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Job: 5991355

Due: 08/10/2021

Recipient:

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Created: 08/10/2021

Client: Koul Law Firm Phone: (213) 761-5484

Email: nazo@koullaw.com

Case #		Plaintiff	Calderon
Court	Monterey County Superior Court - Central	Defendant	D'Arrigo Bros Co.
Documents			
Instructions			
Efile			
Summons			
Complaint			
CCCS			
Serve after			

Date/Time/Initials:

Description of Service / Recipient:

RUSH
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Submitted 8/10/21
4831929 VR
Accepted 8/10/21

Person Served:

Date Served:

Time (Military):

Served By:

Age: Gender: Ethnicity: Weight:

Height: Hair: Eyes: Relationship:

Job: 5991355

PP \$45 SF
\$5 CTF
\$435 Adv
\$1000 chra

SUPERIOR COURT OF MONTEREY COUNTY Monterey Branch, 1200 Aguajito Road, Monterey, CA 93940	
JOAQUIN LOPEZ CALDERON vs. DARRIGO BROS. CO., OF CALIFORNIA	CASE NUMBER 21CV002525
	Case Management Conference

NOTICE OF ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

Your case number ending EVEN is assigned for all purposes to the Hon. Marla O. Anderson- Dept. 14

Your case number ending ODD is assigned for all purposes to the Hon. Thomas W. Wills- Dept. 15

Your complex or class action case is assigned for all purposes to Assigned Visiting Judge- Dept. 13

This notice, which includes the Alternative Dispute Resolution (ADR) information packet (CI-127), must be served together with the Summons and Complaint or Petition pursuant to California Rule of Court 3.221. *Parties are required to follow the complex case instructions, case management rules as outlined in California Rule of Court 3.722 and Chapter 6 of the Local Rules of Court, all can be found on the court website at www.monterey.courts.ca.gov.* A case management statement from each party or joint statement shall be filed prior to the conference as outlined in California Rule of Court 3.725.

Date: December 14, 2021 Time: 9:00 AM

Location: Monterey Courthouse, 1200 AGUAJITO ROAD, MONTEREY, CA 93940

Telephonic appearance, two days prior to the hearing, can be arranged directly through Court Call Service at 1-888-882-6878. California Rule of Court 3.670. Authorization for telephone appearance will not be given on the day of the hearing.

Pursuant to statutes of the State of California, it is the responsibility of the court to establish procedures for the timely and effective disposition of civil cases.

The court is charged with the responsibility of ensuring all parties a fair and timely resolution of their disputes, and the court is in the best position to establish neutral rules and policies without adversely affecting all parties' right to a fair trial. Effective management of the judicial system will build continuing respect by the community of government, minimize the costs to the parties and the public, and maximize the probability that cases will be timely resolved.

The goals of the Monterey County civil case and trial management system are:

1. To provide an effective and fair procedure for the timely disposition of civil cases;
2. To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and
3. To establish reasonable rules and policies to require that cases reporting "ready" for trial may be tried without unnecessary delays or interruptions.

Court proceedings are in English. If you or a witness in your case needs an interpreter, please complete Judicial Council form INT—300. You must file INT-300 at the first floor clerks counter (or by e-file) 15* business days prior to your hearing.

*Los procedimientos judiciales son en inglés. Si usted o un testigo en su caso necesita un intérprete, complete el formulario INT-300 del Consejo Judicial. **Debe presentar el INT-300 con los empleados legales de la oficina del primer piso (o mediante archivo electrónico) 15* días hábiles antes de su audiencia.***

Alternative Dispute Resolution (CI-127)
(INFORMATION PACKET)
OPTIONS FOR RESOLVING YOUR DISPUTE

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach an agreement.

Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time:** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
- **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
- **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
- **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- **Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the ADR Options?

The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

Mediation

In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate: Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration

In arbitration, a neutral person called an “arbitrator” hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either “binding” or “nonbinding.” Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator’s decision as final. Generally, there is no right to appeal an arbitrator’s decision in binding arbitration. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator’s decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate: If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator’s award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In neutral evaluation, each party gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party’s evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator’s opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate: Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate: Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conference

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

D'ARRIGO BROS. CO., OF CALIFORNIA, a California Corporation,
and DOES 1-50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOAQUIN LOPEZ CALDERON, on behalf of himself, all aggrieved
employees, and the State of California as a Private Attorneys General,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 8/10/2021 9:01 AM
By: Rowena Esquerra, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California
County of Monterey, Monterey Courthouse
1200 Aguajito Road, Monterey, CA 93940

CASE NUMBER:
(Número del Caso): 21CV002525

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Nazo Koulloukian, SBN 263809, 3435 Wilshire Blvd., Ste. 1710, Los Angeles, CA 90010, Tel:(213) 761-5484

DATE: 8/10/2021
(Fecha)

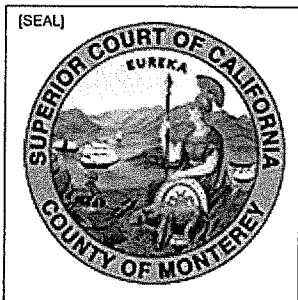
Clerk, by /s/ Rowena Esquerra, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Nazo Koulloukian, SBN 263809; Christine Hamandayan, SBN 320999 KOUL LAW FIRM 3435 Wilshire Blvd., Suite 1710 Los Angeles, CA 90010 TELEPHONE NO.: (213) 761-5484 FAX NO.: (818) 561-3938 ATTORNEY FOR (Name): Plaintiff and all Aggrieved Employees		FOR COURT USE ONLY ELECTRONICALLY FILED BY Superior Court of California, County of Monterey On 8/10/2021 9:01 AM By: Rowena Esquerra, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY STREET ADDRESS: 1200 Aguajito Road, MAILING ADDRESS: 1200 Aguajito Road, CITY AND ZIP CODE: Monterey, 93940 BRANCH NAME: Monterey Courthouse		
CASE NAME: CALDERON v. D'ARRIGO BROS. CO., OF CALIFORNIA, et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 21CV002525 JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): One (1)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 9, 2021

Nazo Koulloukian

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

1 Nazo Koulloukian, SBN 263809
2 nazo@koullaw.com
3 **KOUL LAW FIRM**
4 3435 Wilshire Blvd., Suite 1710
5 Los Angeles, CA 90010
6 Telephone: (213) 761-5484
7 Facsimile: (818) 561-3938

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 8/10/2021 9:01 AM
By: Rowena Esquerra, Deputy

8 Sahag Majarian, II, Esq. SBN 146621
9 Sahagii@aol.com
10 **LAW OFFICES OF SAHAG MAJARIAN II**
11 18250 Ventura Blvd.
12 Tarzana, CA 91356
13 Telephone: (818) 609-0807
14 Facsimile: (818) 609-0892

15 Attorneys for Plaintiff,
16 JOAQUIN LOPEZ CALDERON, on behalf of
17 themselves, all aggrieved employees, and the State
18 of California as a Private Attorneys General

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **MONTEREY COUNTY**

21 JOAQUIN LOPEZ CALDERON, on behalf) Case No.: 21CV002525
22 of himself, all aggrieved employees, and)
23 the State of California as a Private)
24 Attorneys General,) **REPRESENTATIVE ACTION**
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Plaintiff JOAQUIN LOPEZ CALDERON brings this PAGA representative action
complaint on behalf of themselves, all aggrieved employees, and the State of California as a
Private Attorneys General, and alleges as follows:

NATURE OF THE ACTION

1
2
3 1. Plaintiff JOAQUIN LOPEZ CALDERON worked for defendant D'ARRIGO
4 BROS. CO., OF CALIFORNIA, and Does 1-50 (collectively "Defendants") from 2006
5 until April of 2021. Plaintiff brings this action pursuant to the Private Attorneys General
6 Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a representative basis. All
7 current and former employees of Defendants within one year of serving notice on the
8 LWDA to the present are aggrieved employees.

9 2. Defendants failed to comply with California Labor Code requirements due to
10 erroneous, willful, and intentional employment practices and policies. Plaintiff brings this
11 representative action on behalf of themselves, all others similarly situated aggrieved
12 employees, and the State of California, based upon the claims articulated below. Plaintiff
13 provided notice of their claims pursuant to §2698 *et seq.*, to the Labor and Workforce and
14 Development Agency ("LWDA"), as illustrated by the attached Exhibit. The LWDA has
15 not provided any notice to Plaintiff following the exhaustion of the 65-day notice period
16 required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
17 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.*

18 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for
19 all hours worked; (2) failing to provide timely meal breaks; (3) failing to provide safe
20 working conditions; (4) failing to provide rest periods and cool down periods; (5) failing
21 to provide a safe and healthful working environment; (6) failing to pay wages due upon
22 termination; and (7) failing to provide accurate wage statements and maintain accurate
23 payroll records. Defendants are therefore liable for civil penalties under the Cal. Labor
24 Code, including the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*,
25 as described more fully herein.

THE PARTIES

26 7. Plaintiff JOAQUIN LOPEZ CALDERON is a resident of the State of California
27 and was employed as an hourly, nonexempt employee of Defendants from 2006 until April
28 of 2021.

1 8. Defendant D'ARRIGO BROS. CO., OF CALIFORNIA. is a California
2 Corporation doing business in California with the capacity to sue and to be sued and doing
3 business, in Monterey County, State of California.

4 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
5 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50,
6 but is informed and believes and thereon alleges that said Defendants are legally
7 responsible for the wrongful conduct alleged herein and therefore sues these Defendants
8 by such fictitious names, Plaintiffs will amend this complaint when their true names and
9 capabilities are ascertained.

10 10. Plaintiff is informed and believes and thereon alleges that each Defendant,
11 directly or indirectly, or through agents or other persons, employed Plaintiff and other
12 aggrieved employees of the representative class, and exercised control over their wages,
13 hours, and working conditions. Plaintiff is informed and believes and thereon allege that
14 each Defendant acted in all respects pertinent to this action as the agent of the other
15 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
16 hereto, and the acts of each Defendants are legally attributable to the other Defendants.

17 **JURISDICTION AND VENUE**

18 11. Venue is proper in this judicial district because Defendants conduct business in
19 this county, and each defendant has legal obligations to Plaintiff and many of the aggrieved
20 employees in this case that arose in this county.

21 12. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional
22 limits of the Superior Court and will be established according to proof at trial. Based on
23 information, investigation, and analysis, Plaintiff alleges that the amount in controversy,
24 including claims for monetary damages, penalties, and attorney's fees, is more than twenty-
25 five thousand dollars (\$25,000).

26 13. The California Superior Court has jurisdiction in this matter because Plaintiff is
27 a resident of California, and Defendants are incorporated in and/or qualified to do business
28 in California and regularly conduct business in California. Further, there is no federal
question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

14. During the relevant period, Defendants committed various violations of the California Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state law, which is intended to increase profits to the detriment of aggrieved employees.

15. Defendant D'ARRIGO BROS. CO., OF CALIFORNIA operates a shipping and parcel delivery business where Plaintiff worked as a Delivery Driver. Defendants employed Plaintiff and over 100 current and former aggrieved employees.

16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendants engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

17. Plaintiff and all current and former employees within one year of filing this action to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

18. Defendants, and each of them, have committed the following violations of the California Labor Code:

Failure to Pay for All Hours Worked

(Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)

19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

20. Section 2(G) of Wage Order 13 defines "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so." When employees like Plaintiff and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including shaving time from their timecards due to employer rounding and

1 auto-deducting meal break practices, and failing to pay for required travel time between
2 fields.

3 21. This resulted in many unpaid hours worked for all aggrieved employees required
4 to communicate regarding work matters with their employer while off the clock.
5 Defendants violated Labor Code §§510 1194, and 1198, and Wage Order 13. Defendants
6 are liable for civil penalties pursuant to Labor Code §§558 and 2698 et seq.

7 22. Mid-Shift Transportation Time. D'Arrigo has failed to maintain a policy that
8 compensates employees for all hours worked, including overtime. Plaintiff and
9 aggrieved employees were required from time to time to travel mid-shift from one field
10 or yard to another. Plaintiff and other employees were required to take a bus from one
11 field to another, oftentimes spending up to one full hour each way of unpaid travel while
12 under the control of Employers. Plaintiff and aggrieved employees were not paid for
13 work that was involved in switching locations, including packing up and time spent
14 commuting.

15 23. In the seminal case on the issue, *Morillion v. Royal Packing Co.*, 22 Cal.
16 4th 575, 582 (2000), the California Supreme Court affirmatively established that
17 whenever an employee is under the control of his employer, regardless of whether that
18 employee is actually working, the employee must be compensated for that time as "hours
19 worked." In *Morillion*, a factually similar case, the California Supreme Court determined
20 that employees must be paid for time they spend traveling to and from the fields on
21 employer-provided buses pursuant to the IWC wage order which defines "hours worked"
22 as "the time during which an employee is subject to the control of an employer, ...
23 includ[ing] all the time the employee is suffered or permitted to work, whether or not
24 required to do so." (Cal. Code Regs., tit. 8, § 11140, subd. 2(G).) Here, just as in
25 *Morillion*, Plaintiff and aggrieved employees were entitled to compensation, including
26 overtime compensation, for all time spent traveling from one employer location to
27 another.

28 24. Pre and Post Shift Work and Time-Shaving. Plaintiff and aggrieved
employees frequently worked off the clock and were routinely subjected to periods

1 wherein they were under the Employers' control but not compensated for their time.
2 Employees do not clock in and out. Instead, the clock in and out times are recorded for
3 them, in handwriting by the Employer. Plaintiff and aggrieved employees were required
4 to show up to the yard 30 minutes prior to a bus arriving and prior to being clocked in, to
5 take them to the fields. Time is recorded from shift start to shift end time, instead of
6 actual hours worked. In addition to the 30 minutes of unpaid time they were expected to
7 arrive prior to the bus arriving, the Plaintiff and aggrieved employees were also expected
8 to load and unload the tools from the bus into the machine they use in the fields and then
9 load them back up end of shift, even though this work amounts to 30-45 minutes of work
10 per shift and is done "off the clock." Employees complete these pre and post shift tasks
11 unpaid, every day. In addition Plaintiff and aggrieved employees were required to wash
12 their hands after breaks and before returning to work. This activity was required but
13 performed off the clock and would take 3-5 minutes to perform depending on the line of
14 workers at the wash stations.

15 25. When it comes to time shaving and rounding, the California Supreme Court
16 has rejected the de minimis argument frequently echoed by employers, confirming that
17 employees are entitled to payment for all hours (and minutes) worked. Indeed, California
18 law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its
19 face and 'it is used in such a manner that it will not result, over a period of time, in failure
20 to compensate the employees properly for all the time they have actually worked.'"
21 (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210
22 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it
23 consistently shaved time from Plaintiff and aggrieved employees' hours worked,
24 resulting in a failure to compensate Plaintiff and aggrieved employees for all hours and
25 overtime hours worked.

26 26. Work Performed During Unpaid Meal Periods. As more fully set forth below,
27 Employer failed to permit Plaintiff and others to take timely, off-duty, first and second
28 meal breaks of "not less than 30 minutes" for each five consecutive hours of work in
violation of Labor Code §§226.7 and 512. Employees working in the fields did not clock

1 in and out for meal periods, and 30 minutes was automatically deducted from their
2 timecard regardless of whether and when they took a meal period, if at all. In addition,
3 employees working in the fields had a long walk to the rest areas where bathroom breaks
4 and other breaks were to be taken, which cut into their meal period. Further, as
5 previously mentioned, Plaintiff and other employees were required to wash their hands
6 before returning to work. This activity was done during break time, but was a required
7 work activity and would take up to 5 minutes of off the clock time to perform.

8 27. When employees earning minimum wage do not receive payment for all
9 hours worked, including off-the-clock and overtime hours worked, the result is that they
10 are earning less than the statutory minimum wages for all hours worked, in violation of
11 Labor Code §1197.

12 28. Failure to Pay COVID-19 Supplemental Paid Sick Leave. Pursuant to Labor
13 Code §1197, “[t]he minimum wage for employees fixed by the commission or by any
14 applicable state or local law, is the minimum wage to be paid to employees, and the
15 payment of a lower wage than the minimum so fixed is unlawful.” In the case of COVID-
16 19, Executive Order N-51-20 requires that Employers provide 80 hours of paid sick leave
17 to full time employees. Under the Executive Order food sector workers (this includes
18 those who work in the farming industry) who work full time are entitled to 80 hours of
19 paid sick leave if the worker is subject to a Federal, State, or local quarantine or isolation
20 order related to COVID-19, or the worker is advised by a health care provider to self-
21 isolate or self-quarantine due to health concerns related to COVID-19, or the worker is
22 prohibited from working by the worker’s hiring entity due to health care concerns related
23 to the potential transmission of COVID-19.

24 29. In this case, Employer is a covered employer under N-51-20 and Plaintiff and
25 aggrieved employees are covered employees. Plaintiff and aggrieved employees were
26 required to take time off due to COVID-19 related illness or quarantine requirements yet
27 received zero pay, patently violating §1197 and 1197.1.

28 30. As a result of these practices, Employers have violated Cal. Labor Code
§§218, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders

1 paragraph(3)(A)(1) for failure to pay overtime. Employers are liable for civil penalties
2 pursuant to Cal. Labor Code §558and 2698 *et seq.*

3
4 **Failure to Provide Timely Meal Breaks**

5 (Civil Penalties under Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage
6 Orders 13 & 14)

7 31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth
8 and incorporate said paragraphs herein by reference.

9 32. Labor Code §512 provides, “[a]n employer may not employ an employee for a
10 work period of more than five hours per day without providing the employee with a meal
11 period of not less than 30 minutes...An employer shall not employ an employee for a work
12 period of more than 10 hours per day without providing the employee with a second meal
13 period of not less than 30 minutes.”

14 33. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to
15 work during any meal... period mandated by an applicable order of the Industrial Welfare
16 Commission.” Wage Order 13 provides, in pertinent part, “[u]nless an employee is
17 relieved of all duty during a 30 minute meal period, the meal period shall be considered an
18 ‘on duty’ meal period and counted as time worked.” Labor Code §1198 makes it unlawful
19 for an employer to employ an employee for longer hours than those fixed by the wage order
20 or under conditions of labor prohibited by the order.

21 34. Plaintiff and aggrieved employees claim that although he frequently worked 8-
22 9 hour shifts, he was not always provided a full, uninterrupted second 30 minute break.
23 The break area was a 10 minute walk from the work area, thus the breaks were shortened
24 due to travel time and rushed, in order to be able to get back to the work area in time.
25 Additionally, although all meal breaks were shortened due to the rest area being 10 minutes
26 away, D’Arrigo automatically recorded a full 30 minute break each day. Pursuant to *Alberts*
27 *v. Aurora Behavioral Health Care*, (2015) 241 Cal.App.4th 388, 408, altering time cards
28 and engaging in unlawful timekeeping practices to avoid paying meal period premiums is
unlawful.

1 35. Defendants failed to permit Plaintiff and aggrieved employees to take timely,
2 off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of
3 work in violation of Labor Code §§226.7 and 512. Although meals were routinely late,
4 interrupted or non-existent and always noncompliant, Defendants never paid penalty pay
5 to Plaintiff and others. As a derivative claim, Plaintiff alleges that her pay statements
6 were inaccurate, failing to include required meal period penalties, thus failing the
7 requirements of Labor Code §226(a). As a result of these violations, Defendants are
8 liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

9 36. Plaintiff alleges on information and belief that that Defendants’ failure to pay
10 aggrieved employees the unpaid balance of these meal period wages upon the termination
11 of their employment, as alleged in this cause of action, was willful, and thus entitles
12 aggrieved employees to penalties under Labor Code §203. Specifically, Labor Code §203
13 provides that an employee's wages shall continue as a penalty until paid or for a period of
14 up to 30 days from the time they were due, whichever period is shorter.

15 37. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative
16 action for each violation of Labor Code §226.7. Further, as a derivative claim for failing
17 to pay the premium pay of one (1) hour of pay at the employee’s regular rate of
18 compensation for each workday that the meal period is not provided, Plaintiff will seek
19 statutory penalties under Labor Code §226(a)(1) because the failure to pay such premium
20 wages rendered gross pay calculations inaccurate in violation of Labor Code
21 §226(e)(2)(B)(i).

22 **Failure to Provide Safe Working Conditions**

23 (Cal. Labor Code §1198, 2802, 2698 *et seq.*, Wage Order 13 &14 ¶15.)

24 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth
25 and incorporate said paragraphs herein by reference.

26 39. The Wage Order at ¶15 requires:

- 27 a. The temperature maintained in each work area shall provide reasonable
28 comfort consistent with industry-wide standards for the nature of the
process and the work performed.

1 40. Employer's workplaces would get unsafely hot due to outdoor conditions.
2 There is no temperature control mechanism as the work is done outdoors and no shade
3 was provided.

4 41. In addition to climate control issues, Employer failed to take safety measures
5 required to keep employees safe during COVID-19. Employer did not provide masks in
6 violation of Cal. Labor Code §2802. Employers also did not take employees
7 temperatures pre-shift or socially distance workers. Labor Code 1198 makes it unlawful
8 to employ employee in conditions prohibited by the wage order. By violating the wage
9 order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

10 **Failure to Provide Compliant Rest Breaks and Cool Down Periods**

11 (Cal. Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Orders 13 & 14)

12 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth
13 and incorporate said paragraphs herein by reference.

14 43. Plaintiff and his fellow employees often times worked without receiving their
15 required first and second required 10 minute rest breaks throughout the day, in which she
16 was relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Orders
17 13 & 14. Employees were also not able to take adequate 10 minute breaks due to the
18 restroom area being a 10 minute walk away from the work area, resulting in shortened
19 rest breaks.

20 44. Plaintiff and his fellow employees received shortened rest breaks as a result
21 of the time it took them to walk from the work area to the rest area. As a result of this
22 distance, Plaintiff and employees had no choice but to frequently take less than 10
23 minutes their allotted and required break time to ensure they were back in time, or could
24 take no break at all.

25 45. In addition, when rest breaks were taken, they were not compliant with
26 California law. Employees, including Plaintiff, who worked in the fields were not
27 provided with sufficient bathrooms or shade. Labor Code §226.7 requires that employers
28 provide rest periods and cool down rest periods that comply with state laws, including

1 those that require adequate shade and restrooms to employees for use during required
2 break and cool-down rest periods.

3 46. Employee did not receive all required rest breaks. When employees did
4 receive rest breaks, they were not compliant for the following reasons:

5 47. Cool-Down Rest Periods. Even on days when temperatures in the field rose
6 above one-hundred (100) degrees Fahrenheit, Employer discouraged employees from
7 taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working
8 for employers that maintain "outdoor places of employment" "shall be allowed and
9 encouraged to take a preventative cool-down rest in the shade when they feel the need to
10 do so to protect themselves from overheating." Employers who fail to provide required
11 recovery periods are liable for damages under Labor Code 226.7.

12 48. Adequate Shade. Rest breaks did not comply with state laws as required by
13 Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR
14 8, § 3395(d) requires employers to allow access to shade. The regulations define "shade"
15 as "blockage of direct sunlight." Employer failed to provide Plaintiff and aggrieved
16 employees, who worked in the fields, with adequate shade.

17 49. Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to
18 provide a safe and secure workplace. Because Employer did not provide shade required
19 by 8 CCR 3395 at their "outdoor places of employment," Plaintiff and employees were
20 exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and
21 health. Because shade is required, failure to provide adequate shade results in insufficient
22 recovery periods. Damages and PAGA penalties for violation of Labor Code §226.7 are
23 extensive.

24 50. Potable Drinking Water. Rest breaks did not comply with state laws as
25 required by Labor Code §226.7 because employees were denied sufficient potable water.
26 California Labor Code §2441 requires employers to provide fresh, free, and pure drinking
27 water for employees, at reasonable and convenient times and places. 8 CCR §3395
28 requires the provision of "potable drinking water meeting the requirements of §§1524,
3363, and 3457, as applicable, including but not limited to the requirements that it be

1 fresh, pure, suitably cool, and provided to employees free of charge.”8 CCR § 3457(c)
2 further requires the provision of potable drinking water and single use cups. Plaintiff and
3 aggrieved employees were not provided with adequate potable drinking water, not nearly
4 sufficient to meet the needs of the large number of employees working throughout the
5 duration of the shift.

6 51. Pursuant to §2441, “Any violation of this section is punishable for each
7 offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars
8 (\$200), or by imprisonment for not more than 30 days, or by both the fine and
9 imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide
10 the facilities required by the field sanitation standard shall be assessed a civil penalty...of
11 not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code 226.7
12 requires compliant breaks, and employees may recover PAGA penalties for violation of
13 226.7.

14 52. Legally Compliant Bathrooms. Rest breaks did not comply with state laws as
15 required by Labor Code §226.7 because field workers were not provided with bathrooms,
16 and employees who worked within the facility had to deal with filthy bathroom
17 conditions due to Employers failure to maintain clean bathrooms.

18 53. California Labor Code §2350 requires employers to provides that “[e]very
19 factory, workshop, mercantile or other establishment in which one or more persons are
20 employed, shall be kept clean and free from the effluvia arising from any drain or other
21 nuisance, and shall be provided, within reasonable access, with a sufficient number of
22 toilet facilities for the use of the employees.” Employer violated §2350 by failing to
23 provide reasonable access to the bathrooms for employees. Employer further violated 8
24 CCR §3364(b) by failing to place the toilets within a reasonable range of accessibility.

25 54. Cal. Code Regs. tit. 8, § 3364 requires that “toilet facilities should be within
26 200 feet of locations at which workers are regularly employed.” Employers here came
27 nowhere near this 200 ft from work area requirement, leaving their employees to walk
28 approximately half a mile to the nearest restroom. Moreover, “any employer who fails to
provide the facilities required by the field sanitation standard shall be assessed a civil

1 penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor
2 Code §6712. Further, the public policy of the State of California as codified, expressed
3 and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers
4 to take reasonable steps to provide a safe and secure workplace. Unfortunately,
5 bathrooms in Employer’s workplaces were inaccessible and did not meet the accessibility
6 standards set forth.

7 55. Employer failed to pay Plaintiff and similarly situated employees the premium
8 compensation (one hour of pay at the employee’s regular rate of pay for missed or
9 untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest
10 periods. Rest period violations occurred daily, however no rest period penalty pay is
11 listed on the above paystub. Pursuant to Labor Code §1198, “the employment of any
12 employee... under conditions of labor prohibited by the order is unlawful.” Accordingly,
13 because Employer violated Wage Order provisions requiring rest breaks, Employer
14 violated §1198. As a result of these violations, Employer is liable for civil penalties
15 pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Plaintiff
16 alleges that his pay statements were inaccurate, failing to include required rest period
17 penalties, thus failing the requirements of Labor Code §226(a), resulting in further
18 liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

19 **Failure to Provide Place Of Employment That Is Safe And Healthful**

20 **(Cal. Labor Code §6400, 6401, 6401.7, 6402, 6403, §2698 *et. seq.*)**

21 56. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth
22 and incorporate said paragraphs herein by reference.

23 57. Employer failed to take safety measures required to keep employees safe
24 during COVID-19. Employer is liable for civil penalties pursuant to §2698 *et.*
25 *seq.* Employers are liable for violating Labor Code § 6400 when they fail to provide place
26 of employment that is safe and healthful. §6401 is violated when employers fail to
27 furnish and use safety devices and safeguards, and adopt and use practices, means,
28 methods, operations, and processes which are reasonably adequate to render such

1 employment and place of employment safe and healthful. §6401.7 is violated where an
2 employer fails to implement and maintain an effective written injury prevention program,
3 including as relevant to contracting the COVID-19 virus. §6402 prohibits requiring or
4 permitting employee to go or be in employment or place of employment that is not safe
5 and healthful. § 6403 holds employers liable for failure or neglect to provide and use
6 reasonably adequate safety devices and safeguards or adopt or use reasonably adequate
7 methods and processes, or to do every other thing reasonably necessary to protect the life,
8 safety and health of employees.

9 58. Employer failed to timely make changes to the workplace at the onset of
10 COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory
11 syndrome coronavirus 2 (SARS-CoV-2). For the first few months of the pandemic, the
12 employer did not require distancing, masks, hand sanitizer. The Employees continued to
13 work without distancing throughout the pandemic. Employees did not take temperatures
14 at start of shift, did not provide additional handwashing facilities, no covid screening
15 program or plan was implemented, employees were not provided with their own
16 equipment (crew was constantly catching covid because they were all using the same
17 tools and the tools were not being cleaned or disinfected), and there was no effective
18 written covid prevention program. D'Arrigo's employees were employed under unsafe
19 conditions violative of Cal-OSHA regulations and the Health and Safety Code.

20 59. As a result of these practices, Employers have violated Cal. Labor Code
21 §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful
22 environment for their Employees, as outlined above. Employers are liable for civil
23 penalties pursuant to Cal. Labor Code §2699 *et seq.*

24 **Failure to Pay All Wages Due Upon Termination**

25 (Cal. Labor Code §§201, 202, 203, 558, and 2698 *et seq.*, Wage Orders 13 & 14)

26 60. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth
27 and incorporate said paragraphs herein by reference.
28

1 61. Defendants knowingly and willfully failed to pay all compensation due and
2 owing to Plaintiff and aggrieved employees at the time employment terminated.
3 Defendants willfully failed to pay employees who are no longer employed by it all
4 compensation due upon termination of employment as required by Cal. Lab. Code §§201
5 and 202.

6 62. Plaintiff believes that other employees who separated from the company,
7 whether voluntary or involuntary, were also denied payment of wages in a timely manner
8 as required by §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation
9 of §203 and civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor
10 and Workforce and Development Agency (LWDA).

11 63. Pursuant to §§203, Plaintiff and similarly situated individuals are now also
12 entitled to recover up to thirty (30) days of wages due to Defendants' "willful" failure to
13 comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover,
14 because Defendants violated §§201, 202 and 203, Defendants are liable for civil penalties
15 pursuant to Cal. Lab. Code § 2698 *et. seq.*

16 64. Defendants were required to pay Plaintiff and employee all wages earned twice
17 during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all
18 wages earned to employees as a result of the unlawful employment policies and practices
19 discussed herein. As a result of these practices, aggrieved employees were underpaid for
20 hours worked and this underpayment resulted in a failure to pay all wages owed twice per
21 month.

22 **Civil Penalties For Failure to Furnish and Maintain Accurate Payroll Records**

23 (Civil Penalties under Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

24 65. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 66. California Labor Code § 226(a) provides that "[e]very employer shall,
27 semimonthly or at the time of each payment of wages, furnish each of his or her
28 employees...an accurate itemized statement in writing showing (1) gross wages earned, (2)
total hours worked..., (3) the number of piece-rate units earned and any applicable piece

1 rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned,
2 (6) the inclusive dates of period for which the employee is paid, (7) the name of the
3 employee and his or her social security number..., (8) the name and address of the legal
4 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate by the employee.”

6 67. Labor Code § 1174 provides that “[e]very employer employing labor in this state
7 shall ... (c) [k]eep a record showing the names and addresses of all employees employed
8 and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants
9 or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and
11 any applicable piece rate paid to, employees employed at the respective plants or
12 establishments. These records shall be kept in accordance with rules established for this
13 purpose by the commission, but in any case shall be kept on file for not less than two years.”

14 68. Defendants knowingly and intentionally failed to provide timely, accurate,
15 itemized wage statements to Plaintiff and the aggrieved employees in accordance with
16 Labor Code §§ 226 and 1174. Derivative of the claims alleged above, the statements
17 provided to Plaintiff and aggrieved employees have not accurately reflected actual gross
18 wages earned, including overtime, phone reimbursement, and total hour worked. Such
19 failures caused injury to Plaintiff and aggrieved employees, by, among other things,
20 impeding them from knowing the total hours worked and the amount of wages to which
21 they are and were entitled, nor the accurate rate of overtime pay they were entitled to.

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

70. Defendants are liable for civil penalties under §226.3 for violation of §226(a).

1 71. Plaintiff alleges on information and belief that Defendants knowingly and
2 intentionally failed to furnish aggrieved employees with accurate itemized statements for
3 each pay period that they worked and failed to maintain accurate payroll records of the
4 aggrieved employees as mandated by Labor Code §§ 226.

5 72. Defendants failed to timely furnish final wages upon separation as required
6 under Labor Code §201-202, resulting in waiting time penalties when final wages were
7 ultimately paid. As a result, Defendants issued inaccurate final wage statements to
8 aggrieved employees.

9 73. Through this representative action, Plaintiff will advance the interests of
10 hundreds of current and former employees, such that joinder is impracticable. These
11 current and former employees can be readily be identified through a review of Defendants'
12 payroll records and the records of the company that handles payroll for Defendants.

13 74. Plaintiff seeks to recover the PAGA civil penalties through a representative
14 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
15 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is
16 not required.

17 **FIRST CAUSE OF ACTION**

18 **Against All Defendants for Violation of the Private Attorneys General Act**

19 **("PAGA")**

20 **(California Labor Code §2698 *et seq.*)**

21 75. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 76. Plaintiff is an "aggrieved employee" under PAGA, as she was employed by
24 Defendants during the applicable statutory period and suffered one or more of the Labor
25 Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
26 herself and all other current and former aggrieved employees of Defendants, the civil
27 penalties provided by PAGA, plus reasonable attorneys' fees and costs.
28

1 77. Plaintiff seeks to recover the PAGA civil penalties through a representative
2 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
3 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is
4 not required.

5 78. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following
6 Labor Code provisions:

- 7 a. Failure to Pay for All Hours Worked (Cal. Labor Code §§218, 510, 558,
8 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders 13 & 14);
- 9 b. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7,
10 512, 558, 1198, 2698 *et seq.*, Wage Orders 13 & 14);
- 11 c. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, 2802,
12 2698 *et seq.*, Wage Order 13 & 14 ¶15);
- 13 d. Failure to Provide Rest and Cool Down Periods (Cal. Labor Code §§226
14 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Orders 13 & 14);
- 15 e. Failure to Provide a Safe and Healthful Working Environment (Cal. Labor
16 Code §6400, 6401, 6401.7, 6402, 6403, 6404, 6407, §2699 *et. seq.*);
- 17 f. Failure to Pay Wages Upon Termination (Cal. Lab. Code §§201, 202, 203,
18 2698 *et seq.*, Wage Orders 13 & 14); and
- 19 g. Failure to Provide Accurate Itemized Wage Statements and Maintain
20 Accurate Records (Cal. Labor Code §§ 226, 1174, 2698 *et seq.*).

21 79. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes
22 a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars
23 (\$250) per aggrieved employee for the first violation and one thousand dollars (\$1,000) per
24 aggrieved employee for each subsequent violation of Labor Code §226(a).

25 80. With respect to violations of Labor Code §510, Labor Code §558 imposes a civil
26 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
27 violations for each underpaid employee for each pay period for which the employee was
28 underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid
employee for each pay period for which the employee was underpaid. Plaintiff only seeks

1 penalties under §558 and does not seek underpaid wages under §558, which are not
2 available in PAGA actions.

3 81. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100)
4 per pay period, per aggrieved employee for initial violations, and two hundred dollars
5 (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code
6 provisions for which a civil penalty is not specifically provided.

7 82. Plaintiff and the other current and former employees of Defendants are
8 aggrieved employees. They were or are employed by Defendants, and each of them, and
9 the violations alleged herein were committed against them. Plaintiff brings this action on
10 behalf of themselves and all other current and former aggrieved employees.

11 83. At the time of each violation, Defendants employed one or more employees.

12 84. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each
13 of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to
14 be determined at trial, pre-judgment interest, costs, and attorneys' fees.

15 85. Plaintiff has complied with all procedural requirements of Labor Code §2699.3
16 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the
17 Labor and Workforce Development Agency ("LWDA") and served by certified mail upon
18 Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific
19 Labor Code provisions that Defendants have violated. The LWDA did not respond to
20 Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted
21 administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue her
22 PAGA claims in this action on behalf of aggrieved employees and the State of California.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees,
25 prays for judgement against Defendants as follows:

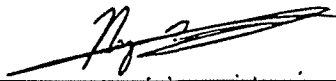
- 26 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount
27 to be determined at trial, but at least the jurisdictional amount of this Court;
28 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
§2699(g) and/or other applicable law;

- 1 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other
- 2 applicable law;
- 3 4. Pre-judgement and post-judgement interest as provided by law; and
- 4 5. Such other and further relief that the Court may deem just and proper.

5
6
7 DATED: July 21, 2021

8 **KOUL LAW FIRM**

9 **LAW OFFICES OF SAHAG MAJARIAN II**

10 

11 BY: Nazo Koulloukian, Esq.

12 Attorneys for Plaintiff JOAQUIN LOPEZ

13 CALDERON, and all aggrieved employees

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EXHIBIT A



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P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

May 18, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

D'Arrigo Bros. Co., Of California
21777 Harris Rd.
Salinas, CA 93908

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Joaquin Lopez Calderon
Employers: D'Arrigo Bros. Co., Of California

Dear Sir or Madam:

Claimant Joaquin Lopez Calderon has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM and Sahag Majarian of LAW OFFICES OF SAHAG MAJARIAN II, for wage and hour claims against his former employer D'Arrigo Bros. Co., Of California ("D'Arrigo" or "employers"). Mr. Calderon began working for D'Arrigo in 2006 and continued until April of 2021. Claimant and aggrieved employees worked as farmworkers and laborers to support D'Arrigo, a California based grower and seller of produce.

D'Arrigo has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency

(“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*,

Wage Orders 13 & 14)

Section 2(G) of Wage Order 14 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including shaving time from their timecards due to employer rounding and auto-deducting meal break practices, and failing to pay for required travel time between fields.

Mid-Shift Transportation Time

D’Arrigo has failed to maintain a policy that compensates employees for all hours worked, including overtime. Claimant and aggrieved employees were required from time to time to travel mid-shift from one field or yard to another. Claimant and other employees were required to take a bus from one field to another, oftentimes spending up to one full hour each way of unpaid travel while under the control of Employers. Claimant and aggrieved employees were not paid for work that was involved in switching locations, including packing up and time spent commuting.

In the seminal case on the issue, *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 582 (2000), the California Supreme Court affirmatively established that whenever an employee is under the control of his employer, regardless of whether that employee is actually working, the employee must be compensated for that time as “hours worked.” In *Morillion*, a factually similar case, the California Supreme Court determined that employees must be paid for time they spend traveling to and from the fields on employer-provided buses pursuant to the IWC wage order which defines “hours worked” as “the time during which an employee is subject to the control of an employer, ... includ[ing] all the time the employee is suffered or permitted to work, whether or not required to do so.” (Cal. Code Regs., tit. 8, § 11140, subd. 2(G).) Here, just as in *Morillion*, Claimant and

aggrieved employees were entitled to compensation, including overtime compensation, for all time spent traveling from one employer location to another.

Pre and Post Shift Work and Time-Shaving

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employers' control but not compensated for their time. Employees do not clock in and out. Instead, the clock in and out times are recorded for them, in handwriting by the Employer. Claimant and aggrieved employees were required to show up to the yard 30 minutes prior to a bus arriving and prior to being clocked in, to take them to the fields. Time is recorded from shift start to shift end time, instead of actual hours worked. In addition to the 30 minutes of unpaid time they were expected to arrive prior to the bus arriving, the Claimant and aggrieved employees were also expected to load and unload the tools from the bus into the machine they use in the fields and then load them back up end of shift, even though this work amounts to 30-45 minutes of work per shift and is done "off the clock." Employees complete these pre and post shift tasks unpaid, every day. In addition Claimant and aggrieved employees were required to wash their hands after breaks and before returning to work. This activity was required but performed off the clock and would take 3-5 minutes to perform depending on the line of workers at the wash stations.

When it comes to time shaving and rounding, the California Supreme Court has rejected the de minimis argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees' hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, first and second meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees working in the fields did not clock in and out for meal periods, and 30 minutes was automatically deducted from their timecard regardless of whether and when they took a

meal period, if at all. In addition, employees working in the fields had a long walk to the rest areas where bathroom breaks and other breaks were to be taken, which cut into their meal period. Further, as previously mentioned, Claimant and other employees were required to wash their hands before returning to work. This activity was done during break time, but was a required work activity and would take up to 5 minutes of off the clock time to perform.

When employees earning minimum wage do not receive payment for all hours worked, including off-the-clock and overtime hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked, in violation of Labor Code §1197.

Failure to Pay COVID-19 Supplemental Paid Sick Leave

Pursuant to Labor Code §1197, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” In the case of COVID-19, Executive Order N-51-20 requires that Employers provide 80 hours of paid sick leave to full time employees. Under the Executive Order food sector workers (this includes those who work in the farming industry) who work full time are entitled to 80 hours of paid sick leave if the worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or the worker is advised by a health care provider to self-isolate or self-quarantine due to health concerns related to COVID-19, or the worker is prohibited from working by the worker’s hiring entity due to health care concerns related to the potential transmission of COVID-19.

In this case, Employer is a covered employer under N-51-20 and Claimant and aggrieved employees are covered employees. Claimant and aggrieved employees were required to take time off due to COVID-19 related illness or quarantine requirements yet received zero pay, patently violating §1197 and 1197.1.

As a result of these practices, Employers have violated Cal. Labor Code §§218, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders paragraph(3)(A)(1) for failure to pay overtime. Employers are liable for civil penalties pursuant to Cal. Labor Code §558and 2698 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Orders 13 & 14)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal

period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of Wage Order 14 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant claims that although he frequently worked 8-9 hour shifts, he was not always provided a full, uninterrupted second 30 minute break. The break area was a 10 minute walk from the work area, thus the breaks were shortened due to travel time and rushed, in order to be able to get back to the work area in time. Additionally, although all meal breaks were shortened due to the rest area being 10 minutes away, D’Arrigo automatically recorded a full 30 minute break each day. Pursuant to *Alberts v. Aurora Behavioral Health Care*, (2015) 241 Cal.App.4th 388, 408, altering time cards and engaging in unlawful timekeeping practices to avoid paying meal period premiums is unlawful.

Section 11 of Wage Orders 13 & 14 requires employers to authorize and permit employees to take an uninterrupted 30 minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, 2802, 2698 *et seq.*, Wage Order 13 & 14 ¶15.)

Employer’s workplaces would get unsafely hot due to outdoor conditions. There is no temperature control mechanism as the work is done outdoors and no shade was provided.

The Wage Order at ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Employer did not provide masks in violation of Cal. Labor Code §2802. Employers also did not take employees temperatures pre-shift or socially distance workers. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Rest Periods and Cool-Down Rest Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Orders 13 & 14)

Claimant and his fellow employees often times worked without receiving their required first and second required 10 minute rest breaks throughout the day, in which she was relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Orders 13 & 14. Employees were also not able to take adequate 10 minute breaks due to the restroom area being a 10 minute walk away from the work area, resulting in shortened rest breaks.

Claimant and his fellow employees received shortened rest breaks as a result of the time it took them to walk from the work area to the rest area. As a result of this distance, Claimant and employees had no choice but to frequently take less than 10 minutes their allotted and required break time to ensure they were back in time, or could take no break at all.

In addition, when rest breaks were taken, they were not compliant with California law. Employees, including Claimant, who worked in the fields were not provided with sufficient bathrooms or shade. Labor Code §226.7 requires that employers provide rest periods and cool down rest periods that comply with state laws, including those that require adequate shade and restrooms to employees for use during required break and cool-down rest periods.

Employee did not receive all required rest breaks. When employees did receive rest breaks, they were not compliant for the following reasons:

Cool-Down Rest Periods

Even on days when temperatures in the field rose above one-hundred (100) degrees Fahrenheit, Employer discouraged employees from taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working for employers that maintain “outdoor places of employment” “shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating.” Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

Adequate Shade

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires employers to allow access to shade. The regulations define “shade” as “blockage of direct sunlight.” Employer failed to provide Claimant and aggrieved employees, who worked in the fields, with adequate shade.

Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to provide a safe and secure workplace. Because Employer did not provide shade required by 8 CCR 3395 at their “outdoor places of employment,” Claimant and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health. Because shade is required, failure to provide adequate shade results in insufficient recovery periods. Damages and PAGA penalties for violation of Labor Code §226.7 are extensive.

Potable Drinking Water

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were denied sufficient potable water.

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Claimant and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working throughout the duration of the shift.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by

imprisonment for not more than 30 days, or by both the fine and imprisonment.” . Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

Legally Compliant Bathrooms

Rest breaks did not comply with state laws as required by Labor Code §226.7 because field workers were not provided with bathrooms, and employees who worked within the facility had to deal with filthy bathroom conditions due to Employers failure to maintain clean bathrooms.

California Labor Code §2350 requires employers to provides that “[e]very 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.” Employer violated §2350 by failing to provide reasonable access to the bathrooms for employees. Employer further violated 8 CCR §3364(b) by failing to place the toilets within a reasonable range of accessibility.

Cal. Code Regs. tit. 8, § 3364 requires that “toilet facilities should be within 200 feet of locations at which workers are regularly employed.” Employers here came nowhere near this 200 ft from work area requirement, leaving their employees to walk approximately half a mile to the nearest restroom. Moreover, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, bathrooms in Employer’s workplaces were inaccessible and did not meet the accessibility standards set forth.

Employer failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on the above paystub. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Accordingly,

because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that 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.

Employer failed to timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). For the first few months of the pandemic, the employer did not require distancing, masks, hand sanitizer. The Employees continued to work without distancing throughout the pandemic. Employees did not take temperatures at start of shift, did not provide additional handwashing facilities, no covid screening program or plan was implemented, employees were not provided with their own equipment (crew was constantly catching covid because they were all using the same tools and the tools were not being cleaned or disinfected), and there was no effective written covid

prevention program. D'Arrigo's employees were employed under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.* Wage Orders 13 & 14)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting." Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203. Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

Based on and as a result of the above mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Employer also failed to list required sick pay pursuant to Executive Order N-51-20. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for herself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform his if it does not intend to investigate these violations so that she may pursue his claims as a representative action in civil court.

Respectfully Submitted,



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