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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

STATE OF CALIFORNIA ex rel.
PAUL VARGAS, as Private Attorney
General,

Plaintiff,

v.

AVALANCHE AIR, INC.; and DOES 1-
25, inclusive,

Defendants.

Case No. 21CV02626

Assigned for All Purposes to:

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

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. PAUL VARGAS as Private Attorney General ("Plaintiff"), who asserts claims against AVALANCHE AIR, INC. and DOES 1-25, inclusive (collectively "Defendants" or "Employer") as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately more than 100 similarly situated current and former aggrieved employees employed by Employer throughout California between September 21, 2020 ("Statutory Period") and the resolution of this

1 action, and the People of the State of California (hereinafter collectively “Employees”) against
2 Employer.

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

11 3. Plaintiff has exhausted or will exhaust all applicable administrative procedures
12 with the California Labor and Workforce Development Agency (“LWDA”) providing notice of his
13 intent to bring a private attorneys general action for recovery of penalties under the PAGA. To the
14 extent any violations were curable, Employer failed to cure within the time prescribed by law.

15 **JURISDICTION AND VENUE**

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

18 5. Venue is proper in this Court because this action arises from work performed in
19 Santa Cruz County.

20 **PARTIES**

21 6. For all times relevant herein, PAUL VARGAS was an adult individual residing in
22 the State of California. Mr. Vargas is not suing in his individual capacity; he is proceeding herein
23 solely under the PAGA, on behalf of the State of California for all aggrieved employees, including
24 himself and other aggrieved employees.

25 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
26 alleges, that Defendant AVALANCHE AIR, INC. was and is a business entity with its principal
27 place of business in California.

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

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

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

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

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1 **FIRST COUNT**

2 **Fraud**

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

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

6 13. “No person, or agent or officer thereof, directly or indirectly, shall influence,
7 persuade, or engage any person to change from one place to another in this State or from any place
8 outside to any place within the State, or from any place within the State to any place outside, for
9 the purpose of working in any branch of labor, through or by means of knowingly false
10 representations, whether spoken, written, or advertised in printed form, concerning [:] The length
11 of time such work will last, or the compensation therefor....” Lab. Code, § 970, subd. (b).

12 14. This claim is brought on behalf all Employees, including Mr. Vargas, who were
13 promised a rate of pay by Employer at the outset of a project, only to have Employer cut the rate
14 of pay during the project. Throughout the Statutory Period, Employer influenced, persuaded,
15 and/or engaged Employees to change from one place to another in this State for the purpose of
16 working/providing labor to Employer in its business operations. Employer did so by means of
17 knowingly false representations to Employees concerning the compensation for the work. For
18 example, to induce Mr. Vargas to travel to Santa Cruz County for work in its business, Employer
19 knowingly and falsely represented to Mr. Vargas that his rate of pay would be \$40 for a project
20 located in Santa Cruz County. Shortly after beginning work, Employer reduced the rate of pay to
21 \$36 an hour.

22 15. Employer is guilty of violating Section 970 and is subject to civil penalties.

23 **SECOND COUNT**

24 **Failure to Pay Minimum Wages and Overtime**

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

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

1 17. “Section 1197 provides that “[t]he minimum wage for employees fixed by the
2 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
3 and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after
4 January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per
5 hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be
6 less than the amounts set forth in this subdivision (1) For any employer who employs 26 or
7 more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December
8 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to
9 December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to
10 December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to
11 December 31, 2020, inclusive,—thirteen dollars (\$13) per hour. (E) From January 1, 2021, to
12 December 31, 2021, inclusive,—fourteen dollars (\$14) per hour. (F) From January 1, 2022, and
13 until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.” Cal. Lab. Code, § 1182.12,
14 subd. (b).

15 18. Throughout the Statutory Period, Employer failed to pay Employees including Mr.
16 Vargas at least minimum wage for all time worked. For example, although Mr. Vargas input and
17 reported hours worked to Employer through the mobile app it uses during the Statutory Period,
18 Employer unilaterally modified and reduced hours worked by Mr. Vargas. Employer paid zero
19 dollars for these times. Consequently, Employer violated the foregoing minimum wage laws.

20 19. Moreover, to the extent those hours push Employees’ daily hours worked past 8
21 hours, based on the foregoing Employer also violated various overtime laws. *See* Lab. Code, §
22 510, subd. (a); Lab. Code, § 1198.

23 20. Employer is guilty of violating the foregoing minimum wage and overtime statutes,
24 and is subject to civil penalties.

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1 **THIRD COUNT**

2 **Unlawful Deduction from Wages**

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

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

6 22. “It shall be unlawful for any employer to collect or receive from an employee any
7 part of wages theretofore paid by said employer to said employee.” Lab. Code, § 221.

8 23. In addition to the conduct alleged above, throughout the Statutory Period,
9 Employer collected or received from Employees including Mr. Vargas part of wages paid to the
10 Employees. For example, Employer promised Mr. Vargas a set hourly rate for a project (\$40).
11 After Mr. Vargas had performed work and earned wages at this rate, Employer changed the rate in
12 the middle of a pay period to \$36 on or about September 28, 2020, and then proceeded to apply
13 the lower rate retroactively going back to September 22, 2020. Employer unlawfully collected
14 and received the additional \$4 per hour straight time that was owed to Mr. Vargas prior to
15 September 28, 2020.

16 24. Employer is guilty of violating Section 221 and is subject to civil penalties.

17 **FOURTH COUNT**

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

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

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

22 26. “An employer shall not require an employee to work during a ... recovery period
23 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of ... the
24 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
25 Health.” Cal. Lab. Code, § 226.7, subd. (b). “As used in this section, ‘recovery period’ means a
26 cooldown period afforded an employee to prevent heat illness.” Cal. Lab. Code, § 226.7, subd. (a).
27 “A rest or recovery period mandated pursuant to a state law ... shall be counted as hours worked,
28 for which there shall be no deduction from wages.” Cal. Lab. Code, § 226.7, subd. (d). “If an

1 employer fails to provide an employee a ... recovery period in accordance with a state law ... the
2 employer shall pay the employee one additional hour of pay at the employee's regular rate of
3 compensation for each workday that the meal or rest or recovery period is not provided." Cal. Lab.
4 Code, § 226.7, subd. (c).

5 27. Pursuant to the applicable regulation, "[w]hen the outdoor temperature in the work
6 area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with
7 shade at all times while employees are present that are either open to the air or provided with
8 ventilation or cooling. The amount of shade present shall be at least enough to accommodate the
9 number of employees on recovery or rest periods, so that they can sit in a normal posture fully in
10 the shade without having to be in physical contact with each other. The shade shall be located as
11 close as practicable to the areas where employees are working. Subject to the same specifications,
12 the amount of shade present during meal periods shall be at least enough to accommodate the
13 number of employees on the meal period who remain onsite." Cal. Code Regs., tit. 8, § 3395,
14 subd. (d)(1).

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

24 29. This claim is brought on behalf of all Employees who worked outdoors, including
25 Mr. Vargas. Throughout the Statutory Period, Employer failed to allow or encourage shaded
26 recovery periods as required by law both when temperatures exceeded eighty degrees and when
27 temperatures were eighty degrees and below. Although Employer informed Employees including
28 Mr. Vargas to provide meal and rest periods, Employer failed to take the necessary actions to

1 provide heat-recovery periods to Employees. Employer also failed to ensure effective employee
2 observation/monitoring as required by law. Employees regularly work/ed outdoors performing
3 various tasks for Employer where heat recovery periods are needed. Employer also failed to
4 conduct meetings on heat illness and failed to encourage or ensure Employees to take heat
5 recovery periods at the required intervals as required by law.

6 30. Employer is subject to civil penalties for its violation of § 226.7 and § 3395.

7 **FIFTH COUNT**

8 **Untimely Payment of Wages**

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

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

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

19 33. Rather than timely paying Employees all wages due within the periods set forth
20 above, throughout the Statutory Period, Employer failed to timely pay Employees for all wages
21 earned as required by law.

22 **SIXTH COUNT**

23 **Failure to Keep or Produce Records of Hours Worked**

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

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

27 35. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a
28 central location in the state or at the plants or establishments at which employees are employed,

payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

36. Pursuant to Sections 1198 and the applicable IWC Wage Order, Employer was also required to keep accurate records of Employees' hours worked, and to make those records available for inspection upon Employees' request. The applicable IWC Wage Order provides that "An employee's records shall be available for inspection by the employee upon reasonable request."

37. Throughout the Statutory Period, Employer failed to keep accurate records showing the hours worked daily by Employees. Moreover, Employer failed to ensure that all Employees' time records were available for inspection upon reasonable request, as evidenced by Mr. Vargas' request for all of his time records, which was declined by Employer.

38. Employer is subject to additional civil penalties for its failure to keep or accurate records of Employees' hours worked.

SEVENTH COUNT

Failure to Issue and Keep Records of Wage Statements

(By Plaintiff against All Defendants)

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

40. California Labor Code section 226, subdivision (a) mandates that employers issue accurate itemized statements semimonthly or at the time of each payment of wages, and that “a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”

1 41. “An employer, semimonthly or at the time of each payment of wages, shall furnish
2 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
3 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
4 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
5 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
6 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
8 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and only the last four digits of his or her social security number or an
10 employee identification number other than a social security number, (8) the name and address of
11 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
12 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
13 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee....” Cal. Lab. Code, §
15 226, subd. (a).

16 42. “An employer that is required by this code or any regulation adopted pursuant to
17 this code to keep the information required by subdivision (a) shall afford current and former
18 employees the right to inspect or copy records pertaining to their employment, upon reasonable
19 request to the employer.” Cal. Lab. Code, § 226, subd. (b). “An employer who receives a written
20 or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or
21 former employee shall comply with the request as soon as practicable, but no later than 21
22 calendar days from the date of the request.” Cal. Lab. Code, § 226, subd. (c).

23 43. Throughout the Statutory Period, Employer violated subdivisions (a), (b), and (c) of
24 Section 226 by failing to issue, maintain, or produce upon Employees’ request either a duplicate of
25 the itemized statements provided to Employees or a computer-generated record that accurately
26 shows all of the required information. Moreover, Employer violated Section 226(a)(8) throughout
27 the Statutory Period, as evidenced by its wage statements which list an Omaha, Nebraska Post
28 Office, rather than the address of the legal entity Employer.

44. Employer is subject to additional civil penalties for its failure to keep or accurate records of Employees' hours worked.

EIGHTH COUNT

Failure to Pay Wages at Termination

(By Plaintiff against All Defendants)

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

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

47. Throughout the Statutory Period, Employer failed to pay Employees all wages earned. These wages were owed and due to Employees at the time of their termination or within 72 hours of their resignation. Employer did not provide full payment of these wages to Employees at these times. Employer's failure to timely pay these wages at the prescribed times, and failure to pay Employees' continued wages for the 30-day period thereafter, constitute a violation of Sections 201 and 203, for which Employer is subject to additional civil penalties.

NINTH COUNT

Violation of Heat Illness Prevention Health-and-Safety Standards

(By Plaintiff against All Defendants)

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

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

5 50. Among these rules, regulations, and orders is Title 8, Section 3395 of the California
6 Code of Regulations, which was applicable to Employer and the Employees. Throughout
7 Employees’ employment, Employer violated the following provisions of § 3395:

8 51. **(d) Access to shade.** (1) Shade shall be present when the temperature exceeds 80
9 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees
10 Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while
11 employees are present that are either open to the air or provided with ventilation or cooling. The
12 amount of shade present shall be at least enough to accommodate the number of employees on
13 recovery or rest periods, so that they can sit in a normal posture fully in the shade without having
14 to be in physical contact with each other. The shade shall be located as close as practicable to the
15 areas where employees are working. Subject to the same specifications, the amount of shade
16 present during meal periods shall be at least enough to accommodate the number of employees on
17 the meal period who remain onsite. (2) Shade shall be available when the temperature does not
18 exceed 80 degrees Fahrenheit. When the outdoor temperature in the work area does not exceed 80
19 degrees Fahrenheit employers shall either provide shade as per subsection (d)(1) or provide timely
20 access to shade upon an employee's request. (3) Employees shall be allowed and encouraged to
21 take a preventative cool-down rest in the shade when they feel the need to do so to protect
22 themselves from overheating. Such access to shade shall be permitted at all times. An individual
23 employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is
24 experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C)
25 shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in
26 no event less than 5 minutes in addition to the time needed to access the shade. (4) If an employee
27 exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest or
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1 during a preventative cool-down rest period, the employer shall provide appropriate first aid or
2 emergency response according to subsection (f) of this section. ...

3 52. *Throughout Employees' employment, Employer failed to provide or encourage*
4 *shade or recovery periods as required by law when temperatures exceeded eighty degrees or*
5 *when they were eighty degrees or lower.*

6 53. **(f) Emergency Response Procedures.** The Employer shall implement effective
7 emergency response procedures including: (1) Ensuring that effective communication by voice,
8 observation, or electronic means is maintained so that employees at the work site can contact a
9 supervisor or emergency medical services when necessary. An electronic device, such as a cell
10 phone or text messaging device, may be used for this purpose only if reception in the area is
11 reliable. If an electronic device will not furnish reliable communication in the work area, the
12 employer will ensure a means of summoning emergency medical services. (2) Responding to signs
13 and symptoms of possible heat illness, including but not limited to first aid measures and how
14 emergency medical services will be provided. (A) If a supervisor observes, or any employee
15 reports, any signs or symptoms of heat illness in any employee, the supervisor shall take
16 immediate action commensurate with the severity of the illness. (B) If the signs or symptoms are
17 indicators of severe heat illness (such as, but not limited to, decreased level of consciousness,
18 staggering, vomiting, disorientation, irrational behavior or convulsions), the employer must
19 implement emergency response procedures. (C) An employee exhibiting signs or symptoms of
20 heat illness shall be monitored and shall not be left alone or sent home without being offered
21 onsite first aid and/or being provided with emergency medical services in accordance with the
22 employer's procedures. (3) Contacting emergency medical services and, if necessary, transporting
23 employees to a place where they can be reached by an emergency medical provider. (4) Ensuring
24 that, in the event of an emergency, clear and precise directions to the work site can and will be
25 provided as needed to emergency responders.

26 54. *Employer failed to implement any and all of the foregoing required procedures.*

27 55. **(g) Acclimatization.** (1) All employees shall be closely observed by a supervisor or
28 designee during a heat wave. For purposes of this section only, 'heat wave' means any day in

1 which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least
2 ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

3 (2) An employee who has been newly assigned to a high heat area shall be closely observed by a
4 supervisor or designee for the first 14 days of the employee's employment.

5 56. *Employer failed to provide the required monitoring throughout Employees'*
6 *employment.*

7 57. **(h) Training.** (1) Employee training. Effective training in the following topics shall
8 be provided to each supervisory and non-supervisory employee before the employee begins work
9 that should reasonably be anticipated to result in exposure to the risk of heat illness: (A) The
10 environmental and personal risk factors for heat illness, as well as the added burden of heat load
11 on the body caused by exertion, clothing, and personal protective equipment. (B) The employer's
12 procedures for complying with the requirements of this standard, including, but not limited to, the
13 employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well
14 as the employees' right to exercise their rights under this standard without retaliation. (C) The
15 importance of frequent consumption of small quantities of water, up to 4 cups per hour, when the
16 work environment is hot and employees are likely to be sweating more than usual in the
17 performance of their duties. (D) The concept, importance, and methods of acclimatization
18 pursuant to the employer's procedures under subsection (i)(4). (E) The different types of heat
19 illness, the common signs and symptoms of heat illness, and appropriate first aid and/or
20 emergency responses to the different types of heat illness, and in addition, that heat illness may
21 progress quickly from mild symptoms and signs to serious and life threatening illness. (F) The
22 importance to employees of immediately reporting to the employer, directly or through the
23 employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers. (G) The
24 employer's procedures for responding to signs or symptoms of possible heat illness, including how
25 emergency medical services will be provided should they become necessary. (H) The employer's
26 procedures for contacting emergency medical services, and if necessary, for transporting
27 employees to a point where they can be reached by an emergency medical service provider. (I)
28 The employer's procedures for ensuring that, in the event of an emergency, clear and precise

1 directions to the work site can and will be provided as needed to emergency responders. These
2 procedures shall include designating a person to be available to ensure that emergency procedures
3 are invoked when appropriate. (2) Supervisor training. Prior to supervising employees performing
4 work that should reasonably be anticipated to result in exposure to the risk of heat illness effective
5 training on the following topics shall be provided to the supervisor: (A) The information required
6 to be provided by section (h)(1) above. (B) The procedures the supervisor is to follow to
7 implement the applicable provisions in this section. (C) The procedures the supervisor is to follow
8 when an employee exhibits signs or reports symptoms consistent with possible heat illness,
9 including emergency response procedures. (D) How to monitor weather reports and how to
10 respond to hot weather advisories.

11 58. *Employer failed to provide the foregoing training to Employees. Mr. Vargas*
12 *received no training on this subject.*

13 59. (i) **Heat Illness Prevention Plan.** The employer shall establish, implement, and
14 maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and
15 the language understood by the majority of the employees and shall be made available at the
16 worksite to employees and to representatives of the Division upon request. The Heat Illness
17 Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program
18 required by section 3203, and shall, at a minimum, contain: (1) Procedures for the provision of
19 water and access to shade. (2) The high heat procedures referred to in subsection (e). (3)
20 Emergency Response Procedures in accordance with subsection (f).

21 60. (4) Acclimatization methods and procedures in accordance with subsection (g).

22 61. *Employer failed to establish, implement, and maintain an effective heat illness*
23 *prevention plan in accordance with law.*

24 62. Employer is subject to additional civil penalties as provided by law.

25 **TENTH COUNT**

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

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

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

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

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

27 66. To substantially comply with Section 6401.7, the employer must provide adequate
28 “meetings, training programs, posting, written communications, a system of anonymous

1 notification by employees about hazards, labor/management safety and health committees, or any
2 other means that ensures communication with employees.” Cal. Code Regs., tit. 8, § 3203, subd.
3 (a)(3).

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

13 68. Throughout the Statutory Period, Employer subjected all Employees, including Mr.
14 Wagner, to working conditions that exposed them to hazards from the lack of an adequate injury
15 prevention program. Employer was subject to all of the foregoing requirements with regard to all
16 of its operations. Employer failed to establish, implement, and maintain an effective injury
17 prevention program. Employer failed to perform periodic inspections to identify unsafe conditions
18 and work practices, and failed to provide occupational health and safety training designed to
19 instruct Employees in general safe and healthy work practices and to provide specific instruction
20 with respect to hazards specific to each Employee’s job assignment; Employer failed to provide
21 such training to Employees, including Mr. Vargas. During Mr. Vargas’s employment with
22 Employer, Employer did not provide injury prevention program materials to him, and did not
23 provide any safety training to Mr. Vargas.

24 69. Employer also failed to keep appropriate records of steps taken to implement and
25 maintain its program and comply with regulations set by the standards board. Employer failed to
26 provide adequate meetings, training programs, posting, written communications, a system of
27 anonymous notification by employees about hazards, labor/management safety and health
28 committees, or any other means that ensures communication with Employees, including Mr.

1 Vargas, regarding health and safety conditions and workplace injury reporting. During the
2 Statutory Period, Mr. Vargas made a safety-related complaint and Employer reprimanded him for
3 doing so.

4 70. Employer also failed to keep records of steps taken to implement and maintain a
5 compliant program, including adequate records of scheduled and periodic inspections to identify
6 unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe
7 conditions and work practices that have been identified, and action taken to correct the identified
8 unsafe conditions and work practices, and documentation of required safety and health training for
9 each of the Employees, including each employee's name or other identifier, training dates, type(s)
10 of training, and training providers.

11 71. Employer is subject to civil penalties as provided by law.

12 **ELEVENTH COUNT**

13 **Requiring Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes**

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

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

17 73. By committing the acts and omissions described in the preceding sections
18 throughout Employees' employment, Employer also violated Labor Code, §§ 6400, 6401, 6402,
19 6403, 6404 by requiring and permitting unsafe work, and failing to provide safe workplaces,
20 practices, and processes to its Employees. Employer is subject to additional civil penalties as
21 provided by law.

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PRAYER

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

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to be ascertained at trial exceeding \$25,000.
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: October 26, 2021

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for PAUL VARGAS
as Private Attorney General