protection, hand protection, sound protection, and chemical exposure protection, 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 slip protection, hand protection, sound protection, and chemical exposure protection); Employer failed to provide such training to Employees.

There was ineffective communication between Employees and Employer on occupational health and safety matters regarding slip protection, hand protection, sound protection, and chemical exposure protection. Employees complained to management about each of these problems existing in Grimmway's facility 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.

F. Failure to Provide or Maintain Adequate Sanitary Facilities

"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. "All employers shall comply with standards relating to sanitary facilities adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1." Cal. Lab. Code, § 2260. "Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated." Cal. Lab. Code 2350.

Throughout the Statutory Period, Employer failed violated the foregoing by failing to adequately maintain clean toilets, and failing to provide reasonable access to a sufficient number of toilet facilities for the use of Employees who were not all the same gender. Despite employing approximately 100-200 Employees at any given time, Employer regularly provided only approximately 7 functioning toilets (5 were out of order). There was also an insufficient number of available lavatories for handwashing.

The toilets were overused and not maintained as much as they needed. Grimmway's facility is aging and is in need of significant repairs. Many -- if not most -- of the toilet stalls were regularly out of service. They regularly lacked toilet paper, soap, and hand towels for proper sanitation. Employees commonly were required to stand and wait in long lines to use the facilities during valuable break periods during which Employees were supposed to be free to rest. Worse yet, Employer punished the Employees for their own lack of sufficient toilet stalls and disciplined and/or reprimanded Employees for taking too long in the toilet.

Employees were not free to use the toilets whenever the needed to; Employees were required to have others cover their work while they used the restroom, which was not always feasible. All of this was no accident. It was designed by Grimmway to discourage Employees from using the toilets in violation of the foregoing statutes (in addition to violating Title 8, Cal. Code Regs., §§ 3364 and 3366).

G. 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, 6402, 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, consisting of a large, stylized 'R' followed by several loops and a final horizontal stroke.

Ruben Escobedo