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10 *Employee, and on behalf of all other Aggrieved*
11 *Employees*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

13 RENE GONZALEZ, as an aggrieved
14 employee, and on behalf of all other aggrieved
15 employees under the Labor Code Private
Attorneys General Act of 2004 ("PAGA"),

Plaintiff,

v.

17 VAL-PRO, INC, a California corporation; and
18 DOES 1 through 10, inclusive,

Defendants.

CASE NUMBER: BCV-25-101999

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action, pursuant to the Labor Code Private Attorneys General Act
2 of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), brought on behalf of Plaintiff,
3 Rene Gonzalez, as an Aggrieved Employee, (“Plaintiff”), against Val-Pro, Inc. (individually
4 referred to as “Defendant”) and any of its respective subsidiaries or affiliated companies within
5 the State of California, and DOES 1 through 10 as further defined below, as a proxy of the Labor
6 and Workforce Development Agency of the State of California (“LWDA”), on behalf of all other
7 current and former non-exempt employees of Defendant working within the Civil Penalty
8 Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply
9 with Labor Code §§201, 202, 203, 226, 226.7, 510, 512, 558, 860, 1174, 1174.5, 1194, 1197,
10 1197.1, 1198, 2698, 2699, 2802, 6401.7, 6401.9, 6428, 6429, 6721, California Code of
11 Regulations, Title 8, Sections 3395 and 3396, suitable resting facilities pursuant to IWC Wage
12 Order 7-2001, Section 13, IWC Wage Orders 7-2001, and all other applicable IWC Wage Orders
13 and sections, on behalf of all employees of Defendant working within the Civil Penalty Period
14 (collectively, “Aggrieved Employees”). Plaintiff makes the following allegations on information
15 and belief, except as to allegations pertaining to Plaintiff, which are based on his personal
16 knowledge.

17 **INTRODUCTION**

18 1. Defendant is a produce distribution company conducting business in Delano,
19 California with headquarters in the Los Angeles Wholesale Product Market.

20 2. As private, for-profit business, Defendant has implemented common policies and
21 practices that have resulted in systemic violations of California’s wage and hour laws. Defendant
22 has failed to implement adequate practices to protect the rights of its employees, particularly in
23 light the nature of its businesses, which is to maximize profits.

24 3. Defendant attempts to maximize profits by among other methods, understaffing
25 its facilities and delivery drivers, requiring the production of increased workloads, etc., denying
26 employees the ability to take meal, recovery and rest breaks.

27 4. Defendant has implemented unlawful written policies with respect to meal,
28 recovery and rest breaks. Defendant also requires its hourly, non-exempt employees, who are

informed that the needs of the businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and to remain on call during such breaks. As a result, Plaintiff and other Aggrieved Employees have been denied the ability to take the meal, recovery and rest breaks that they were and are legally entitled to take.

5. Moreover, Defendant has uniformly failed to pay Plaintiff and other Aggrieved Employees proper overtime wages due the fact that they improperly calculate the highest regular rate of pay based upon nondiscretionary bonus and commission payments; and willfully turn a blind eye to off-the-clock work that Plaintiff and other hourly, non-exempt employees perform as a direct consequence of Defendant's understaffing and imposition of an unreasonable workload.

6. Defendant also failed to provide for recovery periods and implement Heat & Temperature Illness Program, in violation of Labor Code §§6721, Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard, and Defendant failed to implement a workplace violation policy, in violation of Labor Code §§6401.7 and 6401.9, in addition to other violations of the California Labor Code.

JURISDICTION AND VENUE

7. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a citizen and resident of the State of California, and Defendant is authorized and/or regularly conduct business in, the State of California.

8. Plaintiff is an “Aggrieved Employee” under PAGA, as Plaintiff was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus reasonable attorneys’ fees and costs, for all other Aggrieved current and former employees of Defendant during the Civil Penalty Period. Plaintiff does not seek to assert his own claim for civil penalties under PAGA as part of this Action.

9. Specifically, Plaintiff seeks to recover PAGA civil penalties through a

1 representative action permitted by PAGA and the California Supreme Court in, among other
2 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities,
3 class certification of the PAGA allegations described herein is not required.

4 10. During the period beginning one (1) year preceding the provision of notice to the
5 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
6 Defendant violated, *inter alia*, including but not limited to, Labor Code §§201, 202, 203, 226,
7 226.7, 510, 512, 558, 860, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698, 2699, 2802, 6401.7,
8 6401.9, 6428, 6429, 6721, California Code of Regulations, Title 8, Sections 3395 and 3396,
9 suitable resting facilities pursuant to IWC Wage Order 7-2001, Section 13, IWC Wage Orders 7-
10 2001, and all other applicable IWC Wage Orders and sections.

11 11. Labor Code Section 2699, subdivisions (a) and (g), authorizes aggrieved employees
12 on behalf of all other aggrieved current and former employees within the statutory period, to bring
13 a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section
14 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.
15 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533.) Specifically,
16 Plaintiff does not seek to recover Plaintiff’s 35% share of civil penalties for the particular Labor
17 Code violations Plaintiff experienced. Rather, this is a purely representative PAGA action wherein
18 Plaintiff seeks to recover all civil penalties for the Labor Code violations experienced by third-
19 party Aggrieved Employees and the State of California’s 65% of the civil penalties for the Labor
20 Code violations Plaintiff and the other Aggrieved Employees experienced.

21 12. Venue is proper in this judicial district and the County of Kern, California since
22 Defendant maintains its facilities in Delano, California, a city located within the County of Kern,
23 and Defendant’s unlawful actions and omissions, as set forth and alleged herein, occurred in the
24 County of Kern.

25 13. Defendant employed Plaintiff and other Aggrieved Employees within the State of
26 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other Aggrieved
27 Employees.
28

THE PARTIES

14. Plaintiff is a citizen of the State of California and during the relevant time period, Plaintiff was employed by Defendant as a delivery driver transporting produce through the Central Coast of California.

15. Plaintiff is informed and believes, and thereon alleges, that Defendant Val-Pro, Inc., is a corporation organized and existing under the laws of the State of California. Defendant Val-Pro, Inc. is authorized to conduct business and does conduct business in the State of California.

16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy or integrated enterprise. Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other Defendants.

18. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

19. The true names and capacities of DOES 1 through 50, inclusive, are unknown to

1 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
2 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
3 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
4 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
5 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint
6 to allege the true names and capacities of such DOE defendants when ascertained.

7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 20. On March 19, 2025, Plaintiff gave written notice by certified mail pursuant to
9 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
10 ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage
11 Order alleged to have been violated, including the facts and theories to support the alleged
12 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
13 than sixty-five (65) days from March 19, 2025 postmark date of his written notice before filing
14 this action, Plaintiff has complied with all of the requirements set forth in California Labor Code
15 § 2699.3 to commence a representative action under the California Private Attorneys General Act
16 of 2004 ("PAGA").

17 21. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
18 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
19 former non-exempt employees of Defendant and performed work for Defendant in the State of
20 California at any time within the period beginning one (1) year prior and sixty-five (65) days prior
21 to the March 19, 2025 notice Plaintiff provided to the LWDA and Defendant, and ending at the
22 time this action proceeds to final judgment ("statute of limitations period")).

23 **FACTUAL ALLEGATIONS**

24 **Failure to Provide Required Meal Periods**

25 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

26 22. During the statute of limitations period, as part of Defendant's illegal policies and
27 practices to minimize labor costs and maximize corporate profits, Defendant required, permitted
28 or otherwise suffered Plaintiff and Aggrieved Employees to perform work during their meal

1 periods, to completely skip their meal periods, to take late and short meal periods, and Defendant
2 has otherwise failed to provide the required meal periods to Plaintiff and Aggrieved Employees as
3 required under California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable IWC Order.

4 23. Defendant has implemented several practices that have caused Plaintiff and
5 Aggrieved Employees to systematically miss and otherwise take non-compliant meal periods.
6 Defendant systematically understaff its facilities and delivery drivers such that non-exempt
7 employees are given so much work to complete that they regularly miss or otherwise take non-
8 compliant meal periods. As a direct consequence of this understaffing, Plaintiff and Aggrieved
9 Employees have so much work to complete within their scheduled shifts due to their quotas and/or
10 workloads, they are forced to skip their meal periods altogether, to take them after working longer
11 than five (5) hours, to perform work during their meal periods, or return to work after taking less
12 than a thirty (30) minute meal period.

13 24. There are also frequent occasions when Plaintiff and Aggrieved Employees need to
14 perform other duties immediately before the time during which they are legally entitled to take a
15 meal period. Pursuant to Defendant's policies, Plaintiff and Aggrieved Employees cannot simply
16 drop their urgent job duties to take a meal period. Moreover, Defendant failed to provide Plaintiff
17 and the other Aggrieved Employees with their applicable quotas regarding the performance work
18 and production. Consequently, Plaintiff and Aggrieved Employees regularly miss meal periods,
19 take late meal periods, return early from meal periods, and even clock out for meal periods but
20 continue working.

21 25. Despite the foregoing, Defendant has implemented a policy and practice of actively
22 discouraging the issuance of meal period premium payments, and in the process, Defendant has
23 also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage Order, and the
24 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to
25 compensate Plaintiff and Aggrieved Employees who were not authorized and permitted to take a
26 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
27 regular rate of pay for each workday that such a meal period was not authorized or permitted.
28 Defendant also implemented an unlawful meal period policy by compensating Plaintiff and

1 Aggrieved Employees for interrupted meal periods only for their actual work time, as opposed to
2 paying them legally required premiums.

3 26. Defendant also violated California Labor Code § 226.7, § 11 of the applicable IWC
4 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
5 failing to pay Plaintiff and other Aggrieved Employees who were not provided with a meal period,
6 in accordance with the applicable wage order, one additional hour of compensation at the proper
7 regular rate of pay, including but not limited to, shift differentials, nondiscretionary bonuses, etc.,
8 for each workday that a rest break was not provided.

9 **Failure to Provide Required Rest Breaks**

10 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

11 27. During the statute of limitations period, as part of Defendant's illegal policies and
12 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
13 and permit Plaintiff and other Aggrieved Employees to take rest breaks as required under
14 California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

15 28. The same common policies and practices that deprive Plaintiff and other aggrieved
16 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability
17 to take their first and second and third rest breaks. As alleged herein, Defendant understaff its
18 facilities and delivery drivers, which creates so much work for Plaintiff and other Aggrieved
19 Employees that they are frequently unable to take rest breaks.

20 29. Defendant also do not provide adequate training regarding their legal obligations
21 with respect to the provision of rest breaks, do not implement a schedule regarding rest breaks for
22 non-exempt employees, Defendant does not post the required wage and hour posters, including
23 but not limited to, the appropriate IWC Wage Order poster, at the workplace, nor does Defendant
24 provide adequate training regarding the legal obligations to provide rest breaks to Plaintiff and
25 Aggrieved Employees, and neither Defendant implemented an adequate schedule regarding rest
26 breaks for non-exempt employees. In short, Defendant essentially has a non-existent rest break
27 policy, as there is no guidance or specification as to when Plaintiff and other Aggrieved Employees
28 are authorized and permitted to take rest breaks during their shifts. This common policy (or lack

thereof) has caused widespread missed rest breaks and systematic violations of California Labor Code §§ 226.7 and 512, and IWC Order No. 8-2001, § 12, and all other applicable IWC Wage Orders.

30. Defendant also violated California Labor Code § 226.7, § 12 of the applicable IWC Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and other Aggrieved Employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay, including but not limited to, shift differentials, nondiscretionary bonuses, etc., for each workday that a rest break was not provided.

Failure to Provide Required Recovery Periods

[Cal. Lab. Code §§ 226.7; California Code of Regulations, Title 8, Section 3395]

31. At all times relevant herein, as part of Defendant's illegal payroll policies and practices to deprive their non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff and Aggrieved Employees to take recovery periods as required under Cal. Lab. Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Defendant was and are required to provide recovery or "cooldown" periods for the Aggrieved Employees in order to prevent heat illness.

32. Aggrieved Employees in areas performing intense manual labor as assigned by Defendant. This work is performed over the course of many hours in temperatures regularly exceeding 86 degrees Fahrenheit. Despite these work conditions, Defendant has failed to implement an adequate policy or practice of providing recovery periods for Aggrieved Employees. Moreover, Defendant has similarly failed to make effort to comply with heat illness prevention regulations and providing for recovery periods or by supplying sufficient amounts of drinking water, or other methods intended to reduce heat illness. For example, there are times when Defendant does not provide Aggrieved Employees with drinking water during an entire workweek or time to cooldown. As with meal and rest breaks, Defendant failed to provide Aggrieved Employees with any written documents informing them of their rights to take

1 recovery periods, and thus they were not aware of their rights to recovery periods and thus did
2 not take them.

3 33. Defendant further violated Cal. Lab. Code §226.7, and the California Unfair
4 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Aggrieved
5 Employees who were not provided with a recovery period, one additional hour of compensation
6 at the proper regular rate of pay for each workday that a recovery period was not provided.

7 **Failure to Pay Overtime Wages**

8 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

9 34. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
10 Order, Defendant are required to compensate Plaintiff and other Aggrieved Employees for all
11 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
12 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
13 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
14 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
15 seventh consecutive day of work in any workweek.

16 35. During the statute of limitations period, Defendant has failed to compensate
17 Plaintiff and other Aggrieved Employees for all overtime hours worked as required under the
18 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
19 methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
20 provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring,
21 permitting or suffering Plaintiff and other Aggrieved Employees to work off-the-clock, and to
22 work through meal, recovery and rest breaks, but not compensating them for this time, improperly
23 calculating the regular rate of pay based on shift differential and other remuneration, and other
24 methods to be discovered.

25 36. Defendant has knowingly and willfully refused to perform their obligations to
26 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
27 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

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1 quit, in which case the employee is entitled to his or wages at the time of quitting.

2 42. California Labor Code § 203 provides that if an employer willfully fails to pay, in
3 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
4 quits, the employer is liable for waiting time penalties in the form of continued compensation to
5 the employee at the same rate for up to 30 workdays.

6 43. During the statute of limitations period, Defendant has willfully failed to pay
7 accrued wages and other compensation to Plaintiff and other Aggrieved Employees in accordance
8 with California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
9 Plaintiff and other Aggrieved Employees with their final paychecks within the timeframes required
10 under California law. In addition, because Defendant has failed and continue to fail to properly
11 compensate Plaintiff and other Aggrieved Employees for all hours worked when due, overtime
12 wages, and compensation for non-compliant meal and rest breaks, Defendant has also willfully
13 failed and continue to fail to pay accrued wages and other compensation to Plaintiff and other
14 Aggrieved Employees in accordance with California Labor Code §§ 201 and 202.

15 **Failure to Furnish Accurate Itemized Wage Statements**

16 **[Cal. Lab. Code § 226(a); § 7 of the Applicable IWC Wage Order]**

17 44. During the statute of limitations period, Defendant has routinely failed to provide
18 Plaintiff and other Aggrieved Employees with timely and accurate itemized wage statements.
19 Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the applicable rates
20 of pay for regular and overtime hours worked by Plaintiff and Aggrieved Employees. Further,
21 Defendant was and are not providing Plaintiff and other Aggrieved Employees with proper meal
22 periods, recovery and rest breaks but intentionally fails to include in their wage statements one (1)
23 additional hour of compensation at their regular rates of pay for each non-compliant meal periods,
24 recovery periods or rest breaks which include but not limited to, shift differentials,
25 nondiscretionary bonuses, etc., for Plaintiff and the other aggrieved employees. In addition, during
26 a portion of the statute of limitations period, Defendant's wage statements fail to list the names
27 and addresses of each and every legal entity which employed Plaintiff and the other aggrieved
28 employees in violation of Labor Code §226, and other methods to be discovered.

1 45. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
2 provide Plaintiff and other Aggrieved Employees with timely and accurate itemized wage
3 statements in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

4 46. Plaintiff and other Aggrieved Employees suffered injury as a result of Defendant's
5 failure to provide timely and accurate itemized wage statements and prevented them from
6 discovering the scope and extent of Defendant's violations of California wage and hour laws,
7 prevented them from being able to determine the gross wages earned, the total hours worked, all
8 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period
9 and the corresponding number of hours worked at each hourly rate, or even the name and address
10 of the legal entity that employed them at all times alleged herein.

11 **Failure to Maintain Required Records**

12 **[Cal. Lab. Code §§ 226(a), 1174(d); § 7 of the Applicable IWC Wage Order]**

13 47. During the statute of limitations period, as part of Defendant's illegal payroll
14 policies and practices to deprive Plaintiff and other Aggrieved Employees of all wages earned and
15 due, Defendant knowingly and intentionally failed to maintain records as required under California
16 Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited
17 to the following records: total daily hours worked by each employee; applicable rates of pay; all
18 deductions; meal periods; time records showing when each employee begins and ends each work
19 period; and accurate itemized statements. Defendant had knowledge that it was not providing its
20 non-exempt employees with proper meal, recovery and rest periods, but knowingly and willfully
21 failed to include in the wage statements one (1) extra hour of compensation for each missed meal
22 and rest period. Defendant has also failed to maintain accurate, itemized wage statements, as
23 alleged above. Finally, Defendant failed to implement a Workplace Violence Protection plan, and
24 Heat Protection Plan and records relating thereto.

25 **Failure to Indemnify Employees for Necessary Expenditures**

26 **Incurred in Discharge of Duties**

27 **[California Labor Code §2802 and all Applicable IWC Wage Orders]**

28 48. California Labor Code §2802 requires Defendant to reimburse Plaintiff and the

1 other Aggrieved Employees for all necessary expenditures incurred by the employee in direct
2 consequence of the discharge of her or her job duties or in direct consequence of her or her
3 obedience to the directions of Defendant. The applicable IWC Wage Order required Defendant to
4 provide aggrieved employees with the tools or equipment necessary for the performance of their
5 job.

6 49. Defendant failed to properly indemnify Plaintiff and the other aggrieved employees
7 for the usage of personal cell phones used to send and receive messages and calls with supervisors to
8 communicate their duties and the scope of work. Plaintiff and the other Aggrieved Employees were
9 also required to purchase items such as equipment, shoes and tools for the benefit of Defendant without
10 reimbursement. Accordingly, Defendant violated California Labor Code § 2802, and all applicable
11 IWC Wage Orders.

12 **Failure to Implement a Workplace Violence Prevention Policy**

13 **[California Labor Code §§6401.7 and 6401.9]**

14 50. California Labor Code §§6401.7 and 6401.9 required Defendant to develop and
15 implement a workplace violence prevention plan in accordance with newly codified Labor Code
16 section 6401.9, which sets out the requirements for the plan. Starting July 1, 2024, Defendant
17 were required to establish, implement, and maintain a Workplace Violence Prevention Plan that
18 includes: 1) implementation of a Workplace Violence Prevention Plan; 2) maintaining a violence
19 incidence log; 3) training program to discuss and prevent workplace violence; and 4) maintain
20 records relating to workplace violence which includes, records of workplace violence hazard
21 identifications, evaluations, and correction must be created and maintained for a minimum of
22 five years; training records must be created and maintained; incident logs; and records of
23 workplace violence incident investigations under must be maintained.

24 51. Defendant willfully failed to implement a Workplace Violence Prevention Policy
25 starting on or about July 1, 2024. Plaintiff and the other Aggrieved Employees are entitled to
26 recover penalties up to \$25,000 for serious violations, and up to \$158,727 for “willful”
27 violations. See, Labor Code §§6401.7, 6401.9, 6428, and 6429.

Failure to Implement Heat & Temperature Illness Prevention Laws
[California Code of Regulations, Title 8, section 3395 Heat Illness Prevention,
Labor Code §§ 6308, 6317 and any other statutes]

52. Defendant was required to and willfully failed to maintain adequate temperatures which created excessive heat or humidity exposing Plaintiff and the other Aggrieved Employees to temperature related hazards. Defendant failed to maintain a comfortable working environment.

53. On June 20, 2024, the Occupational Safety and Health Standards Board approved California Code of Regulations, Title 8, section 3396, "Heat Illness Prevention in Indoor Places of Employment". This standard applies to most workplaces where the indoor temperature reaches 82°F. It established required safety measures for indoor workplaces to prevent worker exposure to risk of heat illness. This standard went into effect on July 23, 2024. Defendant willfully failed to comply with the mandates of the new OSHA regulations and California law.

54. The applicable provisions of the IWC Wage Orders required temperature to be maintained by Defendant at comfortable levels. Defendant have always had an affirmative duty to prevent and reduce excessive heat or humidity created by the work environment, location, department or any other area of work that creates excessive heat and where employees are exposed to heat illness thereby requiring safety measures including, but not limited, to recovery periods. Defendant, however, have no written policy regarding preventative measures as required by California law or as required by Labor Code § 226.7 and the recently enacted OSHA standards requiring employer to take affirmative measures to prevent heat illness for indoor employees pursuant to California Code of Regulations, Title 8, section 3395 Heat Illness Prevention, Labor Code §§ 6308, 6317 and any other statutes conferring enforcement powers upon the Division.

55. Pursuant to California Labor Code §6721, Defendant were mandated to implement an indoor heat prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard. Defendant failed to implement Indoor Heat Prevention policies at Empire Imports' facilities and warehouses throughout the State of California.

1 56. Section 3396 required Defendant to establish, implement, and maintain an
2 effective Heat Illness Prevention Plan for indoor places of employment. The plan must be in
3 writing and include procedures for water provision, access to cool-down areas, temperature
4 measurement, emergency response, and acclimatization. Defendant failed to establish,
5 implement and maintain an effective Heat Illness Prevention Plan for both indoor and outdoor
6 places of employment for Plaintiff and the other Aggrieved Employees.

7 57. Defendant failure to comply with California Labor Code §6721 and the recently
8 amended Section 3395 of Title 8 of the California Code of Regulations will result in the
9 imposition of substantial civil penalties. In particular, California Labor Code §6428 provides
10 that any employer which violates any occupational safety or health standard shall be assessed a
11 civil penalty of up to \$25,000 for each serious violation. Employers who operate without an
12 injury prevention program can be assessed heightened penalties of up to \$124,709. See,
13 California Labor Code §6429. Thus, the maximum amount of penalties should be imposed
14 against Defendant based upon the failure to implement a heat prevention program.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

17 **[Cal. Lab. Code § 2698 *et seq.*]**

18 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

19 58. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 57 above.

21 59. Plaintiff is an Aggrieved Employee within the meaning of California Labor Code
22 § 2699(c), and proper representative to bring a civil action on behalf of himself and other current
23 and former non-exempt employees of Defendant pursuant to the procedures specified in Labor
24 Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged
25 California Labor Code violations was committed against Plaintiff during the statute of limitations
26 period.

27 60. Plaintiff seeks to recover civil penalties through a representative action permitted
28 by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.

1 Thus, class certification is not required.

2 61. Plaintiff does not seek to recover Plaintiff's 35% share of civil penalties for the
3 particular Labor Code violations experienced by Plaintiff, Plaintiff is seeking 65% civil penalties
4 on behalf of the LWDA and State of California.

5 62. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
6 penalties from Defendant in a representative action on behalf of all Aggrieved Employees, aside
7 from Plaintiff pursuant to *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533,
8 for the violations set forth above, including but not limited to, violations of California Labor
9 Code §§201, 202, 203, 226, 226.7, 510, 512, 558, 860, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
10 2698, 2699, 2802, 6401.7, 6401.9, 6428, 6429, 6721, California Code of Regulations, Title 8,
11 Sections 3395 and 3396, suitable resting facilities pursuant to IWC Wage Order 7-2001, Section
12 13, IWC Wage Orders 7-2001, and all other applicable IWC Wage Orders and sections.

13 63. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil
14 penalties for all Aggrieved Employees, aside from Plaintiff, based upon Defendant's violations
15 of California Labor Code provisions for which a civil penalty is specifically provided as alleged
16 herein.

17 64. California Labor Code § 2699(f) provides that for all California Labor Code
18 violations for which a civil penalty is not specifically provided, the following civil penalties are
19 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the
20 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
21 each subsequent violation, and as otherwise provided by PAGA.

22 65. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to
23 California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees, prays
26 for relief against Defendant, as follows:

- 27 1. For civil penalties according to proof;
28 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §

1 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
2 providing for attorneys' fees and costs; and

3 3. For such further relief that the Court may deem just and proper.

4 Dated: May 29, 2025

THE WHEELER LAW FIRM, APC

5 

6 By: _____

7 Scott Ernest Wheeler

Justin A. Wheeler

8 *Attorney for Plaintiff and the other*
9 *Aggrieved Employees*

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