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ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
6/10/2022 4:00 PM
By: Miroslava Pena-Bautista, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA – COOK DIVISION

STATE OF CALIFORNIA ex rel.
LIZBETH BALDERAS, as Private
Attorney General,

Plaintiff,

v.

FRESH START HARVESTING, INC.;
and DOES 1-25, inclusive,

Defendants.

Case No. 22CV02246

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. LIZBETH BALDERAS as
Private Attorney General (“Plaintiff”), who asserts claims against FRESH START
HARVESTING, INC. (“Fresh Start Harvesting”), 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 herself, approximately 500
similarly situated current and former aggrieved employees employed by Fresh Start Harvesting

1 Inc. between January 27, 2021, and the conclusion of the forthcoming action (“Statutory Period”),
2 and the People of the State of California (hereinafter collectively “Employees”).

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, LIZBETH BALDERAS was an adult individual
22 residing in the State of California. Ms. Balderas is not suing in her individual capacity; she is
23 proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved
24 employees, 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 FRESH START HARVESTING, INC. was and is a corporation with its
27 principal place of 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.

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1 **FIRST COUNT**

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

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

15 14. Pursuant to Labor Code sections 226.7 and 512, and Wage Order 14, duty-free
16 meal periods of no less than thirty (30) minutes are required for all non-exempt employees who
17 work at least five (5) hours in a work period per day. The employee must be free to leave the
18 employer’s premises. An employer may not employ an employee for a work period of more than
19 10 hours per day without providing the employee with a second meal period of not less than 30
20 minutes. Time records of meal periods must be kept. Meal periods must be paid when the
21 employee is not relieved of all duties or free to leave the premises. An employer who fails to
22 provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for
23 each day in which a duty-free meal period is not provided.

24 15. “If an employer fails to provide an employee a meal or rest or recovery period in
25 accordance with a state law, including, but not limited to, an applicable statute or applicable
26 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
27 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
28 pay the employee one additional hour of pay at the employee’s regular rate of compensation for

1 each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code, § 226.7,
2 subd. (c).

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

11 17. Throughout the Statutory Period, Employees were not free to leave their worksite
12 during their meal periods. Fresh Start Harvesting implemented a policy that, “for safety reasons
13 Fresh Start Harvest[ing] has forbidden [Employees] to leave your designated work area without
14 permission[. T]his includes during the Employees[‘] 1/2 Lunch....” This policy unlawfully
15 deterred Employees from taking compliant meal periods during which they were completely
16 unrestricted from leaving the worksite as required by law. Because Fresh Start Harvesting
17 retained control over Employees’ meal periods, the company was also required to pay Employees
18 for this time at a rate at or above the applicable minimum wage rate; Fresh Start Harvesting failed
19 to do so in violation of Cal. Lab. Code, § 1182.12, 1197, and 1197.1 by paying \$0 for Employees’
20 meal periods. Fresh Start Harvesting unlawfully deducted meal period time from Employees’
21 wages in violation of the foregoing statutes, in addition to Sections 221 and 223.

22 18. Meal periods were also provided in an untimely manner throughout the Statutory
23 Period. Employees’ foreman would announce when they were allowed to take a break and
24 everyone within the crew took their breaks at the same time. Although Employees were entitled to
25 a meal period within the first five (5) hours of work, Fresh Start Harvesting regularly scheduled
26 Employees’ first meal periods after such time. For example, when Employees including Ms.
27 Balderas started work for Fresh Start at around 6:00 a.m. or 7:00 a.m., they regularly were not
28 provided a meal period until after 5 hours of work for shifts longer than 5 hours.

19. Fresh Start Harvesting also failed to pay premium wages as required by Section 226.7 for these non-compliant meal periods. For these reasons, Fresh Start Harvesting violated Section 226.7.

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

SECOND COUNT

Failure to Provide Compliant Rest Periods or Pay Rest Premiums

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

23. An employer who fails to provide a compliant rest period must pay the employee an additional one (1) hour of regular pay for each day in which a compliant rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c). Moreover, “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558,
3 subd. (a).

4 24. Throughout the Statutory Period, Fresh Start Harvesting maintained an illegal
5 practice of not providing Fresh Start Harvesting with timely rest periods. For example, when
6 Employees including Ms. Balderas started work at approximately 9:00 a.m., Fresh Start
7 Harvesting generally scheduled Employees’ work as follows: start time at around 9:00 a.m., lunch
8 at around 11:30 a.m., and two rest breaks in the afternoon. As a result, although it was practicable
9 to provide the rest periods in the middle of Employees’ work periods, Fresh Start Harvesting
10 failed to do so.

11 25. Fresh Start Harvesting also failed to pay premium wages as required by Section
12 226.7 for these non-compliant rest periods. For these reasons, Fresh Start Harvesting violated
13 Section 226.7.

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

15 **THIRD COUNT**

16 **Inaccurate Wage Statements**

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

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

20 28. “An employer, semimonthly or at the time of each payment of wages, shall furnish
21 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
22 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
24 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
25 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
26 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
27 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
3 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
4 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
6 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
7 and the total hours worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd.
8 (a).

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

15 30. Throughout the Statutory Period, Fresh Start Harvesting failed to furnish
16 Employees with accurate itemized statements at the time of each payment of wages showing the
17 correct gross wages earned, total hours worked, and correct net wages earned for each pay period.
18 Rather than providing statements with a correct payment of wages based thereon, Fresh Start
19 Harvesting failed to capture and pay Employees for all hours worked and premium wages for
20 noncompliant meal-and-rest periods.

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

22 **FOURTH COUNT**

23 **Untimely Payment of Wages**

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

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

27 33. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
28 204.1, or 204.2, earned by any person in any employment are due and payable twice during each

1 calendar month, on days designated in advance by the employer as the regular paydays. Labor
2 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
3 between the 16th and the 26th day of the month during which the labor was performed, and labor
4 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
5 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

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

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

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

37. Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Fresh Start Harvesting failed to timely pay Employees for all hours worked and premium wages.

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

FIFTH COUNT

Failure to Pay Wages at Termination

(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. “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).

41. Throughout the Statutory Period, Fresh Start Harvesting failed to pay Employees at least minimum wage and all premium wages for all time worked. These wages were owed and due to Employees at the time of their termination. Fresh Start Harvesting did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by law. Fresh Start Harvesting's failure to timely pay these wages at the time of termination, and failure to pay Employees' continued wages for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

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

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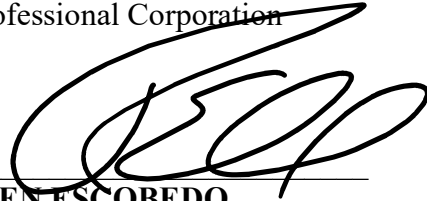
PRAYER

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: June 10, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for LIZBETH BALDERAS
as Private Attorney General