

1 RUBEN ESCOBEDO (SBN 277866)
2 WORKWORLD LAW CORP.
3 A Professional Corporation
4 6907 El Camino Real, Suite A
5 Atascadero, CA 93422
6 Telephone: (805) 335-2476
7 Facsimile: (805) 892-6213
8 Email: support@workworldlaw.com

9 Attorney for ALEJANDRO PALMA RAMIREZ,
10 as Private Attorney General

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA BARBARA – ANACAPA DIVISION**

13 STATE OF CALIFORNIA ex rel.
14 ALEJANDRO PALMA RAMIREZ, as
15 Private Attorney General,

16 Plaintiff,

17 v.

18 FIRE FOX, INC.; and DOES 1-25,
19 inclusive,

20 Defendants.

Case No. 22CV01828

Assigned for All Purposes to:

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

Trial Date: None

Complaint filed:

21 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. ALEJANDRO PALMA
22 RAMIREZ as Private Attorney General (“Plaintiff”), who asserts claims against FIRE FOX, INC.,
23 and DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as follows:

INTRODUCTION

24 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
25 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and the People of the
26 State of California (hereinafter collectively “Plaintiff”). Employer employed Mr. Ramirez as a
27 general laborer during the relevant period for purposes of this PAGA claim, which is from March
28

1 1, 2021, through the end of Mr. Ramirez’s employment on or about July 23, 2021 (“Statutory
2 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, ALEJANDRO PALMA RAMIREZ was an adult
22 individual residing in the State of California. Mr. Ramirez is not suing in his individual capacity;
23 he is proceeding herein solely under the PAGA, on behalf of the State of California for all
24 aggrieved employees, including 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 FIRE FOX, INC. was and is a corporation with its principal place of
27 business in Santa Barbara 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.

25 ///

26 ///

27 ///

28

1 **FIRST COUNT**

2 **Failure to Pay Minimum Wages Owed**

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. Section 1197 provides that “[t]he minimum wage for employees fixed by the
7 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
8 and the payment of a lower wage than the minimum so fixed is unlawful.” “(1) For any employer
9 who employs 26 or more employees, the minimum wage shall be as follows: ... From January 1,
10 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour. (F) From January 1,
11 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.” Cal. Lab. Code, §
12 1182.12, subd. (b).

13 14. Pursuant to Section 1197.1, “(a) Any employer or other person acting either
14 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
15 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
16 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
17 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
18 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
19 for each underpaid employee for each pay period for which the employee is underpaid. This
20 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
21 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
22 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
23 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
24 regardless of whether the initial violation is intentionally committed. This amount shall be in
25 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
26 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

27 15. The Employer (via supervisor) informed Mr. Ramirez that employees were not
28 able to leave the job site during their meal breaks, unless they obtained special permission, which

1 was discouraged and granted only approximately twice a month. Employer failed to pay for Mr.
2 Ramirez's meal periods, although the Employer exercised control over him during his meal
3 periods, qualifying that time as "hours worked" for which Mr. Ramirez was entitled to at least
4 minimum wage.

5 16. As a result of the foregoing, Employer violated California's minimum wage laws
6 and is subject to civil penalties.

7 **SECOND COUNT**

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

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

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

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

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

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

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

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

18 22. Employer provided noncompliant meal periods to Mr. Ramirez because
19 Employer's supervisors informed Mr. Ramirez he was not free to leave the worksite during his
20 meal periods, unless special permission was obtained, which was rare and discouraged. Because
21 Employer discouraged Mr. Ramirez from taking off-duty meal periods where he was free to leave
22 the jobsite, Employer violated Section 226.7 and is subject to additional civil penalties.

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

24 **THIRD COUNT**

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

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

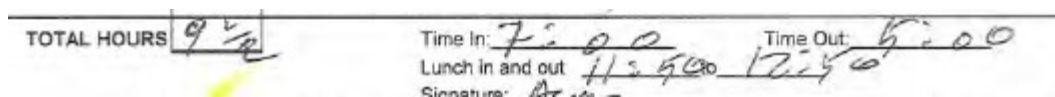
27 24. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

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

7 26. The applicable Wage Order provides “Every employer shall authorize and permit
8 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
9 period.” The time between the start of work and a meal period qualifies as a “work period”
10 pursuant to the regulation, as does the time between the end of the meal period and the end of
11 work. *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1044; *see also Brinker Restaurant*
12 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1031 (“The only constraint on timing is that rest
13 breaks must fall in the middle of work periods ‘insofar as practicable.’ Employers are thus subject
14 to a duty to make a good faith effort to authorize and permit rest breaks in the middle of each work
15 period”).

16 27. Moreover, when two 10-minute rest periods are required for a typical 8-hour shift,
17 combining the rest periods in a single 20-minute rest period is not permitted, unless “an employer's
18 business requires shifts in which the meal period occurs soon after employees report for work.”
19 *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1045. Otherwise, “[I]n the context of an
20 eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break.
21 [Citation.] Shorter or longer shifts and other factors that render such scheduling impracticable may
22 alter this general rule.” *Id.*

23 28. In violation of the foregoing laws, the Employer explained to Mr. Ramirez that it
24 provided Mr. Ramirez with a *single block* break in the middle of the day. For example, on or
25 about March 10, 2021, the Employer recorded a total of 9.5 hours worked, with a single break of
26 approximately 1 hour recorded between 11:50 a.m. and 12:50 a.m.

27 
28

29. Employer failed to provide Mr. Ramirez with rest periods in the middle of each work period, as required by law, and is subject to additional civil penalties.

FOURTH COUNT

Inaccurate Wage Statements

(By Plaintiff against All Defendants)

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

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

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

33. Employer failed to furnish Mr. Ramirez with accurate itemized statements at the time of each payment of wages showing all deductions, the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Mr. Ramirez's wage statements also failed to reflect all premium wages owed for the violations of Section 226.7. Consequently, Employer failed to provide Mr. Ramirez accurate itemized wages statements as required by Section 226.

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

FIFTH COUNT

Untimely Payment of Wages

(By Plaintiff against All Defendants)

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

36. 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).

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

38. “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty

1 as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
2 employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred
3 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
4 withheld.” Cal. Lab. Code, § 210, subd. (a).

5 39. Rather than timely paying Mr. Ramirez all wages due within the periods set forth
6 above, Employer failed to timely pay Mr. Ramirez for all wages owed.

7 40. Employer is subject to civil penalties as provided by law.

8 **SIXTH COUNT**

9 **Failure to Pay Wages at Termination**

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

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

13 42. “If an employer discharges an employee, the wages earned and unpaid at the time
14 of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer
15 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
16 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
17 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
18 paid or until an action therefor is commenced; but the wages shall not continue for more than 30
19 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or
20 who refuses to receive the payment when fully tendered to him or her, including any penalty then
21 accrued under this section, is not entitled to any benefit under this section for the time during
22 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

23 43. Throughout the Statutory Period, Employer failed to pay Mr. Ramirez all wages.
24 These wages were owed and due to Mr. Ramirez at the time of his discharge, or within the
25 statutorily prescribed time after Mr. Ramirez’s resignation. Employer did not provide these
26 payments to Mr. Ramirez at the time of termination or within a sufficient time of resignation as
27 required by law. Employer’s failure to timely pay these wages at the time of termination, and
28

1 failure to pay Mr. Ramirez's continued wages for the 30-day period thereafter, constitutes a
2 violation of Sections 201 and 203.

3 44. Employer is subject to additional civil penalties as provided by law.

4 **SEVENTH COUNT**

5 **Failure to Maintain Accurate Meal-and-Rest Period Records**

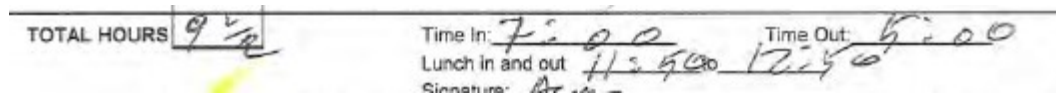
6 **(By Plaintiff against All Defendants)**

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

9 46. "A rest ... period mandated pursuant to a state law ... shall be counted as hours
10 worked...." Lab. Code, § 226.7, subd. (d). Employers are also required to maintain labor
11 conditions that comply with Industrial Welfare Commission Wage Orders. See Lab. Code, §
12 1198.

13 47. Pursuant to Industrial Welfare Commission Wage Orders, every employer shall
14 keep accurate information with respect to each employee including the following: Time records
15 showing when the employee begins and ends each work period. Meal periods shall also be
16 recorded.

17 48. Employer systematically broke the law when it recorded Mr. Ramirez's rest periods
18 as part of a "lunch" where Mr. Ramirez was deemed clocked "out." For example, on or about
19 March 10, 2021, the Employer recorded Mr. Ramirez's rest period as part of a period in which he
20 was "out" of work:

21 A handwritten time record on a lined background. It includes the following entries: 'TOTAL HOURS' followed by '9 1/2', 'Time In: 7:00', 'Lunch in and out 11:50 to 12:50', and 'Time Out: 5:00'. There is a signature 'A. Ramirez' written below the lunch period.

22 49. Employer inaccurately recorded Mr. Ramirez's meal periods by overstating the
23 duration thereof, and by failing to record which part of the approximately 1-hour period labeled
24 "out" was for a rest period and which part was for the meal period. By failing to count Mr.
25 Ramirez's rest periods as hours worked, Employer violated the law and Employer is subject to
26 additional civil penalties.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 in excess of \$25,000.
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: May 11, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for ALEJANDRO PALMA
RAMIREZ
as Private Attorney General