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County of Santa Barbara
Darrel E. Parker, Executive Officer
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA – COOK DIVISION

STATE OF CALIFORNIA ex rel.
REINA BENIGNO, as Private Attorney
General,

Plaintiff,

v.

MKF LOMPOC LLC; MUSHROOM
KING FARM; and DOES 1-25, inclusive,

Defendants.

Case No. 23CV02618

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. REINA BENIGNO as Private Attorney General (“Plaintiff”), who asserts claims against MKF LOMPOC LLC, MUSHROOM KING FARM, 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 250 similarly situated current and former aggrieved employees employed by Employer between March 30, 2022, and the conclusion of the forthcoming action (“Statutory Period”), and the People of the State of California (hereinafter collectively “Employees”).

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

3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce Development Agency (“LWDA”) and Cal/OSHA providing notice of her intent to bring a private attorneys general action for recovery of penalties under the PAGA. The LWDA has not investigated within the time set forth by statute and Plaintiff is now authorized to bring the present action. Attached hereto as **Exhibit 1** and **Exhibit 2** are copies of the letters submitted to the LWDA and Cal/OSHA.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10.

5. Venue is proper in this Court because this action arises from work performed in Santa Barbara County.

PARTIES

6. For all times relevant herein, REINA BENIGNO was an adult individual residing in the State of California. Ms. Benigno is not suing in her individual capacity; she is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including herself and other aggrieved employees.

7. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant MKF LOMPOC LLC was and is a business entity with its principal place of business in Santa Barbara County, California.

1 8. For all times relevant herein, Plaintiff is informed and believes, and on that basis
2 alleges, that Defendant MUSHROOM KING FARM was and is an unknown business entity that
3 does business in California.

4 9. Whenever in this Complaint reference is made to any act, deed, or conduct of
5 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
6 through one or more of its agents, employees, or representatives, who was actively engaged in the
7 management, direction, control, or transaction of the business and affairs of Defendants.

8 10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
9 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
10 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
11 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
12 as the identities of the Doe Defendants are ascertained.

13 11. Plaintiff is informed and believes, and based thereon alleges, that the Doe
14 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
15 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
16 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
17 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
18 to the extent of the liability of Defendants as alleged herein.

19 12. Plaintiff is further informed and believe, and thereon allege, that at all times herein
20 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
21 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
22 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
23 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
24 Whenever and wherever reference is made to individuals who are not named as defendants in this
25 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
26 acted on behalf of Defendants named in this Complaint within the scope of their respective
27 employment or agency with Defendants.

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FACTS COMMON TO ALL COUNTS

13. Ms. Reina Benigno was employed by Mushroom King Farm/ MKF Lompoc LLC (“Mushroom King Farm”) between February 15, 2022, and July 01, 2022. Her position had no official job title, and she was expected to complete the same duties as everyone else such as sorting, picking, weighing, putting pallets together and packaging mushrooms.

14. Mushroom King Farm secretary Alondra directed the rules and workflow for the day. She claimed all the orders came from the boss. When Ms. Benigno started working with the company, Alondra told her she had to be very punctual to work there. Alondra required Employees to arrive 10-15 minutes earlier at the worksite without pay for that time. Alondra did not like Employees arriving late or at the exact time they had to start working. She said if they did not arrive earlier, they were not interested in the job. Ms. Benigno did as was expected and arrived 15 minutes earlier, sat down in the trailer, and waited until she could punch in at her scheduled start time.

15. Ms. Benigno worked long hours, sometimes from 7:00 AM to about 10:00 PM. Employees were not provided with any breaks throughout the day so they could complete the workload. Lunches were mostly taken late into the day.

16. On one occasion Ms. Benigno felt sick to the point that she could faint. It was already 12:00 PM so she tried eating something quickly. Alondra walked in and asked what she was doing and why she was eating. Ms. Benigno explained how she was feeling and asked if she could at least finish one of her tacos, but Alondra said to leave her food and go back to work. Alondra told Ms. Benigno she had to eat at the same time as all her coworkers. Ms. Benigno left her food and went back to work like she was told. They did not get released for lunch until 3:00 pm that day.

17. Ms. Benigno was not allowed to take her lunch until a certain amount of work was finished and she was released. Ms. Benigno had to complete all the orders they were asked to do before going on lunch. Some days they had to complete orders for 4-6 mushroom pallets which pushed breaks back even further. Alondra told the Employees “the orders get done first, then it’s time to eat.”

18. Lunches were supposed to be 30 minutes long but on many occasions Employees were instructed to get back to work after 15 minutes of lunch. When the lunches were cut short, Alondra told the Employees to get up and get back to work and that they could finish the rest of their lunch later. There was never time to finish the lunch later.

19. Some of Ms. Benigno's coworkers complained to each other about the lack of breaks and late lunches, but no one complained to Alondra because they were afraid of losing their job.

20. Mushroom King Farm also did not provide Employees with water to drink. Employees could bring their own water bottles, but they were not allowed to take them to their work area. They could only drink water around their lunch time. Alondra told the Employees to open all the hoses from the restroom and that they could drink that water. Ms. Benigno told Alondra that was not clean drinking water, but Alondra claimed it was filtered and clean for them to drink.

21. Employees used portable restrooms that were not connected to water hookups. There was no water available for handwashing. The restrooms only worked sometimes, but they did not listen to Employees and fix them.

22. The restrooms were not kept clean. There was no one responsible for maintaining the restrooms. Employees were told they had to clean the restrooms if they wanted to use them, but there was no time to clean them. When the restroom accumulated, Alondra told the Employees to go to the river outside.

23. The women going through their monthly cycles could not use the restroom because there was no toilet paper available. Ms. Benigno complained to Alondra that the restrooms never had toilet paper. Alondra responded saying “well, what do you want me to do?”

FIRST COUNT

Failure to Pay Minimum Wages Owed

(By Plaintiff against All Defendants)

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

1 25. Section 1197 provides that “[t]he minimum wage for employees fixed by the
2 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
3 and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after
4 January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per
5 hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be
6 less than the amounts set forth in this subdivision (1) For any employer who employs 26 or
7 more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December
8 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to
9 December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to
10 December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to
11 December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12,
12 subd. (b).

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

27 27. Throughout the Statutory Period, Employer failed to pay Employees at least
28 minimum wage for all time worked, including time during which Employees were required to

1 report early for work and other hours worked “off the clock,” which must be paid at a rate of not
2 less than minimum wage pursuant to California law. Employer paid zero dollars for this time.
3 Consequently, Employer violated the foregoing minimum wage laws.

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

5 **SECOND COUNT**

6 **Failure to Pay Overtime Wages Owed**

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

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

10 30. “The maximum hours of work and the standard conditions of labor fixed by the
11 commission shall be the maximum hours of work and the standard conditions of labor for
12 employees. The employment of any employee for longer hours than those fixed by the order or
13 under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198. Prior to
14 January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, “employees shall not
15 be employed more than ten (10) hours in any one workday or more than six (6) days in any
16 workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular
17 rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours
18 on the seventh (7th) day of work and double the employee’s regular rate of pay for all hours
19 worked over eight (8) on the seventh (7th) day of work in the workweek.”

20 31. Effective January 1, 2019, for employers of more than 25 employees like
21 Employer, Wage Order 14 provides that Employees shall not be employed more than nine and
22 one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
23 receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked
24 over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any
25 one workweek.

26 32. Starting January 1, 2020, Employees shall not be employed more than nine (9)
27 hours per workday or fifty (50) hours per workweek unless the employee receives one and one-

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1 half (11/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in
2 any one workday or more than fifty (50) hours in any one workweek.

3 33. Starting January 1, 2021, Employees shall not be employed more than eight and
4 one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
5 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
6 over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any
7 one workweek.

8 34. Starting January 1, 2022, Employees shall not be employed more than eight (8)
9 hours per workday or work in excess of forty (40) hours per workweek unless the employee
10 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
11 over eight (8) hours in any workday or more than forty (40) hours in any workweek and double
12 the employee's regular rate of pay for all hours worked over twelve (12) hours in any one
13 workday.

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

22 36. Throughout the Statutory Period, Employer failed to pay Employees at least
23 minimum wage for all time worked. Because this time was improperly not counted as hours
24 worked, Employees also accrued additional overtime wages for hours in excess of 8 in their
25 workdays, and/or in excess of 40 in their workweeks, that were never paid to Employees.

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

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1 **THIRD COUNT**

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

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

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

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

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

19 41. Throughout the Statutory Period, Employer maintained an illegal practice of not
20 providing Employees with sanctioned 10-minute rest periods, which were controlled and ordered
21 by managers. Employees first rest periods were routinely provided late, interrupted, or not
22 provided at all, and Employees were not free of all duties or free to leave the premises.
23 Additionally, Employer failed to provide Employees with a compliant second rest period for the
24 majority of their employment.

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

26 **FOURTH COUNT**

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

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

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

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

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

21 46. “If an employer fails to provide an employee a meal or rest or recovery period in
22 accordance with a state law, including, but not limited to, an applicable statute or applicable
23 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
24 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
25 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
26 each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code, § 226.7,
27 subd. (c).

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

48. Throughout the Statutory Period, although Employees were entitled to a meal period within the first five (5) hours of work, Employer regularly scheduled Employees' first meal periods after such time, regularly provided less than 30 minutes of time for meal periods, and failed to provide a second meal period after 10 hours of work as required by law.

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

FIFTH COUNT

Inaccurate Wage Statements

(By Plaintiff against All Defendants)

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

51. "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ... (7) the name of the employee and only the last four digits of his or her social

1 security number or an employee identification number other than a social security number, ..., and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
4 temporary services employer as defined in Section 201.3, the rate of pay and the total hours
5 worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd. (a).

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

12 53. Throughout the Statutory Period, Employer failed to furnish Employees with
13 accurate itemized statements at the time of each payment of wages showing the correct gross
14 wages earned, correct total hours worked, correct net wages earned, and the corresponding correct
15 number of hours worked at each applicable hourly rate. Rather than providing statements of actual
16 time worked and a correct payment of wages based thereon, Employer failed to capture and pay
17 Employees for all hours worked, and also failed to capture and pay premium pay for missed meal
18 and rest periods. Consequently, Employer failed to provide Employees accurate itemized wages
19 statements as required by Section 226.

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

21 **SIXTH COUNT**

22 **Untimely Payment of Wages**

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

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

26 56. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
27 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
28 calendar month, on days designated in advance by the employer as the regular paydays. Labor

1 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
2 between the 16th and the 26th day of the month during which the labor was performed, and labor
3 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
4 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

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

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

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

26 60. Rather than timely paying Employees all wages due within the periods set forth
27 above, throughout Employees’ employment, Employer failed to timely pay Employees for all
28 hours worked and all premium wages.

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

SEVENTH COUNT

Failure to Pay Wages at Termination/Resignation

(By Plaintiff against All Defendants)

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

63. “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 sequesters 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).

64. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage, overtime, and all premium wages for all time worked. These wages were owed and due to Employees at the time of their termination or resignation. Employer did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by Labor Code sections 201 and 202. Employer'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.

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

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1 **EIGHTH COUNT**

2 **Violation of Heat Illness Prevention Health-and-Safety Standards (By Plaintiff against All**
3 **Defendants)**

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

6 67. "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 68. 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 the
12 Statutory Period, Employer violated the following provisions of § 3395:

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

21 70. *Employer failed to provide sufficient water to Employees or encourage*
22 *Employees to frequently take water breaks. To the contrary, Employees were encouraged to*
23 *work without breaks whenever possible, without regard to their well-being.*

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

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1 **TENTH COUNT**

2 **Violation of Health and Safety Standards for Sanitary Facilities**

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

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

6 73. "All employers shall comply with standards relating to sanitary facilities adopted
7 by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with
8 Section 140) of Division 1." Cal. Lab. Code, § 2260. "Every factory, workshop, mercantile or
9 other establishment in which one or more persons are employed, shall be kept clean and free from
10 the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable
11 access, with a sufficient number of toilet facilities for the use of the employees. When there are
12 five or more employees who are not all of the same gender, a sufficient number of separate toilet
13 facilities shall be provided for the use of each sex, which shall be plainly so designated." Cal.
14 Lab. Code 2350.

15 74. Employer failed violated the foregoing by failing to adequately maintain clean
16 toilets, and failing to provide reasonable access to a sufficient number of toilet facilities for the use
17 of Employees who were not all the same gender.

18 75. Throughout the Statutory Period, Employer violated the following provisions of
19 applicable regulation, Cal. Code Regs., tit. 8, § 3457:

20 76. **(1) Potable drinking water.** (A) Potable water shall be provided during working
21 hours and placed in locations readily accessible to all employees. Access to such drinking water
22 shall be permitted at all times. (B) The water shall be fresh and pure, suitably cool, and in
23 sufficient amounts, taking into account the air temperature, humidity, and the nature of the work
24 performed, to meet the needs of all employees. (C) The water shall be dispensed in single-use
25 drinking cups or by fountains....

26 77. *Employer failed to comply with the foregoing requirement and there were often*
27 *insufficient and inadequate cups provided, requiring Employees to provide their own containers*
28 *or provide their own water, or to drink from a hose.*

1 78. **(2) Toilet and handwashing facilities.** (A) Separate toilet facilities for each sex
2 shall be provided for each twenty (20) employees or fraction thereof. One handwashing facility
3 shall be provided for each twenty (20) employees or fraction thereof....

4 79. *Employer violated this requirement by failing to provide adequate handwashing*
5 *facilities. Moreover, handwashing facilities were often understocked, considering the overuse*
6 *of the same by Employees.*

7 80. (B) Toilet and hand-washing facilities shall at all times meet the following
8 standards: 1. Toilet facilities shall be appropriately screened to keep flies and other vermin away
9 from the excreta. ...

10 81. *Employer violated this requirement by failing to provide clean toilets.*

11 82. **(3) Maintenance standards:** ... [T]oilet facilities ... which are under the control
12 of the employer, shall be serviced and maintained by the employer at all times in accordance with
13 appropriate public health sanitation practices, including the following: ... (B) Toilet facilities shall
14 be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair.
15 Written records of service and maintenance shall be maintained and retained for two years. ... (C)
16 Toilet paper shall be provided in a suitable holder in each toilet unit.

17 83. *Employer violated this requirement, including by failing to clean portable toilets*
18 *sufficiently often as necessary to keep them in a sanitary condition. Toilets regularly did not*
19 *function and did not have toilet paper.*

20 84. (G) Handwashing facilities shall at all times meet the following standards: ... 3.
21 Soap or other suitable cleansing agent and single-use towels shall be provided. ...

22 85. *Employer violated this requirement by failing to sufficiently stock handwashing*
23 *facilities considering the overuse of the insufficient number of handwashing facilities made*
24 *available to crews.*

25 86. (4) Reasonable use: The employer shall notify each employee of the location of the
26 sanitation facilities and potable water and shall allow each employee reasonable opportunities
27 during the workday to use these facilities. The employer shall ensure that employees use the
28 sanitation facilities provided and shall inform each employee of the importance of each of the

1 following good hygiene practices to minimize exposure to the hazards in the field of heat,
2 communicable diseases, retention of urine, and agrichemical residues: (A) Use the water and
3 facilities provided for drinking, handwashing, and elimination; (B) Drink water frequently,
4 especially on hot days; (C) Urinate as frequently as necessary; (D) Wash hands both before and
5 after using the toilet; and (E) Wash hands before eating and smoking.

6 87. *Employer violated this requirement by failing to adequately inform and*
7 *encourage Employees to properly use the sanitation facilities in accordance with the regulation.*

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

9 **PRAYER**

10 WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

11 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to
12 be ascertained at trial exceeding \$25,000.

13 2. For reasonable costs and attorneys' fees; and

14 3. For such other and further relief as the Court deems proper.

15 DATED: June 7, 2023

WORKWORLD LAW CORP.
A Professional Corporation

17
18
19 By: 
20 **RUBEN ESCOBEDO**
Attorneys for REINA BENIGNO
as Private Attorney General

EXHIBIT 1



WORKWORLD LAW

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March 30, 2023

VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

CALIFORNIA DIVISION OF
OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., Rm. 9516
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

MKF Lompoc LLC
2080 Sweeney Road
Lompoc, CA 93436

Mushroom King Farm
2 High Bridge Road
Manalapan, NJ 07726

Re: Reina Benigno's Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

To the California Labor and Workforce Development Agency; the California Division of Occupational Safety and Health; and MKF Lompoc LLC and Mushroom King Farm ("Employer"):

WorkWorld Law Corp. represents Reina Benigno, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of herself, approximately 250 similarly situated current and former aggrieved employees employed by Employer between March 30, 2022, and the conclusion of the forthcoming action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

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

* * *

Ms. Reina Benigno was employed by Mushroom King Farm/ MKF Lompoc LLC between February 15, 2022, and July 01, 2022. Her position had no official job title, and she was expected to complete the same duties as everyone else such as sorting, picking, weighing, putting pallets together and packaging mushrooms.

Mushroom King Farm secretary Alondra directed the rules and workflow for the day. She claimed all the orders came from the boss. When Ms. Benigno started working with the company, Alondra told her she had to be very punctual to work there. Alondra required Employees to arrive 10-15 minutes earlier at the worksite without pay for that time. Alondra did not like Employees arriving late or at the exact time they had to start working. She said if they did not arrive earlier, they were not interested in the job. Ms. Benigno did as was expected and arrived 15 minutes earlier, sat down in the trailer, and waited until she could punch in at her scheduled start time.

Ms. Benigno worked long hours, sometimes from 7:00 AM to about 10:00 PM. Employees were not provided with any breaks throughout the day so they could complete the workload. Lunches were mostly taken late into the day.

On one occasion Ms. Benigno felt sick to the point that she could faint. It was already 12:00 PM so she tried eating something quickly. Alondra walked in and asked what she was doing and why she was eating. Ms. Benigno explained how she was feeling and asked if she could at least finish one of her tacos, but Alondra said to leave her food and go back to work. Alondra told Ms. Benigno she had to eat at the same time as all her coworkers. Ms. Benigno left her food and went back to work like she was told. They did not get released for lunch until 3:00 pm that day.

Ms. Benigno was not allowed to take her lunch until a certain amount of work was finished and she was released. Ms. Benigno had to complete all the orders they were asked to do before going on lunch. Some days they had to complete orders for 4-6 mushroom pallets which pushed breaks back even further. Alondra told the Employees "the orders get done first, then it's time to eat."

Lunches were supposed to be 30 minutes long but on many occasions Employees were instructed to get back to work after 15 minutes of lunch. When the lunches were cut short, Alondra told the Employees to get up and get back to work and that they could finish the rest of their lunch later. There was never time to finish the lunch later.

Some of Ms. Benigno's coworkers complained to each other about the lack of breaks and late lunches, but no one complained to Alondra because they were afraid of losing their job.

Mushroom King Farm also did not provide Employees with water to drink. Employees could bring their own water bottles, but they were not allowed to take them to their work area. They could only drink water around their lunch time. Alondra told the Employees to open all the hoses from the restroom and that they could drink that water. Ms. Benigno told Alondra that was not clean drinking water, but Alondra claimed it was filtered and clean for them to drink.

Employees used portable restrooms that were not connected to water hookups. There was no water available for handwashing. The restrooms only worked sometimes, but they did not listen to Employees and fix them.

The restrooms were not kept clean. There was no one responsible for maintaining the restrooms. Employees were told they had to clean the restrooms if they wanted to use them, but there was no time to clean them. When the restroom accumulated, Alondra told the Employees to go to the river outside.

The women going through their monthly cycles could not use the restroom because there was no toilet paper available. Ms. Benigno complained to Alondra that the restrooms never had toilet paper. Alondra responded saying "well, what do you want me to do?"

* * *

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Minimum Wages Owed

Section 1197 provides that "[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." "[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour." Cal. Lab. Code, § 1182.12, subd. (a). "[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour." Cal. Lab. Code, § 1182.12, subd. (b).

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage for all time worked, including time during which Employees were required to report early for work and other hours worked "off the clock," which must be paid at a rate of not less than minimum wage pursuant to California law. Employer paid zero dollars for this time. Consequently, Employer violated the foregoing minimum wage laws.

B. Failure to Pay Overtime Wages Owed

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Cal. Lab. Code, § 1198. Prior to January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, "employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek."

Effective January 1, 2019, for employers of more than 25 employees like Employer, Wage Order 14 provides that Employees shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

Starting January 1, 2020, Employees shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2)

times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

Starting January 1, 2021, Employees shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

Starting January 1, 2022, Employees shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage for all time worked. Because this time was improperly not counted as hours worked, Employees also accrued additional overtime wages for hours in excess of 8 in their workdays, and/or in excess of 40 in their workweeks, that were never paid to Employees.

C. Failure to Provide Compliant Rest Periods or Pay Rest Premiums

Pursuant to Industrial Welfare Commission Wage Order 14, 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. An employer who fails to provide a duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

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

Throughout the Statutory Period, Employer maintained an illegal practice of not providing Employees with sanctioned 10-minute rest periods, which were controlled and ordered by managers. Employees first rest periods were routinely provided late, interrupted, or not provided at all, and Employees were not free of all duties or free to leave the premises. Additionally, Employer failed to provide Employees with a compliant second rest period for the majority of their employment.

D. Failure to Provide Compliant Meal Periods or Pay Meal Premiums

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

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

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

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, although Employees were entitled to a meal period within the first five (5) hours of work, Employer regularly scheduled Employees' first meal periods after such time, regularly provided less than 30 minutes of time for meal periods, and failed to provide a second meal period after 10 hours of work as required by law.

E. Inaccurate Wage Statements

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment." Cal. Lab. Code, § 226, subd. (a).

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Rather than providing statements of actual time worked and a correct payment of wages based thereon, Employer failed to capture and pay Employees for all hours worked, and also failed to capture and pay premium pay for missed meal and rest periods. Consequently, Employer failed to provide Employees accurate itemized wages statements as required by Section 226.

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F. Untimely Payment of Wages

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

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

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

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

Employees incorporate the preceding sections herein. Rather than timely paying Employees all wages due within the periods set forth above, throughout Employees’ employment, Employer failed to timely pay Employees for all hours worked and all premium wages.

G. Failure to Pay Wages at Termination/Resignation

“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).

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage, overtime, and all premium wages for all time worked. These wages were owed and due to Employees at the time of their termination or resignation. Employer did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by Labor Code sections 201 and 202. Employer'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.

H. Violation of Heat Illness Prevention Health-and-Safety Standards

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

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

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

Employer failed to provide sufficient water to Employees or encourage Employees to frequently take water breaks. To the contrary, Employees were encouraged to work without breaks whenever possible, without regard to their well-being.

Employer also violated Cal. Code Regs., tit. 8, § 3457. Employer is subject to additional civil penalties as provided by law.

I. Violation of Health and Safety Standards for Sanitary Facilities

"All employers shall comply with standards relating to sanitary facilities adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1." Cal. Lab. Code, § 2260. "Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated." Cal. Lab. Code 2350.

Employer failed violated the foregoing by failing to adequately maintain clean toilets, and failing to provide reasonable access to a sufficient number of toilet facilities for the use of Employees who were not all the same gender.

Throughout the Statutory Period, Employer violated the following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3457:

(1) Potable drinking water. (A) Potable water shall be provided during working hours and placed in locations readily accessible to all employees. Access to such drinking water shall be permitted at all times. (B) The water shall be fresh and pure, suitably cool, and in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet the needs of all employees. (C) The water shall be dispensed in single-use drinking cups or by fountains....

Employer failed to comply with the foregoing requirement and there were often insufficient and inadequate cups provided, requiring Employees to provide their own containers or provide their own water, or to drink from a hose.

(2) Toilet and handwashing facilities. (A) Separate toilet facilities for each sex shall be provided for each twenty (20) employees or fraction thereof. One handwashing facility shall be provided for each twenty (20) employees or fraction thereof....

Employer violated this requirement by failing to provide adequate handwashing facilities. Moreover, handwashing facilities were often understocked, considering the overuse of the same by Employees.

(B) Toilet and hand-washing facilities shall at all times meet the following standards: 1. Toilet facilities shall be appropriately screened to keep flies and other vermin away from the excreta. ...

Employer violated this requirement by failing to provide clean toilets.

(3) Maintenance standards: ... [T]oilet facilities ... which are under the control of the employer, shall be serviced and maintained by the employer at all times in accordance with appropriate public health sanitation practices, including the following: ... (B) Toilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years. ... (C) Toilet paper shall be provided in a suitable holder in each toilet unit.

Employer violated this requirement, including by failing to clean portable toilets sufficiently often as necessary to keep them in a sanitary condition. Toilets regularly did not function and did not have toilet paper.

(G) Handwashing facilities shall at all times meet the following standards: ... 3. Soap or other suitable cleansing agent and single-use towels shall be provided. ...

Employer violated this requirement by failing to sufficiently stock handwashing facilities considering the overuse of the insufficient number of handwashing facilities made available to crews.

(4) Reasonable use: The employer shall notify each employee of the location of the sanitation facilities and potable water and shall allow each employee reasonable opportunities during the workday to use these facilities. The employer shall ensure that employees use the sanitation facilities provided and shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine, and agrichemical residues: (A) Use the water and facilities provided for drinking, handwashing, and elimination; (B) Drink water frequently, especially on hot days; (C) Urinate as frequently as necessary; (D) Wash hands both before and after using the toilet; and (E) Wash hands before eating and smoking.

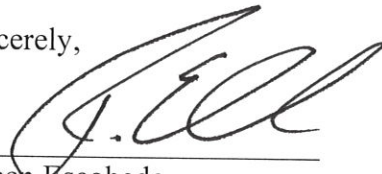
Employer violated this requirement by failing to adequately inform and encourage Employees to properly use the sanitation facilities in accordance with the regulation.

Cal. Code Regs., tit. 8, § 3457. Employer is subject to additional civil penalties as provided by law.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Escobedo', written over a horizontal line.

Ruben Escobedo

EXHIBIT 2



WORKWORLD LAW

6907 El Camino Real, Suite A
Atascadero, CA 93422
support@workworldlaw.com
(805) 335-2476
(805) 892-6213 (Fax)

April 17, 2023

VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

CALIFORNIA DIVISION OF
OCCUPATIONAL SAFETY AND HEALTH
455 Golden Gate Ave., Rm. 9516
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

MKF Lompoc LLC
2080 Sweeney Road
Lompoc, CA 93436

Mushroom King Farm
2 High Bridge Road
Manalapan, NJ 07726

Re: Reina Benigno's Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

To the California Labor and Workforce Development Agency; the California Division of Occupational Safety and Health; and MKF Lompoc LLC and Mushroom King Farm ("Employer"):

WorkWorld Law Corp. represents Reina Benigno, who intends to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of herself, approximately 250 similarly situated current and former aggrieved employees employed by Employer between March 30, 2022, and the conclusion of the forthcoming action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

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

* * *

Ms. Reina Benigno was employed by Mushroom King Farm/ MKF Lompoc LLC between February 15, 2022, and July 01, 2022. Her position had no official job title, and she was expected to complete the same duties as everyone else such as sorting, picking, weighing, putting pallets together and packaging mushrooms.

Mushroom King Farm secretary Alondra directed the rules and workflow for the day. She claimed all the orders came from the boss. When Ms. Benigno started working with the company, Alondra told her she had to be very punctual to work there. Alondra required Employees to arrive 10-15 minutes earlier at the worksite without pay for that time. Alondra did not like Employees arriving late or at the exact time they had to start working. She said if they did not arrive earlier, they were not interested in the job. Ms. Benigno did as was expected and arrived 15 minutes earlier, sat down in the trailer, and waited until she could punch in at her scheduled start time.

Ms. Benigno worked long hours, sometimes from 7:00 AM to about 10:00 PM. Employees were not provided with any breaks throughout the day so they could complete the workload. Lunches were mostly taken late into the day.

On one occasion Ms. Benigno felt sick to the point that she could faint. It was already 12:00 PM so she tried eating something quickly. Alondra walked in and asked what she was doing and why she was eating. Ms. Benigno explained how she was feeling and asked if she could at least finish one of her tacos, but Alondra said to leave her food and go back to work. Alondra told Ms. Benigno she had to eat at the same time as all her coworkers. Ms. Benigno left her food and went back to work like she was told. They did not get released for lunch until 3:00 pm that day.

Ms. Benigno was not allowed to take her lunch until a certain amount of work was finished and she was released. Ms. Benigno had to complete all the orders they were asked to do before going on lunch. Some days they had to complete orders for 4-6 mushroom pallets which pushed breaks back even further. Alondra told the Employees "the orders get done first, then it's time to eat."

Lunches were supposed to be 30 minutes long but on many occasions Employees were instructed to get back to work after 15 minutes of lunch. When the lunches were cut short, Alondra told the Employees to get up and get back to work and that they could finish the rest of their lunch later. There was never time to finish the lunch later.

Some of Ms. Benigno's coworkers complained to each other about the lack of breaks and late lunches, but no one complained to Alondra because they were afraid of losing their job.

Mushroom King Farm also did not provide Employees with water to drink. Employees could bring their own water bottles, but they were not allowed to take them to their work area. They could only drink water around their lunch time. Alondra told the Employees to open all the hoses from the restroom and that they could drink that water. Ms. Benigno told Alondra that was not clean drinking water, but Alondra claimed it was filtered and clean for them to drink.

Employees used portable restrooms that were not connected to water hookups. There was no water available for handwashing. The restrooms only worked sometimes, but they did not listen to Employees and fix them.

The restrooms were not kept clean. There was no one responsible for maintaining the restrooms. Employees were told they had to clean the restrooms if they wanted to use them, but there was no time to clean them. When the restroom accumulated, Alondra told the Employees to go to the river outside.

The women going through their monthly cycles could not use the restroom because there was no toilet paper available. Ms. Benigno complained to Alondra that the restrooms never had toilet paper. Alondra responded saying "well, what do you want me to do?"

* * *

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Minimum Wages Owed

Section 1197 provides that "[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." "[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour." Cal. Lab. Code, § 1182.12, subd. (a). "[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour." Cal. Lab. Code, § 1182.12, subd. (b).

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage for all time worked, including time during which Employees were required to report early for work and other hours worked "off the clock," which must be paid at a rate of not less than minimum wage pursuant to California law. Employer paid zero dollars for this time. Consequently, Employer violated the foregoing minimum wage laws.

B. Failure to Pay Overtime Wages Owed

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Cal. Lab. Code, § 1198. Prior to January 1, 2019, pursuant to Industrial Welfare Commission Wage Order 14, "employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek."

Effective January 1, 2019, for employers of more than 25 employees like Employer, Wage Order 14 provides that Employees shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

Starting January 1, 2020, Employees shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2)

times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

Starting January 1, 2021, Employees shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

Starting January 1, 2022, Employees shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage for all time worked. Because this time was improperly not counted as hours worked, Employees also accrued additional overtime wages for hours in excess of 8 in their workdays, and/or in excess of 40 in their workweeks, that were never paid to Employees.

C. Failure to Provide Compliant Rest Periods or Pay Rest Premiums

Pursuant to Industrial Welfare Commission Wage Order 14, 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. An employer who fails to provide a duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

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

Throughout the Statutory Period, Employer maintained an illegal practice of not providing Employees with sanctioned 10-minute rest periods, which were controlled and ordered by managers. Employees first rest periods were routinely provided late, interrupted, or not provided at all, and Employees were not free of all duties or free to leave the premises. Additionally, Employer failed to provide Employees with a compliant second rest period for the majority of their employment.

D. Failure to Provide Compliant Meal Periods or Pay Meal Premiums

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

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

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

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, although Employees were entitled to a meal period within the first five (5) hours of work, Employer regularly scheduled Employees' first meal periods after such time, regularly provided less than 30 minutes of time for meal periods, and failed to provide a second meal period after 10 hours of work as required by law.

E. Inaccurate Wage Statements

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment." Cal. Lab. Code, § 226, subd. (a).

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

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to furnish Employees with accurate itemized statements at the time of each payment of wages showing the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Rather than providing statements of actual time worked and a correct payment of wages based thereon, Employer failed to capture and pay Employees for all hours worked, and also failed to capture and pay premium pay for missed meal and rest periods. Consequently, Employer failed to provide Employees accurate itemized wages statements as required by Section 226.

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F. Untimely Payment of Wages

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

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

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

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

Employees incorporate the preceding sections herein. Rather than timely paying Employees all wages due within the periods set forth above, throughout Employees’ employment, Employer failed to timely pay Employees for all hours worked and all premium wages.

G. Failure to Pay Wages at Termination/Resignation

“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).

Employees incorporate the preceding sections herein. Throughout the Statutory Period, Employer failed to pay Employees at least minimum wage, overtime, and all premium wages for all time worked. These wages were owed and due to Employees at the time of their termination or resignation. Employer did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by Labor Code sections 201 and 202. Employer'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.

H. Violation of Heat Illness Prevention Health-and-Safety Standards

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

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

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

Employer failed to provide sufficient water to Employees or encourage Employees to frequently take water breaks. To the contrary, Employees were encouraged to work without breaks whenever possible, without regard to their well-being.

Employer also violated Cal. Code Regs., tit. 8, § 3457. Employer is subject to additional civil penalties as provided by law.

I. Violation of Health and Safety Standards for Sanitary Facilities

"All employers shall comply with standards relating to sanitary facilities adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1." Cal. Lab. Code, § 2260. "Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated." Cal. Lab. Code 2350.

Employer failed violated the foregoing by failing to adequately maintain clean toilets, and failing to provide reasonable access to a sufficient number of toilet facilities for the use of Employees who were not all the same gender.

Throughout the Statutory Period, Employer violated the following provisions of applicable regulation, Cal. Code Regs., tit. 8, § 3457:

(1) Potable drinking water. (A) Potable water shall be provided during working hours and placed in locations readily accessible to all employees. Access to such drinking water shall be permitted at all times. (B) The water shall be fresh and pure, suitably cool, and in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet the needs of all employees. (C) The water shall be dispensed in single-use drinking cups or by fountains....

Employer failed to comply with the foregoing requirement and there were often insufficient and inadequate cups provided, requiring Employees to provide their own containers or provide their own water, or to drink from a hose.

(2) Toilet and handwashing facilities. (A) Separate toilet facilities for each sex shall be provided for each twenty (20) employees or fraction thereof. One handwashing facility shall be provided for each twenty (20) employees or fraction thereof....

Employer violated this requirement by failing to provide adequate handwashing facilities. Moreover, handwashing facilities were often understocked, considering the overuse of the same by Employees.

(B) Toilet and hand-washing facilities shall at all times meet the following standards: 1. Toilet facilities shall be appropriately screened to keep flies and other vermin away from the excreta. ...

Employer violated this requirement by failing to provide clean toilets.

(3) Maintenance standards: ... [T]oilet facilities ... which are under the control of the employer, shall be serviced and maintained by the employer at all times in accordance with appropriate public health sanitation practices, including the following: ... (B) Toilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years. ... (C) Toilet paper shall be provided in a suitable holder in each toilet unit.

Employer violated this requirement, including by failing to clean portable toilets sufficiently often as necessary to keep them in a sanitary condition. Toilets regularly did not function and did not have toilet paper.

(G) Handwashing facilities shall at all times meet the following standards: ... 3. Soap or other suitable cleansing agent and single-use towels shall be provided. ...

Employer violated this requirement by failing to sufficiently stock handwashing facilities considering the overuse of the insufficient number of handwashing facilities made available to crews.

(4) Reasonable use: The employer shall notify each employee of the location of the sanitation facilities and potable water and shall allow each employee reasonable opportunities during the workday to use these facilities. The employer shall ensure that employees use the sanitation facilities provided and shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine, and agrichemical residues: (A) Use the water and facilities provided for drinking, handwashing, and elimination; (B) Drink water frequently, especially on hot days; (C) Urinate as frequently as necessary; (D) Wash hands both before and after using the toilet; and (E) Wash hands before eating and smoking.

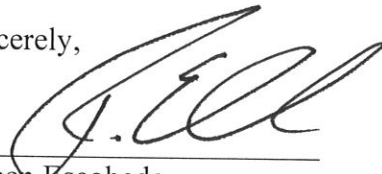
Employer violated this requirement by failing to adequately inform and encourage Employees to properly use the sanitation facilities in accordance with the regulation.

Cal. Code Regs., tit. 8, § 3457. Employer is subject to additional civil penalties as provided by law.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Escobedo', written over a horizontal line.

Ruben Escobedo