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Superior Court of California  
County of Santa Barbara  
Darrel E. Parker, Executive Officer  
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SANTA BARBARA – ANACAPA DIVISION**

13 22CV01267

14 STATE OF CALIFORNIA ex rel.  
15 OLGA MARTINEZ, as Private Attorney  
16 General,

17 Plaintiff,

18 v.

19 TORO CANYON NURSERY, INC.;  
20 ALFREDO SUAREZ; ERIK SUAREZ;  
21 LILIANA SUAREZ; and DOES 1-25,  
22 inclusive,

23 Defendants.

Case No.

*Assigned for All Purposes to:*

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

*Trial Date: None*

*Complaint filed:*

24 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. OLGA MARTINEZ as Private  
25 Attorney General (“Plaintiff”), who asserts claims against TORO CANYON NURSERY, INC.,  
26 ALFREDO SUAREZ, ERIK SUAREZ, LILIANA SUAREZ, and DOES 1-25, inclusive  
27 (collectively “Defendants” or “Employer”) as follows:

**INTRODUCTION**

28 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 herself, approximately 30  
similarly situated current and former aggrieved employees, and the People of the State of

1 California (hereinafter collectively “Employees”) employed by Employer between January 19,  
2 2021, and the conclusion of the action (“Statutory Period”).

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 filed an exhaustion letter with the California Labor and Workforce  
12 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys  
13 general action for recovery of penalties under the PAGA. The LWDA has not investigated within  
14 the time set forth by statute and Plaintiff is now authorized to bring the present action.

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 Barbara County.

20 **PARTIES**

21 6. For all times relevant herein, OLGA MARTINEZ was an adult individual residing  
22 in the State of California. Ms. Martinez is not suing in her individual capacity; she is proceeding  
23 herein solely under the PAGA, on behalf of the State of California for all aggrieved employees,  
24 including herself and other aggrieved employees.

25 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis  
26 alleges, that Defendant TORO CANYON NURSERY, INC. was and is a corporation with its  
27 principal place of business in Santa Barbara County, California.

1           8.       For all times relevant herein, Plaintiff is informed and believes, and on that basis  
2 alleges, that Defendant ALFREDO SUAREZ was and is an individual residing in the State of  
3 California.

4           9.       For all times relevant herein, Plaintiff is informed and believes, and on that basis  
5 alleges, that Defendant ERIK SUAREZ was and is an individual residing in the State of  
6 California.

7           10.      For all times relevant herein, Plaintiff is informed and believes, and on that basis  
8 alleges, that Defendant LILIANA SUAREZ was and is an individual residing in the State of  
9 California.

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

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

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

25          14.      Plaintiff is further informed and believe, and thereon allege, that at all times herein  
26 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and  
27 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to  
28 any conduct by Defendants, or any of them, such allegations and references shall also be deemed

1 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.  
2 Whenever and wherever reference is made to individuals who are not named as defendants in this  
3 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times  
4 acted on behalf of Defendants named in this Complaint within the scope of their respective  
5 employment or agency with Defendants.

6 **FIRST COUNT**

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

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

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

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

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

25 18. Throughout the Statutory Period, Employer maintained an illegal practice of not  
26 providing Employees with timely first and second rest periods. Although Employees regularly  
27 worked at least 6 or more hours per day, the Employer failed to provide any rest periods,  
28 explaining to Employees that they would receive only a meal period. For example, Ms. Martinez

1 asked Employer, including its representative Alfredo Suarez, why rest periods were not permitted,  
2 the Employer's response was that no rest period were needed because Employees were allowed to  
3 use the restroom as needed.

4 19. As a result of the foregoing, Employer is subject to civil penalties.

5 **SECOND COUNT**

6 **Inaccurate Wage Statements and Wage Statement Records**

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

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

10 21. "An employer, semimonthly or at the time of each payment of wages, shall furnish  
11 to his or her employee, either as a detachable part of the check, draft, or voucher paying the  
12 employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized  
13 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,  
14 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable  
15 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all  
16 deductions made on written orders of the employee may be aggregated and shown as one item, (5)  
17 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
18 name of the employee and only the last four digits of his or her social security number or an  
19 employee identification number other than a social security number, (8) the name and address of  
20 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in  
21 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services  
22 of the employer, and (9) all applicable hourly rates in effect during the pay period and the  
23 corresponding number of hours worked at each hourly rate by the employee...." Cal. Lab. Code, §  
24 226, subd. (a).

25 22. "Any employer who violates subdivision (a) of Section 226 shall be subject to a  
26 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an  
27 initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent  
28 citation, for which the employer fails to provide the employee a wage deduction statement or fails

1 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in  
2 this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3.

3 23. Employees incorporate the preceding sections herein. Throughout the Statutory  
4 Period, Employer failed to furnish Employees with accurate itemized statements at the time of  
5 each payment of wages showing all deductions, the correct gross wages earned, correct total hours  
6 worked, correct net wages earned, and the corresponding correct number of hours worked at each  
7 applicable hourly rate. Rather than providing statements of actual time worked and a correct  
8 payment of wages based thereon, the wage statements the Employer issued to Employees included  
9 only a regularly-set default number of hours (for example, 40 hours per week in the case of Ms.  
10 Martinez) when in reality, the Employees were working significantly longer hours. When  
11 Employees complained about the inaccurate payroll picture, the Employer attempted to justify its  
12 actions by misrepresenting to Employees that this method of payroll resulted in a larger take-  
13 home-pay figure. Employees’ wage statements also failed to reflect all premium wages owed for  
14 the violations of Section 226.7. Consequently, Employer failed to provide Employees accurate  
15 itemized wages statements as required by Section 226.

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

### 17 **THIRD COUNT**

#### 18 **Untimely Payment of Wages**

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

1           27.     Generally, “[l]abor performed by a weekly-paid employee during any calendar  
2 week and prior to or on the regular payday shall be paid for not later than the regular payday of the  
3 employer for such weekly-paid employee falling during the following calendar week. Labor  
4 performed by a weekly-paid employee during any calendar week and subsequent to the regular  
5 payday shall be paid for not later than seven days after the regular payday of the employer for such  
6 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

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

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

22           30.     Employees incorporate the preceding sections herein. Rather than timely paying  
23 Employees all wages due within the periods set forth above, throughout the Statutory Period,  
24 Employer failed to timely pay Employees for all premium wages owed under Section 226.7.

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

26     ///

27     ///

28     ///

1 **FOURTH COUNT**

2 **Failure to Pay Wages at Termination**

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

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

6 33. “If an employer discharges an employee, the wages earned and unpaid at the time  
7 of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer  
8 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,  
9 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the  
10 wages of the employee shall continue as a penalty from the due date thereof at the same rate until  
11 paid or until an action therefor is commenced; but the wages shall not continue for more than 30  
12 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or  
13 who refuses to receive the payment when fully tendered to him or her, including any penalty then  
14 accrued under this section, is not entitled to any benefit under this section for the time during  
15 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

16 34. Employees incorporate the preceding sections herein. Throughout the Statutory  
17 Period, Employer failed to pay Employees all premium wages. These wages were owed and due  
18 to Employees at the time of their discharge, or within the statutorily prescribed time after  
19 Employees’ resignation. Employer did not provide these payments to Employees at the time of  
20 termination or within a sufficient time of resignation as required by law. Employer’s failure to  
21 timely pay these wages at the time of termination, and failure to pay Employees’ continued wages  
22 for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

23 35. Defendants are subject to all civil penalties and other remedies under the PAGA.

24 **FIFTH COUNT**

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

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

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

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

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

25           39.    To substantially comply with Section 6401.7, the employer must provide adequate  
26 “meetings, training programs, posting, written communications, a system of anonymous  
27 notification by employees about hazards, labor/management safety and health committees, or any  
28

1 other means that ensures communication with employees.” Cal. Code Regs., tit. 8, § 3203, subd.  
2 (a)(3).

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

12 41. Throughout the Statutory Period, Employer subjected all Employees, including Ms.  
13 Martinez, to working conditions that exposed them to hazards from the lack of a legally mandated  
14 injury prevention program. Employer was subject to all of the foregoing requirements with regard  
15 to all of its operations. Employer failed to establish, implement, and maintain an effective injury  
16 prevention program. Employer failed to perform periodic inspections to identify unsafe conditions  
17 and work practices, and failed to provide occupational health and safety training designed to  
18 instruct Employees in general safe and healthy work practices and to provide specific instruction  
19 with respect to hazards specific to each Employee’s job assignment; Employer failed to provide  
20 such training to Employees, including Ms. Martinez, and including training designed to ensure  
21 safe pedestrian traffic on the job to avoid accidents and safe handling of chemicals on the job.  
22 During Ms. Martinez’s employment with Employer, Employer did not provide any injury  
23 prevention program materials to her, and did not provide any safety training to Ms. Martinez or  
24 her colleagues.

25 42. Employer also failed to keep appropriate records of steps taken to implement and  
26 maintain its program and comply with regulations set by the standards board. Employer failed to  
27 provide adequate meetings, training programs, posting, written communications, a system of  
28 anonymous notification by employees about hazards, labor/management safety and health

1 committees, or any other means that ensures communication with Employees, including Ms.  
2 Martinez, regarding health and safety conditions and workplace injury reporting. During Ms.  
3 Martinez's employment with Employer, Employer did not conduct safety meetings or implement  
4 any safety training programs.

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

12 44. Throughout the Statutory Period, the Employer also failed to comply with Title 8,  
13 Section 3395 of the California Code of Regulations, which required the Employer to address the  
14 risk of heat illness and incorporate additional breaks for Employees to account for high  
15 temperatures on the job into its illness and injury prevention program and practices, which the  
16 Employer failed to do.

17 45. Employer is subject to civil penalties as provided by law.

## 18 **SIXTH COUNT**

### 19 **Failure to Produce Injury Prevention Plan Materials Upon Request**

#### 20 **(By Plaintiff against All Defendants)**

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

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

27 48. As required by occupational safety and health standards,

28 The employer shall provide access to the Program by doing one of  
the following:

1 1. Provide access in a reasonable time, place, and manner, but in no  
2 event later than five (5) business days after the request for access is  
received from an employee or designated representative.

3 a. Whenever an employee or designated representative requests a  
4 copy of the Program, the employer shall provide the requester a  
printed copy of the Program, unless the employee or designated  
representative agrees to receive an electronic copy of the Program.

5 b. One printed copy of the Program shall be provided free of charge.  
6 If the employee or designated representative requests additional  
7 copies of the Program within one (1) year of the previous request  
8 and the Program has not been updated with new information since  
the prior copy was provided, the employer may charge reasonable,  
non-discriminatory reproduction costs (per Section 3204(e)(1)(E))  
for the additional copies. or,

9 2. Provide unobstructed access through a company server or  
10 website, which allows an employee to review, print, and email the  
11 current version of the Program. Unobstructed access means that the  
employee, as part of his or her regular work duties, predictably and  
12 routinely uses the electronic means to communicate with  
management or coworkers.

13 Cal. Code Regs., tit. 8, § 3203, subd. (a)(8).

14 49. Throughout the Statutory Period, the Employer failed to grant Employees access to  
15 its written injury and heat illness prevention plan, to the extent it had one. Despite the foregoing,  
16 and despite Ms. Martinez's written request for such materials, the Employer failed to provide a  
17 copy of any written injury and heat illness prevention plan, indicating either that the Employer  
18 does not have one or that is failed to provide a copy as required.

19 50. Employer is subject to additional civil penalties as provided by law.

## 20 **SEVENTH COUNT**

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

#### 22 **(By Plaintiff against All Defendants)**

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

25 52. Employees incorporate the preceding sections herein. By committing the acts and  
26 omissions described in the preceding sections throughout Employees' employment and throughout  
27 the past year, Employer also violated Labor Code, §§ 6400, 6401, 6402, 6403, 6404 by requiring  
28 and permitting unsafe work, and failing to provide safe workplaces, practices, and processes to its

1 Employees, including Ms. Martinez. Employer is subject to additional civil penalties as provided  
2 by law.

3 **PRAYER**

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

5 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to  
6 be ascertained at trial exceeding \$25,000.

7 2. For reasonable costs and attorneys' fees; and

8 3. For such other and further relief as the Court deems proper.

9  
10 DATED: March 31, 2022

**WORKWORLD LAW CORP.**  
A Professional Corporation

11  
12  
13 By: 

**RUBEN ESCOBEDO**

Attorneys for OLGA MARTINEZ  
as Private Attorney General