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For All Purposes

Attorney for JAVIER MIRELES,
as Private Attorney General

Case Management Conference

01/25/2023 08:30 AM - Department 02

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE**

STATE OF CALIFORNIA ex rel.
JAVIER MIRELES, as Private Attorney
General,

Plaintiff,

v.

CENTRAL VALLEY CONSTRUCTION;
and DOES 1-25, inclusive,

Defendants.

Case No. VCU293499

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. JAVIER MIRELES as Private Attorney General (“Plaintiff”), who asserts claims against CENTRAL VALLEY CONSTRUCTION and DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately more than 50 similarly situated current and former aggrieved employees employed by Employer

1 throughout California between July 20, 2021 (“Statutory Period”) and the resolution of this action,
2 and the People of the State of California (hereinafter collectively “Employees”) against Employer.

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

11 3. Plaintiff has 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 Defendant CENTRAL VALLEY
19 CONSTRUCTION is domiciled in Tulare County.

20 **PARTIES**

21 6. For all times relevant herein, JAVIER MIRELES was an adult individual residing
22 in the State of California. Mr. Mireles is not suing in his individual capacity; he is proceeding
23 herein solely under the PAGA, on behalf of the State of California for all aggrieved employees,
24 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 CENTRAL VALLEY CONSTRUCTION was and is a corporation with its
27 principal place of business in Tulare 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 Pay Minimum Wages and Overtime**

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.” “[O]n and after
9 January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per
10 hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be
11 less than the amounts set forth in this subdivision (1) For any employer who employs 26 or
12 more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December
13 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to
14 December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to
15 December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to
16 December 31, 2020, inclusive,—thirteen dollars (\$13) per hour. (E) From January 1, 2021, to
17 December 31, 2021, inclusive,—fourteen dollars (\$14) per hour. (F) From January 1, 2022, and
18 until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.” Cal. Lab. Code, § 1182.12,
19 subd. (b).

20 14. Throughout the Statutory Period, Employer failed to pay Employees including
21 Mr. Mireles at least minimum wage for all time worked. For example, Employer generally paid
22 Mr. Mireles a flat 80 hours for every two weeks of work, although the Employer knew or had
23 reason to know that he and other Employees usually worked more hours (an extra 5-10 hours
24 every 2 weeks in Mr. Mireles’ case). Employer regularly paid zero dollars for these additional
25 hours. Consequently, Employer violated the foregoing minimum wage laws.

26 15. Moreover, to the extent those hours push Employees’ daily hours worked past 8
27 hours, based on the foregoing Employer also violated various overtime laws. *See* Lab. Code, §
28 510, subd. (a); Lab. Code, § 1198. On some occasions, Employer did pay Employees for overtime

1 hours, although on a cash “under the table” basis, but at a rate of pay lower than the applicable
2 overtime rate (at least time and a half).

3 16. Employer is guilty of violating the foregoing minimum wage and overtime
4 statutes, and is subject to civil penalties.

5 **SECOND COUNT**

6 **Failure to Provide or Pay for Rest Periods**

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

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

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

16 19. During the Statutory Period, Employer failed to provide Employees with duty-free
17 rest periods as set forth above. Employer required Employees as a general rule to remain on duty
18 and continue working from the beginning of work until their meal period, and then from the
19 resumption of work after Employees’ meal periods until the conclusion of the day. Employer also
20 failed to pay an additional hour of pay at Employees’ regular rate of compensation for these
21 violations.

22 **THIRD COUNT**

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

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

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

27 21. “An employer shall not require an employee to work during a ... recovery period
28 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of ... the

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

10 22. Pursuant to the applicable regulation, “[w]hen the outdoor temperature in the work
11 area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with
12 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 23. “Employees shall be allowed and encouraged to take a preventative cool-down rest
21 in the shade when they feel the need to do so to protect themselves from overheating. Such access
22 to shade shall be permitted at all times. An individual employee who takes a preventative cool-
23 down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness;
24 (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until any
25 signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to
26 the time needed to access the shade.” Cal. Code Regs., tit. 8, § 3395, subd. (d)(3). “For purposes
27 of this section, preventative cool-down rest period has the same meaning as ‘recovery period’ in
28 Labor Code Section 226.7(a).” Cal. Code Regs., tit. 8, § 3395, subd. (e)(6).

1 24. This claim is brought on behalf of all Employees who worked outdoors, including
2 Mr. Mireles. Throughout the Statutory Period, Employer failed to allow or encourage shaded
3 recovery periods as required by law both when temperatures exceeded eighty degrees and when
4 temperatures were eighty degrees and below. Although Employer informed Employees including
5 Mr. Mireles to provide meal periods, Employer failed to take the necessary actions to provide
6 heat-recovery periods to Employees. Employer also failed to ensure effective employee
7 observation/monitoring as required by law. Employees regularly work/ed outdoors performing
8 various tasks for Employer where heat recovery periods are needed. Employer also failed to
9 conduct meetings on heat illness and failed to encourage or ensure Employees to take heat
10 recovery periods at the required intervals as required by law.

11 25. Employer is subject to civil penalties for its violation of § 226.7 and § 3395.

12 **FOURTH COUNT**

13 **Untimely Payment of Wages**

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

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

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

24 28. Rather than timely paying Employees all wages due within the periods set forth
25 above, throughout the Statutory Period, Employer failed to timely pay Employees for all wages
26 earned as required by law.

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FIFTH COUNT

Failure to Keep or Produce Records of Hours Worked

(By Plaintiff against All Defendants)

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

30. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

31. Pursuant to Sections 1198 and the applicable IWC Wage Order, Employer was also required to keep accurate records of Employees’ hours worked.

32. Throughout the Statutory Period, Employer failed to keep accurate records showing the hours worked daily by Employees, including the hours Employees worked “off the clock,” as set forth above.

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

SIXTH COUNT

Failure to Issue and Keep Records of Wage Statements

(By Plaintiff against All Defendants)

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

35. California Labor Code section 226, subdivision (a) mandates that employers issue accurate itemized statements semimonthly or at the time of each payment of wages, and that “a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

1 For purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to
2 an employee or a computer-generated record that accurately shows all of the information required
3 by this subdivision.”

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

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

26 38. Throughout the Statutory Period, Employer violated subdivisions (a), (b), and (c)
27 of Section 226 by failing to issue, maintain, or produce upon Employees’ request either a duplicate
28 of the itemized statements provided to Employees or a computer-generated record that accurately

1 shows all of the required information. Employer is subject to additional civil penalties for its
2 failure to keep or accurate records of Employees' hours worked.

3 **SEVENTH COUNT**

4 **Failure to Pay Wages at Termination**

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

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

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

18 41. Throughout the Statutory Period, Employer failed to pay Employees all wages
19 earned. These wages were owed and due to Employees at the time of their termination or within
20 72 hours of their resignation. Employer did not provide full payment of these wages to Employees
21 at these times. Employer's failure to timely pay these wages at the prescribed times, and failure to
22 pay Employees' continued wages for the 30-day period thereafter, constitute a violation of
23 Sections 201 and 203, for which Employer is subject to additional civil penalties.

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1 **EIGHTH COUNT**

2 **Violation of Heat Illness Prevention Health-and-Safety Standards**

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

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

6 43. "Every employer and every employee shall comply with occupational safety and
7 health standards, with Section 25910 of the Health and Safety Code, and with all rules,
8 regulations, and orders pursuant to this division which are applicable to his own actions and
9 conduct." Lab. Code 6407.

10 44. Among these rules, regulations, and orders is Title 8, Section 3395 of the California
11 Code of Regulations, which was applicable to Employer and the Employees. Throughout
12 Employees' employment, Employer violated the following provisions of § 3395:

13 45. **(d) Access to shade.** (1) Shade shall be present when the temperature exceeds 80
14 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees
15 Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while
16 employees are present that are either open to the air or provided with ventilation or cooling. The
17 amount of shade present shall be at least enough to accommodate the number of employees on
18 recovery or rest periods, so that they can sit in a normal posture fully in the shade without having
19 to be in physical contact with each other. The shade shall be located as close as practicable to the
20 areas where employees are working. Subject to the same specifications, the amount of shade
21 present during meal periods shall be at least enough to accommodate the number of employees on
22 the meal period who remain onsite. (2) Shade shall be available when the temperature does not
23 exceed 80 degrees Fahrenheit. When the outdoor temperature in the work area does not exceed 80
24 degrees Fahrenheit employers shall either provide shade as per subsection (d)(1) or provide timely
25 access to shade upon an employee's request. (3) Employees shall be allowed and encouraged to
26 take a preventative cool-down rest in the shade when they feel the need to do so to protect
27 themselves from overheating. Such access to shade shall be permitted at all times. An individual
28 employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is

1 experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C)
2 shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in
3 no event less than 5 minutes in addition to the time needed to access the shade. (4) If an employee
4 exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest or
5 during a preventative cool-down rest period, the employer shall provide appropriate first aid or
6 emergency response according to subsection (f) of this section. ...

7 46. *Throughout Employees' employment, Employer failed to provide or encourage*
8 *shade or recovery periods as required by law when temperatures exceeded eighty degrees or*
9 *when they were eighty degrees or lower.*

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

3 48. *Employer failed to implement any and all of the foregoing required procedures.*

4 49. **(g) Acclimatization.** (1) All employees shall be closely observed by a supervisor or
5 designee during a heat wave. For purposes of this section only, 'heat wave' means any day in
6 which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least
7 ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.
8 (2) An employee who has been newly assigned to a high heat area shall be closely observed by a
9 supervisor or designee for the first 14 days of the employee's employment.

10 50. *Employer failed to provide the required monitoring throughout Employees'*
11 *employment.*

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

1 employer's procedures for responding to signs or symptoms of possible heat illness, including how
2 emergency medical services will be provided should they become necessary. (H) The employer's
3 procedures for contacting emergency medical services, and if necessary, for transporting
4 employees to a point where they can be reached by an emergency medical service provider. (I)
5 The employer's procedures for ensuring that, in the event of an emergency, clear and precise
6 directions to the work site can and will be provided as needed to emergency responders. These
7 procedures shall include designating a person to be available to ensure that emergency procedures
8 are invoked when appropriate. (2) Supervisor training. Prior to supervising employees performing
9 work that should reasonably be anticipated to result in exposure to the risk of heat illness effective
10 training on the following topics shall be provided to the supervisor: (A) The information required
11 to be provided by section (h)(1) above. (B) The procedures the supervisor is to follow to
12 implement the applicable provisions in this section. (C) The procedures the supervisor is to follow
13 when an employee exhibits signs or reports symptoms consistent with possible heat illness,
14 including emergency response procedures. (D) How to monitor weather reports and how to
15 respond to hot weather advisories.

16 52. *Employer failed to provide the foregoing training to Employees. Mr. Mireles*
17 *received no training on this subject.*

18 53. **(i) Heat Illness Prevention Plan.** The employer shall establish, implement, and
19 maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and
20 the language understood by the majority of the employees and shall be made available at the
21 worksite to employees and to representatives of the Division upon request. The Heat Illness
22 Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program
23 required by section 3203, and shall, at a minimum, contain: (1) Procedures for the provision of
24 water and access to shade. (2) The high heat procedures referred to in subsection (e). (3)
25 Emergency Response Procedures in accordance with subsection (f). (4) Acclimatization methods
26 and procedures in accordance with subsection (g).

27 54. *Employer failed to establish, implement, and maintain an effective heat illness*
28 *prevention plan in accordance with law.*

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

NINTH COUNT

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

(By Plaintiff against All Defendants)

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

57. “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).

58. “The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.” Lab. Code, 6401.7, subd. (c). “The employer shall keep appropriate records of steps taken to implement and maintain the program.” Lab. Code, 6401.7,

1 subd. (d). The standards board shall adopt a standard setting forth the employer's duties under this
2 section....” Lab. Code, 6401.7, subd. (e)(1).

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

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

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

62. Employer also failed to keep appropriate records of steps taken to implement and maintain its program and comply with regulations set by the standards board. Employer failed to provide adequate meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with Employees, including Mr. Mireles, regarding health and safety conditions and workplace injury reporting. Employer required Employees, including Mr. Mireles, to work at an unsafely fast workplace.

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

TENTH COUNT

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

(By Plaintiff against All Defendants)

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

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

PRAAYER

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.

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- 2. For reasonable costs and attorneys’ fees; and
- 3. For such other and further relief as the Court deems proper.

DATED: September 26, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for JAVIER MIRELES
as Private Attorney General