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ELECTRONICALLY FILED
3/24/2022 3:27 PM
Kern County Superior Court
By Alejandra Velazquez, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

STATE OF CALIFORNIA ex rel.
RAMON RUIZ, as Private Attorney
General,

Plaintiff,

v.

MASHBURN TRANSPORTATION
SERVICES, INC.; and DOES 1-25,
inclusive,

Defendants.

Case No. BCV-22-100698

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. RAMON RUIZ as Private
Attorney General ("Plaintiff"), who asserts claims against MASHBURN TRANSPORTATION
SERVICES, 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 75
similarly situated current and former aggrieved employees employed by Defendant throughout

1 California between January 18, 2021, and the resolution of this action (“Statutory Period”), and
2 the People of the State of California (hereinafter collectively “Employees”) against Defendant.

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 Employer.

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 Kern County.

20 **PARTIES**

21 6. For all times relevant herein, RAMON RUIZ was an adult individual residing in
22 the State of California. Mr. Ruiz 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 MASHBURN TRANSPORTATION SERVICES, INC. was and is a
27 business entity doing business and employing Employees in Kern County, 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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FIRST COUNT

**Failure to Provide Compliant Meal, Rest, and Recovery Periods; Failure to Pay Premium
Wages (By Plaintiff against All Defendants)**

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

13. Pursuant to California Labor Code § 512, no employer shall employ an employee for a work period of more than five hours without providing a meal break of not less than thirty minutes in which the employee is relieved of all of his or her duties. An employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

14. Pursuant to the IWC Wage Orders applicable to Employees, in order for an “on duty” meal period to be permissible, the nature of the work of the employee must prevent an employee from being relieved of all duties relating to his or her work for the employer and the employee must consent in writing to the “on duty” meal period. Employees did not consent in writing to an “on duty” meal period. Further, the nature of the work of Employees was not such that they are prevented from being relieved of all duties. Employees must be free to leave the premises during meal-and-rest breaks; otherwise, the time is considered “on duty” and must be paid accordingly.

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

16. Finally, “[a]n employer shall not require an employee to work during a ... recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or

1 order of ... the Occupational Safety and Health Standards Board, or the Division of Occupational
2 Safety and Health.” Cal. Lab. Code, § 226.7, subd. (b). “As used in this section, ‘recovery
3 period’ means a cooldown period afforded an employee to prevent heat illness.” Cal. Lab. Code, §
4 226.7, subd. (a). “A rest or recovery period mandated pursuant to a state law ... shall be counted
5 as hours worked, for which there shall be no deduction from wages.” Cal. Lab. Code, § 226.7,
6 subd. (d). “If an employer fails to provide an employee a ... recovery period in accordance with a
7 state law ... the employer shall pay the employee one additional hour of pay at the employee’s
8 regular rate of compensation for each workday that the meal or rest or recovery period is not
9 provided.” Cal. Lab. Code, § 226.7, subd. (c).

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

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

19. Throughout the Statutory Period, Defendant failed to provide Employees with compliant off-duty meal, rest, and recovery periods. Rather than providing off-duty meal-and-rest breaks, Defendant provided Employees with on-duty meal-and-rest breaks in violation of California law. For example, Mr. Ruiz was required by Defendant to stay in or near his truck at all times, including breaks, and was prohibited from leaving his truck unattended. Moreover, Defendant regularly failed to provide Employees, including Mr. Ruiz, with a shaded area to take meal, rest, and recovery periods. Oftentimes, Defendant required the Employees to drive in vehicles without air conditioning and without anywhere to otherwise seek refuge from the heat and elements. By failing to provide the required breaks, and by failing to pay the required premium wages required by Labor Code section 226, Defendant violated the California Labor Code and is subject to substantial civil penalties as a result

20. Employer is subject to civil penalties as provided by law.

SECOND COUNT

Failure to Timely Pay All Wages

(By Plaintiff against All Defendants)

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

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

23. Employees incorporate the preceding sections herein. Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Defendant failed to timely pay Employees for all wages earned as required by law.

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

1 **THIRD COUNT**

2 **Failure to Comply with Recordkeeping Requirements**

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

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

6 26. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a
7 central location in the state or at the plants or establishments at which employees are employed,
8 payroll records showing the hours worked daily by and the wages paid to, and the number of
9 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
10 respective plants or establishments. These records shall be kept in accordance with rules
11 established for this purpose by the commission, but in any case shall be kept on file for not less
12 than three years.” Pursuant to Sections 1198 and the applicable IWC Wage Order, Defendant was
13 also required to keep accurate records of Employees’ hours worked, and to make those records
14 available for inspection upon Employees’ request. The applicable IWC Wage Order provides that
15 “An employee's records shall be available for inspection by the employee upon reasonable
16 request.”

17 27. Employees incorporate the preceding sections herein. Throughout the Statutory
18 Period, Defendant failed to keep accurate records showing the hours worked daily by Employees.
19 Moreover, Defendant failed to ensure that all Employees’ time records were available for
20 inspection upon reasonable request, as evidenced by Mr. Ruiz’s request for all of his time records,
21 which was declined by Defendant.

22 28. Defendant is subject to additional civil penalties for its failure to keep accurate
23 records of Employees’ hours worked.

24 **FOURTH COUNT**

25 **Failure to Produce Records upon Request**

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

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

1 30. “Every current and former employee, or his or her representative, has the right to
2 inspect and receive a copy of the personnel records that the employer maintains relating to the
3 employee’s performance or to any grievance concerning the employee. (b) (1) The employer shall
4 make the contents of those personnel records available for inspection to the current or former
5 employee, or his or her representative, at reasonable intervals and at reasonable times, but not later
6 than 30 calendar days from the date the employer receives a written request, unless the current or
7 former employee, or his or her representative, and the employer agree in writing to a date beyond
8 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar
9 days from the employer’s receipt of the written request.” Lab. Code, § 1198.5, subds. (a) and (b).

10 31. “An employer that is required by this code or any regulation adopted pursuant to
11 this code to keep the information required by subdivision (a) shall afford current and former
12 employees the right to inspect or receive a copy of records pertaining to their employment, upon
13 reasonable request to the employer. The employer may take reasonable steps to ensure the identity
14 of a current or former employee. If the employer provides copies of the records, the actual cost of
15 reproduction may be charged to the current or former employee. (c) An employer who receives a
16 written or oral request to inspect or receive a copy of records pursuant to subdivision (b)
17 pertaining to a current or former employee shall comply with the request as soon as practicable,
18 but no later than 21 calendar days from the date of the request. A violation of this subdivision is an
19 infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an
20 affirmative defense for an employer in any action alleging a violation of this subdivision. An
21 employer may designate the person to whom a request under this subdivision will be made.” Lab.
22 Code, § 226, subds. (b) and (c).

23 32. Throughout the Statutory Period, Defendant violated these provisions by failing
24 to allow Employees access to all records which they are entitled to inspect. Defendant failed to
25 produce any records in response to Employees’ requests made under the foregoing provisions.
26 Defendant is subject to additional civil penalties as provided by law.

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1 **FIFTH COUNT**

2 **Failure to Issue and Keep Accurate Wage Statements**

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

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

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

13 35. “An employer, semimonthly or at the time of each payment of wages, shall
14 furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying
15 the employee’s wages, or separately if wages are paid by personal check or cash, an accurate
16 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
17 employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any
18 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
19 all deductions made on written orders of the employee may be aggregated and shown as one item,
20 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
21 name of the employee and only the last four digits of his or her social security number or an
22 employee identification number other than a social security number, (8) the name and address of
23 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
24 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
25 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee....” Cal. Lab. Code, §
27 226, subd. (a).
28

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

37. Employees incorporate the preceding sections herein. Throughout the Statutory Period, Defendant violated subdivisions (a), (b), and (c) of Section 226 by failing to issue, maintain, or produce upon Employees' request either a duplicate of the itemized statements provided to Employees or a computer-generated record that accurately shows all of the required information. For example, Defendant ignored Mr. Ruiz's multiple requests for his records. Defendant is subject to additional civil penalties as provided by law.

SIXTH COUNT

Failure to Pay All Wages Due at Separation

(By Plaintiff against All Defendants)

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

39. “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).

40. Employees incorporate the preceding sections herein. Throughout the Statutory Period, Defendant 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. Defendant did not provide full payment of these wages to Employees at these times. Defendant'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 Defendant is subject to additional civil penalties.

SEVENTH COUNT

Noncompliant Injury and Illness Prevention Program

(By Plaintiff against All Defendants)

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

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

Lab. Code, 6401.7, subd. (a). “The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.” Lab. Code, 6401.7, subd. (b).

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

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

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

23 46. Throughout the Statutory Period, Defendant subjected all Employees, including
24 Mr. Ruiz, to working conditions that exposed them to hazards from the lack of an adequate injury
25 prevention program. Defendant was subject to all of the foregoing requirements with regard to all
26 of its operations. Defendant failed to implement and maintain an effective injury prevention
27 program. Although Defendant provided training to Employees, Defendant failed to comply with
28 its own program by taking appropriate investigation and corrective action when Employees,

1 including Mr. Ruiz, complained of safety issues in the workplace. Defendant is subject to civil
2 penalties as provided by law. Moreover, Defendant's program systematically fails to address the
3 risks and hazards presented by Employees working long hours in the field without access to
4 adequate food or water, or adequate notice or planning to ensure that Employees are able to take
5 sufficient food and water to last through overtime shifts. Defendant is subject to additional civil
6 penalties as provided by law.

7 **EIGHTH COUNT**

8 **Noncompliant Injury and Illness Prevention Program**

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

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

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

16 49. Among these rules, regulations, and orders is Title 8, Section 3395 of the
17 California Code of Regulations, which was applicable to Defendant and the Employees.
18 Throughout the Statutory Period, Defendant violated the following provisions of § 3395:

19 50. **(c) Provision of water.** Employees shall have access to potable drinking water
20 meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not
21 limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of
22 charge. The water shall be located as close as practicable to the areas where employees are
23 working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be
24 provided in sufficient quantity at the beginning of the work shift to provide one quart per
25 employee per hour for drinking for the entire shift. ... The frequent drinking of water, as described
26 in subsection (h)(1)(C), shall be encouraged.

27 51. ***Throughout the Statutory Period, Defendant provided Employees only one 2-***
28 ***gallon water jug (8 quarts) for shifts lasting anywhere between 10 hours and 18 hours.***

1 *Defendant must provide more water. Some supervisors do deliver more water to the drivers*
2 *throughout the day, but others (including Donald Williams) failed to do so, resulting in an*
3 *inadequate water supply to the Employees.*

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

26 53. *Throughout the Statutory Period, Defendant failed to ensure that all of its*
27 *Employees had access to outdoor shade or alternatively air conditioning in their field vehicles.*
28

1 *For example, may Employees were provided with vehicles with no functioning air conditioning,*
2 *leaving Employees in the middle of a field, without shade.*

3 54. **(e) High-heat procedures.** The employer shall implement high-heat procedures
4 when the temperature equals or exceeds 95 degrees Fahrenheit. These procedures shall include the
5 following to the extent practicable: (1) Ensuring that effective communication by voice,
6 observation, or electronic means is maintained so that employees at the work site can contact a
7 supervisor when necessary. An electronic device, such as a cell phone or text messaging device,
8 may be used for this purpose only if reception in the area is reliable. (2) Observing employees for
9 alertness and signs or symptoms of heat illness. The employer shall ensure effective employee
10 observation/monitoring by implementing one or more of the following: (A) Supervisor or designee
11 observation of 20 or fewer employees, or (B) Mandatory buddy system, or (C) Regular
12 communication with sole employee such as by radio or cellular phone, or (D) Other effective
13 means of observation. (3) Designating one or more employees on each worksite as authorized to
14 call for emergency medical services, and allowing other employees to call for emergency services
15 when no designated employee is available. (4) Reminding employees throughout the work shift to
16 drink plenty of water. (5) Pre-shift meetings before the commencement of work to review the high
17 heat procedures, encourage employees to drink plenty of water, and remind employees of their
18 right to take a cool-down rest when necessary.

19 55. *Throughout the Statutory Period, Defendant systematically failed to implement*
20 *the required high-heat procedures. For example, during periods of high heat, Mr. Ruiz's*
21 *supervisors failed to monitor and keep Employees under observation. Defendant failed to*
22 *observe Employees for alertness and signs or symptoms of heat illness. Defendant's supervisors*
23 *conveyed that they cared only about whether there was coverage to get the job done; as far as*
24 *health and safety were concerned, Employees were left to fend for themselves. Defendant also*
25 *failed to conduct pre-shift meetings before the commencement of work to review the high heat*
26 *procedures, encourage Employees to drink plenty of water, and remind Employees of their right*
27 *to take a cool-down rest when necessary.*

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

57. *The Defendant also failed to implement any and all of the foregoing required procedures.*

58. Defendant is subject to additional civil penalties as provided by law.

NINTH COUNT

Unsafe Working Conditions

(By Plaintiff against All Defendants)

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

60. Employees incorporate the preceding sections herein. By committing the acts and omissions described in the preceding sections throughout the Statutory Period, Defendant also violated Labor Code, §§ 6400, 6401, 6402, 6403, and 6404 by requiring and permitting unsafe work, failing to provide safe workplaces, practices, and processes to its Employees.

61. Defendant is subject to additional civil penalties as provided by law.

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: March 24, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: RUBEN ESCOBEDO
Attorneys for RAMON RUIZ
as Private Attorney General