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11 *Attorney for FILIBERTO EUDAVE,*
as Private Attorney General

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA BARBARA – COOK DIVISION**

15
16 STATE OF CALIFORNIA ex rel.
FILIBERTO EUDAVE, as Private
17 Attorney General,

18 Plaintiff,

19 v.

20 TREASURY WINE ESTATES
AMERICAS COMPANY, a corporation;
21 and DOES 1-25, inclusive,

22 Defendants.
23

Case No. 20CV03219

Assigned for All Purposes to:

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

Trial Date: None

Complaint filed:

24
25 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. FILIBERTO EUDAVE as
26 Private Attorney General (“Plaintiff”), who asserts claims against TREASURY WINE ESTATES
27 AMERICAS COMPANY, a corporation, and DOES 1 through 25, inclusive (collectively
28 “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 himself, approximately more
4 than 10,000 similarly situated current and former aggrieved employees employed by Treasury
5 Wine Estates Americas Company and/or its related entities (“Employer” or “Defendants”)
6 between April 6, 2019 and the resolution of the action (“Statutory Period”), and the People of the
7 State of California (hereinafter collectively “Employees”).

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

16 3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce
17 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys
18 general action for recovery of penalties under the PAGA. Upon the conclusion of the PAGA
19 exhaustion period, Plaintiff will file a First Amended Complaint, as permitted by law, alleging
20 exhaustion of administrative remedies.

21 **JURISDICTION AND VENUE**

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

24 5. Venue is proper in this Court because this action arises from work performed in
25 Northern Santa Barbara County.

26 **PARTIES**

27 6. For all times relevant herein, FILIBERTO EUDAVE was an adult individual
28 residing in the State of California. Mr. Eudave is not suing in his individual capacity; he is

1 proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved
2 employees, including himself and other aggrieved employees.

3 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
4 alleges, that Defendant TREASURY WINE ESTATES AMERICAS COMPANY was and is a
5 Delaware corporation with its principal place of business in California.

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

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

15 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
16 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
17 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
18 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
19 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
20 to the extent of the liability of Defendants as alleged herein.

21 11. Plaintiff is further informed and believe, and thereon allege, that at all times herein
22 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
23 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
24 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
25 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
26 Whenever and wherever reference is made to individuals who are not named as defendants in this
27 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
28

1 acted on behalf of Defendants named in this Complaint within the scope of their respective
2 employment or agency with Defendants.

3 **FIRST COUNT**

4 **Failure to Pay Minimum Wages Owed**

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

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

8 13. Section 1197 provides that “[t]he minimum wage for employees fixed by the
9 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
10 and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after
11 January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per
12 hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be
13 less than the amounts set forth in this subdivision (1) For any employer who employs 26 or
14 more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December
15 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to
16 December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to
17 December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to
18 December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12,
19 subd. (b).

20 14. Pursuant to Section 1197.1, “(a) Any employer or other person acting either
21 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
22 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
23 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
24 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
25 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
26 for each underpaid employee for each pay period for which the employee is underpaid. This
27 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
28 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section

1 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
2 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
3 regardless of whether the initial violation is intentionally committed. This amount shall be in
4 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
5 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

6 15. Throughout the Statutory Period, Defendants failed to pay Employees at least
7 minimum wage for all time worked, including time worked prior to Employees’ scheduled shifts.
8 Employees including Mr. Eudave were required by Defendants to appear ready for work early
9 (e.g., 15 minute early), time worked during Employees’ meal periods when they were required by
10 Defendants to remain on Defendants’ premises, and time worked after Employees’ regularly
11 scheduled shifts, which must be paid at a rate of not less than minimum wage pursuant to
12 California law. Defendants paid zero dollars for this time worked prior to and after Employees’
13 regularly scheduled shifts. Consequently, Defendants violated the foregoing minimum wage laws
14 and are subject to all civil penalties and other remedies under the PAGA.

15 **SECOND COUNT**

16 **Failure to Pay Overtime Wages Owed**

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

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

20 17. “The maximum hours of work and the standard conditions of labor fixed by the
21 commission shall be the maximum hours of work and the standard conditions of labor for
22 employees. The employment of any employee for longer hours than those fixed by the order or
23 under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198. Prior to
24 January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, “employees shall not
25 be employed more than ten (10) hours in any one workday or more than six (6) days in any
26 workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular
27 rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours
28

1 on the seventh (7th) day of work and double the employee's regular rate of pay for all hours
2 worked over eight (8) on the seventh (7th) day of work in the workweek."

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

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

13 20. Starting January 1, 2021, Employees shall not be employed more than eight and
14 one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
15 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
16 over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any
17 one workweek.

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

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

1 employee for each pay period for which the employee was underpaid in addition to an amount
2 sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

3 23. Throughout the Statutory Period, Defendants failed to account for all of
4 Employees’ hours worked and consequently failed to pay Employees at least minimum wage for
5 all time worked. As a result, Employees also accrued additional unpaid overtime wages for hours
6 in excess of the foregoing applicable overtime thresholds.

7 24. Defendants are subject to all civil penalties and other remedies under the PAGA.

8 **THIRD COUNT**

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

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

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

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

24 27. Pursuant to the applicable regulation, “[w]hen the outdoor temperature in the work
25 area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with
26 shade at all times while employees are present that are either open to the air or provided with
27 ventilation or cooling. The amount of shade present shall be at least enough to accommodate the
28 number of employees on recovery or rest periods, so that they can sit in a normal posture fully in

1 the shade without having to be in physical contact with each other. The shade shall be located as
2 close as practicable to the areas where employees are working. Subject to the same specifications,
3 the amount of shade present during meal periods shall be at least enough to accommodate the
4 number of employees on the meal period who remain onsite.” Cal. Code Regs., tit. 8, § 3395,
5 subd. (d)(1).

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

15 29. “When temperatures reach 95 degrees or above, the employer shall ensure that the
16 employee takes a minimum ten minute net preventative cool-down rest period every two hours.
17 The preventative cool-down rest period required by this paragraph may be provided concurrently
18 with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8
19 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal
20 or rest period thus resulting in no additional preventative cool-down rest period required in an
21 eight hour workday. If the workday will extend beyond eight hours, then an additional
22 preventative cool-down rest period will be required at the conclusion of the eighth hour of work;
23 and if the workday extends beyond ten hours, then another preventative cool-down rest period will
24 be required at the conclusion of the tenth hour and so on.” Cal. Code Regs., tit. 8, § 3395, subd.
25 (e)(6).

26 30. Throughout the Statutory Period, Defendants failed to allow or encourage shaded
27 recovery periods as required by law when temperatures exceeded eighty degrees and when
28 temperatures were eighty degrees and lower. Defendants also failed to ensure that Employees

1 took cool-down rest periods at any time, including when temperatures reached ninety-five degrees.
2 Employees' complaints to Defendants about heat illness were inadequately addressed. Defendants
3 failed to pay recovery period premium wages to Employees for its violations. Employees
4 including Plaintiff complained about the lack of shade, and Defendants reprimanded Employees in
5 violation of §§ 98.6 and 1102.5 for seeking out shade in the extreme heat. Defendants also failed
6 to comply with § 226.7 because it failed to make suitable water available for heat-recovery periods
7 at all times. The water provided, if any, was discolored and not suitable for drinking.

8 31. Defendants are subject to civil penalties and other remedies under the PAGA.

9 **FOURTH COUNT**

10 **Failure to Provide Compliant Rest Periods or Pay Rest Premiums**

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

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

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

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

27 35. Throughout the Statutory Period, Employees regularly worked 6-10 hours daily
28 without being provided a second rest period. Employer maintained an illegal practice of not

1 providing Employees who worked shifts between 6-10 hours with sanctioned second 10-minute
2 rest periods, which were controlled and ordered by managers. Moreover, for all of the Employees'
3 rest periods, including their first daily rest periods, they were routinely provided by Defendants
4 late, and Employees were not free of all duties or free to leave the premises. Defendants also
5 failed to pay rest period premium wages for missed rest breaks.

6 36. Defendants are subject to all civil penalties and other remedies under the PAGA.

7 **FIFTH COUNT**

8 **Failure to Provide Compliant Meal Periods or Pay Meal Premiums**

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

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

12 38. "An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and employee. An employer may
16 not employ an employee for a work period of more than 10 hours per day without providing the
17 employee with a second meal period of not less than 30 minutes, except that if the total hours
18 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
19 employer and the employee only if the first meal period was not waived." Cal. Lab. Code, § 512,
20 subd. (a).

21 39. Pursuant to Labor Code sections 226.7 and 512, and Wage Order 14, duty-free
22 meal periods of no less than thirty (30) minutes are required for all non-exempt employees who
23 work at least five (5) hours in a work period per day. The employee must be free to leave the
24 employer's premises. An employer may not employ an employee for a work period of more than
25 10 hours per day without providing the employee with a second meal period of not less than 30
26 minutes. Time records of meal periods must be kept. Meal periods must be paid when the
27 employee is not relieved of all duties or free to leave the premises. An employer who fails to
28

1 provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for
2 each day in which a duty-free meal period is not provided.

3 40. "If an employer fails to provide an employee a meal or rest or recovery period in
4 accordance with a state law, including, but not limited to, an applicable statute or applicable
5 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
6 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
7 pay the employee one additional hour of pay at the employee's regular rate of compensation for
8 each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code, § 226.7,
9 subd. (c).

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

18 42. Throughout the Statutory Period, Defendants required the Employees to remain on
19 the premises for their meal periods, rendering such time "on duty." Despite this practice,
20 Defendants maintained an illegal policy and practice of automatically deducting time from
21 Employees' wages in violation of §§ 226.7, 221 and 223. Moreover, Defendants failed to pay
22 premium wages to Employees. Employees including Plaintiff complained about the lack of
23 compliant breaks and the wage deductions, and Defendants retaliated against Employees in
24 violation of §§ 98.6 and 1102.5 (for example, by giving extra undesirable work assignments like
25 hole-digging).

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1 **SIXTH COUNT**

2 **Inaccurate Wage Statements**

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, semimonthly or at the time of each payment of wages,
7 furnish each of his or her employees, either as a detachable part of the check, draft, or voucher
8 paying the employee s wages, or separately when wages are paid by personal check or cash, an
9 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
10 the employee, except for any employee whose compensation is solely based on a salary and who is
11 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
13 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
14 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
15 net wages earned, ... (7) the name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number, ..., and
17 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
19 temporary services employer as defined in Section 201.3, the rate of pay and the total hours
20 worked for each temporary services assignment." Cal. Lab. Code, § 226, subd. (a).

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

27 46. Throughout the Statutory Period, Defendants failed to furnish Employees with
28 accurate itemized statements at the time of each payment of wages showing the correct gross

1 wages earned, correct total hours worked, correct net wages earned, and the corresponding correct
2 number of hours worked at each applicable hourly rate. Rather than providing statements of actual
3 time worked and a correct payment of wages based thereon, Defendants failed to capture and pay
4 Employees for all minimum and overtime worked, and also failed to capture and pay premium pay
5 for missed meal, rest, and recovery periods. Consequently, Defendants failed to provide
6 Employees accurate itemized wages statements as required by Section 226.

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

8 **SEVENTH COUNT**

9 **Untimely Payment of Wages**

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

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

13 49. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
14 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
15 calendar month, on days designated in advance by the employer as the regular paydays. Labor
16 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
17 between the 16th and the 26th day of the month during which the labor was performed, and labor
18 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
19 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

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

26 51. Special rules govern agricultural employees, however: “All wages, other than those
27 mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section
28 1140.4, are due and payable twice during each calendar month, on days designated in advance by

1 the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th
2 days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the
3 month during which the labor was performed. Labor performed between the 16th and the last day,
4 inclusive, of any calendar month shall be paid between the first and the seventh day of the
5 following month.” Cal. Lab. Code, § 205.5.

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

13 53. Rather than timely paying Employees all wages due within the periods set forth
14 above, throughout the Statutory Period, Defendants failed to timely pay Employees for all hours
15 worked and all premium wages.

16 54. Defendants are subject to civil penalties as provided by law.

17 **EIGHTH COUNT**

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

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

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

22 56. “Every person employing labor in this state shall: ... (d) Keep, at a central location
23 in the state or at the plants or establishments at which employees are employed, payroll records
24 showing the hours worked daily by and the wages paid to, and the number of piece-rate units
25 earned by and any applicable piece rate paid to, employees employed at the respective plants or
26 establishments. These records shall be kept in accordance with rules established for this purpose
27 by the commission, but in any case shall be kept on file for not less than three years.” Lab. Code,
28 § 1174, subd. (d).

57. Moreover, Wage Order 14 requires employers to keep accurate information regarding their employees, including time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. The “standard conditions of labor fixed by the commission [in Wage Order 14] shall be ... the standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.” Lab. Code, § 1198.

58. Throughout the Statutory Period, Defendants failed to accurately record and keep payroll records showing the hours worked daily by Employees for the minimum period of three years, failed to keep accurate information showing when Employees began and ended each work period, and failed to keep accurate records of Employees' meal periods.

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

NINTH COUNT

Failure to Pay Wages at Termination

(By Plaintiff against All Defendants)

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

61. “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 secretes 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).

62. Throughout the Statutory Period, Defendants failed to pay Employees at least minimum wage, overtime, and all premium wages for all time worked. These wages were owed

1 and due to Employees at the time of their termination. Defendants did not provide these payments
2 to Employees at the time of termination or within a sufficient time of resignation as required by
3 law. Moreover, Defendants failed to pay Employees' earned vacation wages at or near the time of
4 their termination in violation of the foregoing sections and § 227.3. Defendants' failure to timely
5 pay these wages at the time of termination, and failure to pay Employees' continued wages for the
6 30-day period thereafter, constitutes a violation of Sections 201, 203, and 227.3.

7 **TENTH COUNT**

8 **Failure to Produce Employment Records Upon Request**

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

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

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

21 65. "An employer that is required by this code or any regulation adopted pursuant to
22 this code to keep the information required by subdivision (a) shall afford current and former
23 employees the right to inspect or receive a copy of records pertaining to their employment, upon
24 reasonable request to the employer. The employer may take reasonable steps to ensure the identity
25 of a current or former employee. If the employer provides copies of the records, the actual cost of
26 reproduction may be charged to the current or former employee. (c) An employer who receives a
27 written or oral request to inspect or receive a copy of records pursuant to subdivision (b)
28 pertaining to a current or former employee shall comply with the request as soon as practicable,

1 but no later than 21 calendar days from the date of the request. A violation of this subdivision is an
2 infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an
3 affirmative defense for an employer in any action alleging a violation of this subdivision. An
4 employer may designate the person to whom a request under this subdivision will be made.” Lab.
5 Code, § 226, subs. (b) and (c).

6 66. Defendants violated these provisions by failing to allow Employees access to all
7 records which they are entitled to inspect. Defendants maintain a policy and practice of ignoring
8 Employees’ requests for their employment records, and/or retaliating against Employees who
9 retain counsel to assert their rights under the California Labor Code by ignoring represented
10 Employees’ requests for their employment files.

11 67. Defendants failed to produce any records in response to Plaintiff’s requests made
12 under the foregoing provisions.

13 68. Defendants are subject to additional civil penalties as provided by law

14 **ELEVENTH COUNT**

15 **Failure to Provide Compliant Toilet Breaks**

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

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

19 70. “Every factory, workshop, mercantile or other establishment in which one or
20 more persons are employed, shall be kept clean and free from the effluvia arising from any drain
21 or other nuisance, and shall be provided, within reasonable access, with a sufficient number of
22 toilet facilities for the use of the employees. When there are five or more employees who are not
23 all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use
24 of each sex, which shall be plainly so designated.” Cal. Lab. Code, § 2350.

25 71. “All employers shall comply with standards relating to sanitary facilities adopted
26 by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with
27 Section 140) of Division 1.” Cal. Lab. Code, § 2260. These standards include the following with
28 respect to sanitary facilities: “Toilet facilities shall be kept clean, maintained in good working

1 order and be accessible to the employees at all times. Where practicable, toilet facilities should be
2 within 200 feet of locations at which workers are regularly employed and should not be more than
3 one floor-to-floor flight of stairs from working areas.” Cal. Code Regs., tit. 8, § 3364, subd. (b)
4 (“Sanitary Facilities”), adopted per Lab. Code, § 142.3. For agricultural employees, sanitary
5 facilities must also comply with Cal. Code Regs., tit. 8, § 3457. Employees’ right to the use of
6 toilets at all times is separate and independent from their right to meal and rest breaks.

7 72. Throughout the Statutory Period, Defendants violated the foregoing by failing to
8 adequately maintain clean toilets, and failing to provide reasonable access to a sufficient number
9 of toilet facilities for the use of Employees. For example, although Mr. Eudave worked in a crew
10 of more than 5 Employees who were not the same gender, Defendants provided only toilet facility;
11 men and women were required to share one facility. Moreover, Defendants’ toilet facilities were
12 filthy. For example, the toilet facility provided to Mr. Eudave was cleaned only approximately
13 once every week. What made things worse was Defendants also failed to ensure that its toilet
14 facilities were sufficiently close to work areas. For example, it took Mr. Eudave up to 15 minutes
15 to access toilet facilities by motor vehicle. All of the foregoing are detrimental to Employees’
16 health and must be remedied.

17 73. Throughout the Statutory Period, Defendants violated the following provisions of
18 applicable regulation, Cal. Code Regs., tit. 8, § 3457: “**(1) Potable drinking water.** (A) Potable
19 water shall be provided during working hours and placed in locations readily accessible to all
20 employees. Access to such drinking water shall be permitted at all times. (B) The water shall be
21 fresh and pure, suitably cool, and in sufficient amounts, taking into account the air temperature,
22 humidity, and the nature of the work performed, to meet the needs of all employees. (C) The water
23 shall be dispensed in single-use drinking cups or by fountains....”

24 74. Defendants failed to comply with the foregoing requirement, providing water that
25 was discolored and unsuitable for drinking.

26 75. “**(2) Toilet and handwashing facilities.** ... (D) The facilities shall be located
27 within a one-quarter (1/4) mile walk or within five (5) minutes, whichever is shorter. (E) Where
28

1 due to terrain it is not feasible to locate facilities as required above, the facilities shall be located at
2 the point closest to vehicular access.”

3 76. Defendants failed to comply with the foregoing requirement, requiring
4 Employees to travel excessive distances to use the restroom. Defendants placed the portable
5 facilities so that Employees had to travel up to 15 minutes each way, and far more than a ¼ mile
6 walk, if they wanted to access the facilities, depending on where the worker was. Defendants
7 could have been moved the facilities closer to the field workers at a point where Defendants had
8 vehicular access, and it was feasible to do so, but they failed to do so.

9 77. **“(3) Maintenance standards:** ... [T]oilet facilities ... which are under the
10 control of the employer, shall be serviced and maintained by the employer at all times in
11 accordance with appropriate public health sanitation practices, including the following: ... (B)
12 Toilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and
13 kept in good repair. Written records of service and maintenance shall be maintained and retained
14 for two years. ...”

15 78. Defendants violated this requirement, including by failing to clean portable toilets
16 sufficiently often as necessary to keep them in a sanitary condition.

17 79. **“(4) Reasonable use:** The employer shall notify each employee of the location of
18 the sanitation facilities and potable water and shall allow each employee reasonable opportunities
19 during the workday to use these facilities. The employer shall ensure that employees use the
20 sanitation facilities provided and shall inform each employee of the importance of each of the
21 following good hygiene practices to minimize exposure to the hazards in the field of heat,
22 communicable diseases, retention of urine, and agrichemical residues: (A) Use the water and
23 facilities provided for drinking, handwashing, and elimination; (B) Drink water frequently,
24 especially on hot days; (C) Urinate as frequently as necessary; (D) Wash hands both before and
25 after using the toilet; and (E) Wash hands before eating and smoking.”

26 80. Defendants violated this requirement by failing to adequately inform and
27 encourage Employees to properly use the sanitation facilities in accordance with the regulation.
28 Quite the opposite, Defendants discouraged use of the facilities.

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

TWELFTH COUNT

Failure to Provide Compliant Water Breaks

(By Plaintiff against All Defendants)

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

83. “Every employer of labor in this state shall, without making a charge therefor, provide fresh and pure drinking water to his or her employees during working hours. Access to the drinking water shall be permitted at reasonable and convenient times and places.” Cal. Lab. Code, § 2441. Employees’ right to water breaks is separate and independent from their right to meal and rest breaks.

84. Throughout the Statutory Period, Defendants' policies and practices required Employees to work continuously during all work periods, without access to drinking water at reasonable and convenient times and places. Moreover, the water, to the extent any was provided, was "fresh and pure," but was discolored and unfit for drinking. Defendants violated § 2441 and are subject to additional civil penalties.

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

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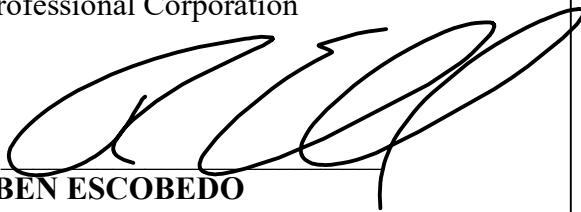
PRAYER

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

86. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount not less than \$25,000,000;
87. For reasonable costs and attorneys' fees; and
88. For such other and further relief as the Court deems proper.

DATED: September 30, 2020

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for FILIBERTO EUDAVE
as Private Attorney General