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VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
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VIA U.S. CERTIFIED MAIL

Western Harvesting LLC
48452 Lonoak Rd.
King City, CA 93930

Western Harvesting LLC
P.O. Box 689
King City, CA 93930

Re: Jennifer Rodriguez and Dalila Rios'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 ("LWDA") and Western Harvesting LLC ("Employer"):

WorkWorld Law Corp. represents Jennifer Rodriguez and Dalila Rios who intend to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of themselves, approximately 250 other current and former non-exempt aggrieved employees, and the People of the State of California (hereinafter collectively "Employees") employed by Employer between March 23, 2023, and the conclusion of the action ("Statutory Period").

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.

* * *

Based on the following facts, Ms. Rodriguez and Ms. Rios are aggrieved employees with standing to pursue penalties on behalf of the Employees.

Western Harvesting LLC harvests and produces salad products. The company has an agricultural cooler where the greens are mixed in machines and then prepared to ship to stores.

Ms. Jennifer Rodriguez was employed by Western Harvesting from April 17, 2020, until August 2, 2022. Ms. Dalila Rios was employed by Western Harvesting from April 12, 2021, until July 27, 2022.

Ms. Rodriguez and Ms. Rios had no official job title. They both worked in the Blending Line office, completing documentation and doing clerical work. They were assigned additional duties such as shipping, receiving, dispatching, overseeing the inventory, going in the cooler, directing trucks for shipments, and generally ensuring everything was running smoothly.

Ms. Rodriguez and Ms. Rios worked an alternating schedule. Ms. Rodriguez worked from 5:30 AM to 3:30 PM one week and from 2:00 PM to 2:00 AM the next week. Some days ran later depending on the orders for that day. Ms. Rios worked the schedule from 5:00 AM to 5:30 PM one week and from 1:00 PM to 12:00 AM the next week.

Ms. Rios took her lunch from 1:00 PM to 1:30 PM on the weeks she went in at 5:00 AM because Ms. Rodriguez could provide coverage when she got there. On the weeks she went in at 1:00 PM, Ms. Rios had no one to cover her so she ate while working around 8:00 PM. Sometimes Ms. Rios waited until production shut down around 11:30 PM.

Due to Ms. Rodriguez and Ms. Rios being the only employee on their shift, they did not have a set break schedule. They were supposed to have a break schedule, but it was impracticable to follow in light of the heavy workload that was time sensitive. Western Harvesting workload and understaffing interfered with Ms. Rodriguez and Ms. Rios' ability to take breaks, and they were regularly unable to take compliant, timely, and off-duty breaks.

Per directives by Western Harvesting, Ms. Rodriguez and Ms. Rios both recorded meal periods on their timesheet, although they were not taken. They were told to take their lunches, but realistically without coverage they could not leave the office. Management was aware that they were struggling to take meal periods after Ms. Rodriguez and Ms. Rios reported the issue to Western Harvesting.

Ms. Rodriguez tried to take her lunches. Her lunch was almost always interrupted. Either the phones rang, and she had to answer and inform them she would call back or a truck driver came in for reports. Other employees came into the office and saw her eating while working. She had to stop eating to do what was needed. In July of 2022, she decided to leave the office for her lunch so they can see her leaving even though the office was left unattended.

Ms. Rios ate lunch at her desk while she continued working. She was almost always interrupted by different people. Sometimes it was the phones, the loaders that drove the forklifts, the radios when the laborers had issues, the truck drivers that came in and needed paperwork. She had to stop eating to do what was needed.

Even when they tried to leave, work seemed to follow them. Ms. Rios did not leave for breaks because the times she tried to take them in her car, employees that walked by saw her in her car and knocked on the window to ask her questions. If she went downstairs to the restrooms, employees would start wondering where she was and why she was not available to answer questions. She always carried the radio out of fear of getting in trouble for not being available. There was nowhere to go to take a duty-free break. Western Harvesting did not respect employees' breaks, and was only concerned with whether its records *looked* compliant, and not whether employees were actually receiving compliant duty-free meal and rest breaks.

Breaks were interrupted the same way lunches were. Depending on the day, breaks could be easier to take but they still had interruptions. When Ms. Rios tried to take breaks in the break room, she was still interrupted by the phone or radio when someone had questions. There was no other person to direct them to, so she had to provide the answers.

Ms. Rodriguez did not feel free to leave for breaks. She remained there because she knew she had a lot of work to complete. Even if she took a break, it was interrupted so she did not consider it a break. If she left, she had a lot of work to come back to. The work for the day had deadlines and all the paperwork had to be completed by that day. Western Harvesting assigned too many duties without enough coverage to enable compliant, timely, and off-duty breaks.

Ms. Rodriguez and Ms. Rios went to supervisor Mr. Christian Rivas around April 2022 to complain about the lack of coverage for breaks and lunches. They requested help because the work was heavy for one person to manage alone in a shift. Mr. Rivas said they would see if they could get a second person on shift but never actually did anything about it. The company said they would set up interviews and a new person was hired for an internship, but she was put in the safety department. Ms. Rodriguez and Ms. Rios could not rely on her to cover breaks because she was always busy. Ms. Rodriguez and Ms. Rios continued reminding management that they were understaffed and needed help. They also brought it up to HR during a meeting.

On July 28, 2022, Ms. Rodriguez wrote a letter explaining and addressing the issue. Ms. Rodriguez and Ms. Rios exhausted all their options to seek help. They both went to HR, their superiors, leads, anyone they could, to ask them to hire someone else to help them because they were short staffed. Upper management knew the workload was too much for one person per shift. They both asked for help so they can have coverages to take their breaks and lunches. In response, HR did nothing, except fire Ms. Rodriguez and Ms. Rios. Western Harvesting fired Ms. Rodriguez and Ms. Rios in violation of Labor Code sections 98.6 and 1102.5 in retaliation for their complaints about the lack of breaks.

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 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 ff 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).

Throughout the Statutory Period, the meal periods provided to Employees were noncompliant because Employer failed to provide a full, timely 30-minute off-duty meal period for shifts over 5 hours within the first 5 hours of work, Employees were not free to leave during their meal periods, and Employer otherwise impeded or discouraged Employees from taking such off-duty meal periods. For these reasons, Employer violated Section 226.7.

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

Pursuant to the applicable Industrial Welfare Commission Wage Order, employers must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours

worked or major fraction thereof. Duty-free rest periods must be paid. 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, the rest periods provided to Employees were noncompliant because Employer failed to provide a full, timely first 10-minute off-duty rest period for shifts of 3.5 hours or more, Employees were not free to leave during their rest periods, and Employer otherwise impeded or discouraged Employees from taking such off-duty rest periods. For these reasons, Employer violated Section 226.7.

C. Inaccurate Wage Statements and Wage Statement Records

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

“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 and correct net wages earned; the wage statements omitted premium wages owed to Employees pursuant to § 226.7. Moreover, Employer's wage statements issued to the Employees throughout the Statutory Period failed to state the Employer's address; instead, a King City post office was listed on Employer's wage statements. Consequently, Employer failed to provide Employees accurate itemized wages statements as required by Section 226.

D. 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).

Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Employer failed to timely pay Employees for all premium wages owed under Section 226.7.

E. Failure to Pay Wages at Termination

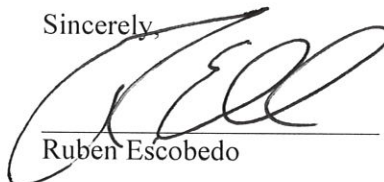
“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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).

Throughout the Statutory Period, Employer failed to pay Employees all premium wages. These wages were owed and due to Employees at the time of their discharge, or within the statutorily prescribed time after Employees’ resignation. Employer did not provide these payments to Employees at the time of termination or within a sufficient time of resignation as required by law. 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, 202, and 203.

* * *

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,



Ruben Escobedo

cc: Michael P. Roy, Esq., mike-vcaa@pacbell.net; Robert Roy, rob-vcaa@pacbell.net