

SUMMONS
(CITACION JUDICIAL)

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Los Angeles Superior Court

JUL 30 2009

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

State of California; State of California Division of Occupational Safety and Health;
Len Welsh, in Only his Official Capacity as Chief of the State of California Division
of Occupational Safety and Health

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Margarita Alvarez Bautista; Ana Rosa Bautista; Socorro Rivera;
Mauricia Calvillo; Natividad Carrillo; United Farm Workers Of America

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso):

BC418871

Superior Court of California, County of Los Angeles, Central District
111 North Hill Street, Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

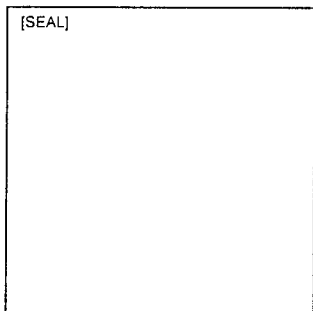
Bradley S. Phillips, Munger, Tolles & Olson LLP, 355 S. Grand Ave., Los Angeles, CA 90071 (213) 683-9100

DATE: July 30, 2009
(Fecha)

JUL 30 2009

Clerk, by S. WESLEY Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- 4. by personal delivery on (date):

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OF ORIGINAL FILED
Los Angeles Superior Court

JUL 30 2009

John A. Clarke Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

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14 CALVILLO; NATIVIDAD CARRILLO; UNITED FARM
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15

Additional counsel listed on following page

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 CITY AND COUNTY OF LOS ANGELES

18
19 MARGARITA ALVAREZ BAUTISTA; ANA ROSA
BAUTISTA; SOCORRO RIVERA; MAURICIA
20 CALVILLO; NATIVIDAD CARRILLO; UNITED
FARM WORKERS OF AMERICA,
21

22 Plaintiffs,

23 vs.

24 STATE OF CALIFORNIA; STATE OF
CALIFORNIA DIVISION OF OCCUPATIONAL
SAFETY AND HEALTH; LEN WELSH, IN ONLY
25 HIS OFFICIAL CAPACITY AS CHIEF OF THE
STATE OF CALIFORNIA DIVISION OF
26 OCCUPATIONAL SAFETY AND HEALTH;

27 Defendants.
28

CASE NO.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND WRIT
OF MANDATE

BC418871

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1 INTRODUCTION

2 1. Plaintiffs bring this action to enforce the State’s constitutional and statutory duty,
3 under Article XIV, § 4 of the California Constitution and Sections 6300 *et seq.* of the California
4 Labor Code (the California Occupational Safety and Health Act), to protect the safety of farm
5 workers who are denied basic access to drinking water, rest breaks, and shade while working in
6 extreme heat conditions in California fields. Despite recognition at the highest levels of
7 California government that heat-related illness is “very, very dangerous,” and the State’s
8 professed commitment to farm workers that “we have to take care of you,” California continues
9 to lead all states in agricultural heat-related deaths. (Office of the Governor, Governor’s
10 Remarks, 8/3/2005.) Since August 2005, when California enacted its Heat Illness Prevention
11 regulation, Cal. Code Regs. Title 8, § 3395, the number of farm worker heat-related deaths has
12 *increased*—including six such deaths in summer of 2008 alone—and hundreds more suffer heat-
13 related illnesses and hospitalizations each year. Outdoor heat exposure deaths are all the more a
14 “tragedy” (to use the State’s word) because their prevention is relatively simple, as the State has
15 acknowledged. But, the current regulation fails to adopt reasonably adequate safeguards that are
16 recommended by federal agencies and have long been put into practice by employers ranging
17 from firefighters to the United States’ military services. Moreover, as the State has also
18 recognized, large numbers of agricultural employers regularly violate the mandatory heat safety
19 regulation with impunity. For all intents and purposes, the State of California has no system for
20 enforcement and accountability regarding the persistent dangers to farm workers, who have no
21 choice but to toil in extreme conditions of heat in California’s fields.

22 2. Pro-active monitoring and management of employee heat stress and
23 acclimatization to heat is recommended by the American Conference of Governmental Industrial
24 Hygienists and federal agencies such as the National Institute for Occupational Safety and Health,
25 the Department of Labor, and the Environmental Protection Agency, and has been the practice of
26 the United States Army and Marine Corps for decades. Yet the State’s Heat Illness Prevention
27 regulation does not require employers to monitor environmental conditions that affect the heat
28 burden on employees and decrease or halt work activities when heat stress approaches human

1 tolerance limits. Indeed, the current regulation places the burden entirely on the individual
2 worker to request shade or seek a preventative recovery period. Farm laborers throughout the
3 state report feeling pressured to work without rest, even during periods of intense heat, and fearful
4 of being fired if they complain. The current heat regulation also does not give employees the
5 right to take a rest break until they recognize that they are already experiencing symptoms of heat
6 illness—when it may already be too late to prevent injury—and only then are employees allowed
7 a *five minute* recovery period, a duration of time that doctors agree is insufficient to recover from
8 heat illness. The State itself has also recognized “how significant a role acclimatization plays in
9 preventing heat illness.”¹ Yet the current regulation does not require employers to take any
10 affirmative steps to ensure that employees are acclimatized to heat.

11 3. Moreover, the State’s enforcement of the basic requirements that are contained in
12 its Heat Illness Prevention regulation has been woefully inadequate. The State itself has
13 acknowledged that violations of the heat safety regulation are widespread. In 2008, nearly 40
14 percent of agricultural employers inspected by the State’s Division of Occupational Health and
15 Safety (“Cal-OSHA”) were found to be in violation of the heat safety regulation. In the first *two*
16 *weeks* of the 2009 heat season, Cal-OSHA found that the number of employers in violation of the
17 Heat Illness Prevention regulation was *more than double* the number of cases found in *all* of
18 2008.² Cal-OSHA acknowledged such serious deficiencies in and noncompliance with its
19 existing regulation that twice this Summer it sought to make emergency revisions to the
20 regulation. Both times, the State’s Occupational Safety and Health Standards Board (“Standards
21 Board”) refused to adopt any changes to the existing regulation; after the second failure,
22 Governor Schwarzenegger appropriately recognized that the Board members “have failed in their
23 mission to ensure the health and safety of California’s outdoor workers.”³

24 ¹ State of California - Department of Industrial Relations, Occupation Safety And Health
25 Standards Board, Summary of Public Hearing, April 20, 2006 (“2006 Public Hearing”), at p. 3.

26 ² State of California - Department of Industrial Relations, Occupation Safety And Health
27 Standards Board, Section 3395, Heat Illness Prevention, Finding of Emergency, June 11, 2009
28 (hereafter “2009 Finding of Emergency”), at 2.

³ Office of the Governor, Governor Schwarzenegger Issues Statement on Failure to Pass
Strengthened Heat Illness Prevention Standards, 7/16/2009, *available at*
<http://gov.ca.gov/index.php?/press-release/12824/>

1 4. Violations of the existing Heat Illness Prevention regulation are widespread in part
2 because Cal-OSHA employs only 187 Cal-OSHA safety and health compliance inspectors to
3 cover more than 1 million workplaces throughout the state, making it “one of the weakest” state
4 safety enforcement programs in the country.⁴ There are more state Fish & Game wardens (200)
5 than there are Cal-OSHA compliance officers. Although Cal-OSHA is required by law “to
6 maintain the capability to receive and act upon complaints at all times” and to employ as many
7 investigators and other employees as is necessary to ensure “safe and healthful” working
8 conditions, (Cal. Labor Code §§ 6307, 6315), workplace on-site inspections have declined by 35
9 percent and cited violations by 44 percent over the last fifteen years, while the number of workers
10 in California has increased by 20 percent.⁵

11 5. While Cal-OSHA has stepped up its heat illness enforcement efforts following the
12 deaths of six more farm workers in 2008, by increasing the number of workplace inspections and
13 shutting down 10 farm labor contractors this year, Cal-OSHA Chief Len Welsh admitted that the
14 Division is “maxed out” and cannot sustain its enforcement activity.⁶ Even with the temporary
15 surge in enforcement, Cal-OSHA’s efforts have fallen far short of compliance with its mandatory
16 duties to perform timely inspections of workplaces where a complaint has been filed, to verify
17 that hazards have been corrected, to issue citations and impose and collect adequate penalties for
18 violations, and to maintain an adequate number of inspectors and investigators.

19 6. Noncompliance with the Heat Illness Prevention regulation is widespread also
20 because those few violators who are occasionally identified generally escape with little or no
21 punishment. Even when serious violations are discovered, inadequate (if any) penalties are
22 imposed, with penalties for violations that resulted in farm worker heat-related deaths averaging
23 less than \$10,000 and in some instances dropping as low as \$250. Furthermore, because many

24 _____
25 ⁴ Lawrence Rose, former Cal-OSHA Senior Public Medical Officer, “Cal-OSHA Going Down
the Tubes?” 8/1/ 2008, at <http://www.indybay.org/newsitems/2008/08/01/18521702.php>

26 ⁵ Garrett Brown, Cal-OSHA compliance officer, “The Two Faces Of Cal/OSHA,” 10/1/2007, at
[http://www.ishn.com/CDA/Articles/Feature_Article/BNP_GUID_9-5-
2006_A_1000000000000184514](http://www.ishn.com/CDA/Articles/Feature_Article/BNP_GUID_9-5-2006_A_1000000000000184514) (“Two Faces of Cal/OSHA”).

27 ⁶ “Great Reservations” Prompt Board to Reject Emergency Heat Changes, 7/26/09 Cal-OSHA
28 Reporter (hereafter “Great Reservations”).

1 farm workers are employed directly by farm labor contractors, not the growers who own the land
2 and the crops, those who profit most from the workers' labors often have no incentive to ensure
3 that heat-related safety regulations are being complied with in their fields. The State has taken
4 insufficient steps to ensure that growers have an incentive to ensure that labor contractors protect
5 workers' safety.

6 7. Even when penalties are issued, employers have little incentive to change their
7 practices because employers know that the Occupational Safety and Health Appeals Board
8 ("Appeals Board") routinely reduces fines upon request and frequently departs from Cal-OSHA
9 regulations prescribing rules for the calculation of penalties. In 2007, employer challenges to
10 fines resulted in the Appeals Board reducing fines issued by Cal-OSHA by two-thirds, from a
11 total of more than \$1 million to just under \$336,000 for all employers. Cal-OSHA's Chief Len
12 Welsh has admitted that the reduction of penalties "sends a bad message."⁷ The Appeals Board
13 also "deliberately overbooks" multiple case hearings at the same time before the same judge, and
14 it frequently holds hearings in "distant locations, where worker witnesses have great difficulty in
15 appearing," in an effort to reduce a backlog of cases and to force the settlement of cases, usually
16 at drastically reduced penalties.⁸ The Board's practices have drawn strong criticism from forty-
17 seven Cal-OSHA inspectors and district managers, who asserted in an open letter that the Board's
18 policies "sabotage the Division's ability to defend citations and penalties on appeal." (*Id.*)

19 8. Employers often file frivolous appeals to stay enforcement of fines and abatement
20 orders automatically (Cal. Code Regs. Title 8, § 362); because employers are not required to
21 abate citations that are under appeal, hazardous conditions often continue uncorrected for years.
22 (Two Faces of Cal/OSHA at p.4.) Even after a final order is issued, fines are rarely collected by
23 Cal-OSHA. In the much-publicized heat-related workplace death of 17-year-old Maria Isabel
24 Vasquez Jimenez in May 2008, Cal-OSHA had already fined the employer, Merced Farm Labor,
25

26 _____
27 ⁷ Susan Ferriss, "Cal-OSHA To Review Handling Of Heat Cases," 12/31/2008 Sacramento Bee

28 ⁸ Susan Ferriss, "Cal-OSHA Workers Protest Appeals System," 6/18/09 Sacramento Bee; "DOSH
Officers To Appeals Board: "Cease and Desist" Unfair Practices," 6/19/09 Cal-OSHA Reporter

1 \$2,250 in 2006 for serious occupational safety violations, but it had never collected the fine or
2 sought to verify that the company was complying with the regulations.

3 9. The failure of the State to prevent or to detect and correct violations of basic safety
4 protections for farm workers who toil in seasonal heat every year constitutes an unreasonable
5 failure by the State to perform its mandatory constitutional and statutory duty to protect the safety
6 of California's farm workers. Specifically, the State has failed to adopt and enforce reasonably
7 adequate requirements for rest breaks, drinking water, shade, training, and emergency services;
8 and it has failed to hire an adequate number of inspectors, conduct effective and an adequate
9 number of workplace inspections, and collect meaningful penalties from the parties responsible
10 for violations of the Heat Illness Prevention regulation. As a result, the rights of plaintiffs and all
11 farm workers to be protected adequately against unsafe conditions of employment have been
12 curtailed and unreasonably burdened.

13 10. As the State itself acknowledges, climate change is expected continuously to
14 increase the number and duration of extreme heat events in California, creating ever more danger
15 of heat-related illnesses and deaths among farm workers. Even under current climate conditions,
16 however, heat-related illness and death among farm workers occur with frightening regularity.
17 This Court should order the State to perform its constitutional and statutory duty and exercise its
18 authority to protect farm workers reasonably and adequately against this workplace danger, lest
19 even more avoidable deaths and serious illnesses occur.

20 **PARTIES**

21 11. Plaintiff Margarita Alvarez Bautista is the daughter of Maria de Jesus Bautista,
22 who fell seriously ill on or about July 17, 2008 after being exposed to extreme heat while working
23 picking grapes in Riverside County. Maria de Jesus Bautista died two weeks later from health
24 complications arising from her heat exposure. Plaintiffs are informed and believe that, at the time
25 of such heat exposure, Maria de Jesus Bautista's employer had not complied with the Heat Illness
26 Prevention regulation. Plaintiff Margarita Alvarez Bautista is herself a farm worker who has
27 worked in the fields of Riverside County for 19 years during periods of extreme heat and expects
28 to do so again in 2009 and beyond. Plaintiff Margarita Alvarez Bautista fears for her safety but

1 must work out of economic necessity. Plaintiff Margarita Alvarez Bautista is a legal resident of
2 the United States and a resident of Riverside County.

3 12. Plaintiff Ana Rosa Bautista is the niece of Maria de Jesus Bautista, whose
4 exposure to extreme heat (described above) caused or contributed to her death on August 2, 2008.
5 Plaintiff Ana Rosa Bautista has worked in the fields of Riverside County and Kern County during
6 periods of extreme heat and expects to do so again in 2009 and beyond. Plaintiff Ana Rosa
7 Bautista has suffered from heat illness in the past and fears for her safety but must work out of
8 economic necessity. Plaintiff Ana Rosa Bautista is a legal resident of the United States and a
9 resident of Riverside County.

10 13. Plaintiff Socorro Rivera is a farm worker who has worked in the fields of Kern
11 County and Tulare County for 29 years during periods of extreme heat and expects to do so again
12 in 2009 and beyond. Plaintiff Socorro Rivera works for an employer that has not and presently
13 does not comply with the Heat Illness Prevention regulation. Plaintiff Socorro Rivera fears for
14 her safety but must work out of economic necessity. Plaintiff Socorro Rivera is a legal resident of
15 the United States and a resident of Kern County.

16 14. Plaintiff Mauricia Calvillo is a farm worker who has worked in the fields of Kern
17 County and Tulare County for 14 years during periods of extreme heat and expects to do so again
18 in 2009 and beyond. Plaintiff Mauricia Calvillo works for an employer that has not and presently
19 does not comply with the Heat Illness Prevention regulation. Plaintiff Mauricia Calvillo fears for
20 her safety but must work out of economic necessity. Plaintiff Mauricia Calvillo is a legal resident
21 of the United States and a resident of Kern County.

22 15. Plaintiff Natividad Carrillo is the sister of Ramiro Carrillo, who died on July 10,
23 2008, from heat stroke caused by his exposure to extreme heat while working in a field in Fresno
24 County, California. Plaintiffs are informed and believe that, at the time of such heat exposure,
25 Ramiro Carrillo's employer did not provide any shade and did not make any effort to seek out
26 medical attention for him. Plaintiff Natividad Carrillo has also suffered from heat illness while
27 working in the fields of Tulare County during periods of extreme heat. She fears for her safety
28 but expects to continue working in 2009 and beyond out of economic necessity. Plaintiff

1 Natividad Carrillo is a legal resident of the United States and a resident of Tulare County,
2 California.

3 16. Plaintiff United Farm Workers of America (“UFW”) was founded in 1962 by
4 Cesar Chavez and is the nation’s largest farm workers’ union. The UFW is headquartered in
5 Keene, California, and has offices in California, Oregon, Washington State and Florida. The
6 UFW has thousands of members in California. In addition, tens of thousands of farm workers
7 who work in California fields during periods of extreme heat and are therefore at risk of heat-
8 related death or illness, have voted for the union during union elections and rely on the union as a
9 source of information about heat safety regulations, yet still do not have union contracts. The
10 UFW has represented the interests of these farm workers in negotiations with Cal-OSHA over the
11 adoption of the Heat Illness Prevention regulation, and has mounted public service campaigns to
12 inform farm workers about their rights under the regulation. The UFW brings this action on
13 behalf of its members and farm workers who have voted for union representation.

14 17. Defendant the State of California is the government entity responsible for
15 enforcement of the Constitution and laws of the State and is subject to suit as such in this Court.
16 Under Article XIV, § 4 of the California Constitution, the State has the duty and authority to
17 create and enforce a complete system of workers’ compensation, which must include full
18 provision for securing safety in places of employment.

19 18. Defendant Division of Occupational Safety and Health (“Cal-OSHA”) is the
20 division within the Department of Industrial Relations that is charged with responsibility for
21 implementing and enforcing occupational safety and health standards in general, (Cal. Labor
22 Code § 142), and the Heat Illness Prevention regulation, Cal Code Regs. Title 8, § 3395, in
23 particular. Cal-OSHA is under a mandatory duty to inspect places of employment and enforce
24 safety provisions under the California Occupational Safety and Health Act of 1973, and to take
25 action to prevent or prohibit any unsafe condition in a place of employment that could reasonably
26 be expected to result in immediate death or serious physical harm. (Cal. Labor Code § 6327.5.)

27 19. Defendant Len Welsh is sued herein only in his official capacity as Chief of
28 Defendant Division of Occupational Safety and Health; Mr. Welsh is responsible in his official

1 capacity for ensuring that the Division performs its mandatory obligation to inspect and enforce
2 occupational health and safety standards and acts to prevent or prohibit any unsafe condition in
3 any place of employment that could reasonably be expected to result in immediate death or
4 serious physical harm. (Cal. Labor Code § 6327.5.)

5 VENUE

6 20. Venue in this Court is proper under Code of Civil Procedure § 401.

7 BACKGROUND

8 21. California produces about 44% of the nation's fruit, vegetable and horticultural
9 crops. In doing so, it relies on hired farm workers to do over 90% of the work. Approximately
10 36% of the nation's farm workers — roughly 650,000 people — work in California's fields each
11 year. Those farm workers work long hours for very low wages, and most have no other means to
12 support themselves or their families. Farm workers are one of the most vulnerable populations of
13 workers in the State, because they usually move from place to place within the State as the
14 picking seasons change, they are typically employed not by landowners or growers but by farm
15 labor contractors, and many of them have limited proficiency in the English language and limited
16 ability to access social services. These, however, are the people who pick most of the fruits and
17 vegetables that the people of California and the nation eat and drink.

18 22. Many crops in California are picked under conditions of extreme heat. For
19 example, during July 2006 the average daily maximum temperature in Imperial County, where
20 table grapes and bell peppers are picked, was 107.9 degrees Fahrenheit (the average *low* was 81.6
21 degrees). The average high in Kings County that month (where grapes, tomatoes, peaches,
22 apricots, nectarines are picked) was 100.6 degrees, in Kern County (where table grapes, melons,
23 onions, citrus are picked) it was 98.2 degrees, and in Yolo County (where wine grapes, melons,
24 tomatoes are picked) it was 96.8 degrees. These temperatures are expected to rise in future years
25 as a result of global warming and climate change.

26 23. Workers in the fields engage in strenuous physical activity throughout the day.
27 During late Spring, Summer and early Fall, they frequently work long hours in conditions of
28 extreme heat. As a result, absent adequate precautions, they are at serious risk of developing heat

1 stresses of varying severity, including heat cramps (severe painful cramping of muscles in the
2 legs or abdomen), heat edema (swelling in the legs), heat syncope (sudden loss of consciousness),
3 heat exhaustion (the symptoms of which include malaise, weakness, nausea, vomiting, headache
4 and a rapid heart beat, and which can lead to heat stroke) and heat stroke, which can result in
5 organ damage, permanent neurological impairment, or death.

6 24. Farm workers are at particular risk of heat-related illness or death if they work
7 long hours in the heat without first having become gradually acclimatized to it. For example, of
8 twenty-five cases of heat-related fatalities and hospitalizations investigated by Cal-OSHA in
9 2005, 80 percent of the workers involved had been employed for four days or fewer. (Final
10 Statement at p. 21.) The State of California has found that Spring and early Summer can be
11 particularly problematic because daytime temperatures rise throughout the State and employees
12 are not acclimatized to the hot weather, a recognized risk factor for heat illness.⁹ Even
13 moderately high temperatures can pose a hazard to unacclimatized workers. Cal-OSHA's
14 investigation of heat exposure fatalities and injuries in 2005 included cases involving daytime
15 temperatures as low as 75 degrees Fahrenheit. (2006 Public Hearing at p. 3). The State is well
16 aware of "how significant a role acclimatization plays in preventing heat illness." (*Id.*)

17 25. California's Heat Illness Prevention regulation, Cal. Code Regs. Title 8, § 3395,
18 was adopted in August 2005 in response to five farm worker heat-related deaths that year. The
19 regulation applies to "all outdoor places of employment" and provides that "[e]mployees shall
20 have access to potable drinking water" that meets specified requirements, "provided in sufficient
21 quantity ... to provide one quart per employee per hour for drinking for the entire shift." (Cal.
22 Code Regs. Title 8, § 3395(c).) Section 3395(d) provides that "[e]mployees suffering from heat
23 illness or believing a preventative recovery period is needed, shall be provided access [at all
24 times] to an area with shade that is either open to the air or provided with ventilation or cooling
25 for a period of no less than five minutes." Section 3395 (b) defines "shade" as the "blockage of
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27 ⁹ State of California - Department of Industrial Relations, Occupation Safety And Health
28 Standards Board, Section 3395, Heat Illness Prevention, Finding of Emergency, March 3, 2006, at
2-3.

1 direct sunlight” and clarifies that “[s]hade is not adequate when heat in the area of shade defeats
2 the purpose of shade, which is to allow the body to cool.” Section 3395(e) provides that
3 “[t]raining ... shall be provided to all supervisory and non-supervisory employees” in topics that
4 include environmental and personal risk factors for heat illness, the importance of frequent
5 consumption of water, the importance of acclimatization, common signs and symptoms of heat
6 illness, and the employer’s procedures for responding to symptoms of possible heat illness and
7 contacting emergency services. Section 3395(a) provides that “[t]his standard is enforceable by
8 the Division of Occupational Safety and Health [Cal-OSHA]” and provides no other enforcement
9 mechanism.

10 26. Despite the rudimentary nature of the requirements in the Heat Illness Prevention
11 regulation, violations are widespread, as the State has acknowledged. In 2008, Cal-OSHA
12 conducted just 750 agricultural inspections among approximately 35,000 farms (many of whom
13 contract with multiple farm labor contractor employers)—and found that 289 companies, nearly
14 40 percent of the total inspected, had violated mandatory heat safety regulations. This year, Cal-
15 OSHA found in the first *two weeks* of the 2009 heat season alone that the number of employers
16 cited for violation of the heat regulation was more than double the number of cases in all of 2008.
17 (2009 Finding of Emergency at p. 2).

18 27. The State’s statistics merely confirm what many farm workers and stakeholders
19 commonly know to be true—large numbers of agricultural employers fail utterly to provide basic
20 access to water and shade for their employees. On June 30, 2009, Erika Oropeza drove through
21 Huron, California. As Ms. Oropeza observed, four crews of 140 farm workers were picking
22 grapes in 90 degree Fahrenheit heat in an area where their employer, Manuel Murrillon FLC, was
23 providing no access to shade and only two portable bathrooms. (See Declaration of Erika
24 Oropeza (“Oropeza Decl.”), 7/9/09, at p. 1).¹⁰ At a different worksite, Ms. Oropeza witnessed
25 another employer, West Side Farms, had a crew of 27 onion pickers working in 90 degree heat
26 without any shade available to them. The following day, as Ms. Oropeza observed, an employer

27 ¹⁰ Attached hereto in Appendix A and incorporated herein by reference are declarations by seven
28 individuals.

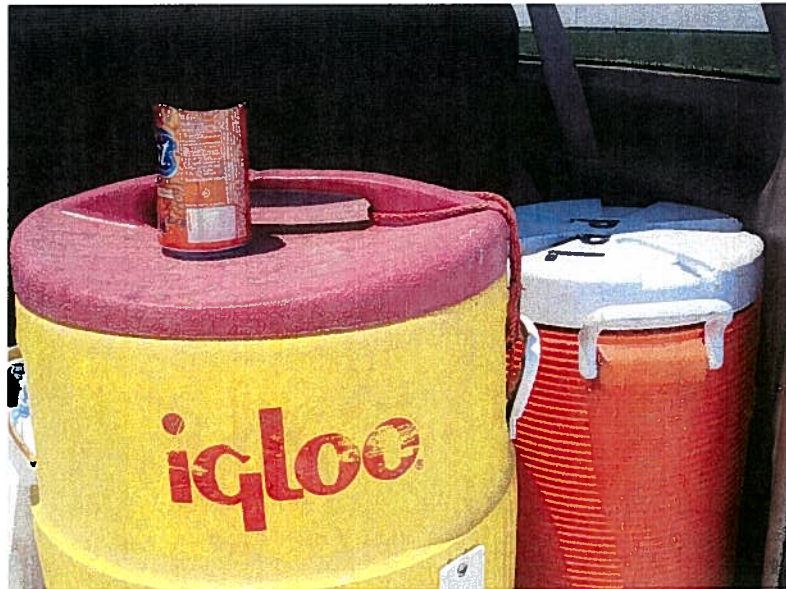
1 named GTO Packing, Inc. had 150 workers picking garlic in 95 degree heat without providing
2 any access to shade, and she later observed another employer, Turlock Fruit Company, had 200
3 farm workers picking melons in 95 degree weather without providing any access to shade. The
4 photograph below, taken on July 1, 2009 of a crew of farm workers working without any shade in
5 100 degree Fahrenheit heat, is typical of farm working conditions throughout California.



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17 (See Declaration of Armando Elenes (“Elenes Decl.”), at p. 1 and Exhibit A). Although Ms.
18 Oropeza filed complaints with the Fresno office of Cal-OSHA on June 30th and July 1st against
19 each of these employers, Cal-OSHA never contacted her. On July 10, 2009, Ms. Oropeza
20 returned to where onion pickers were working for West Side Farms and found that West Side
21 Farms still was not providing the same workers with access to shade, while having them toil in 92
22 degree heat. (Oropeza Decl., 7/10/09, at p. 1).

23 28. Unfortunately, what Ms. Oropeza observed is all too common. Agricultural
24 employers throughout the state continually fail to provide any shade or water whatsoever (for
25 example, see Declarations of Vianey Torres, Juan Lopez, and Jose Luis Alvarez); provide
26 inadequate shade in the form of small beach umbrellas (for example, see Declaration of Juana
27 Carbajal) or four foot short mini-canopies (for example, see Declaration of Jose Luis Alvarez); or
28 provide shade and water over a quarter mile away from workers (for example, see Declarations of

1 Juan Lopez, Armando Elenes, and Oscar Mejia)—all when temperatures regularly exceed 90
2 degrees Fahrenheit. Farm workers are also regularly subjected to dangerous and unsanitary work
3 conditions. For example, on July 1, 2009 Armando Elenes observed a crew of approximately 20
4 farm workers picking tomatoes near Firebaugh, California, when the temperature was 100
5 degrees Fahrenheit. Mr. Elenes observed that the workers were over a 20-minute walk away from
6 any shade, water, and bathrooms, and their only means of drinking water was from a single used
7 soda can whose top had been cut off, as pictured below:



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18 (See Elenes Decl., at p. 1 and Exhibit B). As farm workers frequently complain, the water that
19 they are provided is often “hot” and undrinkable; sometimes it is “muddy.” (*Id.*)

20 29. Cal-OSHA’s enforcement of the Heat Illness Prevention regulation has been
21 unreasonably lax and grossly inadequate. This fact is known by officials and agents of Cal-
22 OSHA and by growers and farm labor contractors. It begins with Cal-OSHA’s failure to conduct
23 timely, effective, and an adequate number of inspections, including mandatory unannounced
24 inspections of workplaces where a complaint has been filed by or on behalf of an employee.

25 According to one former Cal-OSHA officer:

26 “The decline in inspectors has led, not surprisingly, to failures by Cal-OSHA to
27 meet the requirements of the labor code: inspections are not being initiated within
28 the required 14-day post-complaint period, inspections are not being closed in a

1 timely fashion, and many serious complaints are being declared “invalid” at the
2 discretion of the 21 district managers. Worse yet, follow-up inspections for
3 “serious” citations are not being carried out, and there are [sic] an increasing
4 reluctance to effectively fight appeals by employers.... Over the years, Cal-OSHA
5 has essentially eliminated the enforcement of health standards” (Cal-OSHA
6 Going Down The Tubes? at p. 1.)

7 Cal-OSHA’s failure to inspect workplace hazards or to investigate complaints it receives by or on
8 behalf of farm worker employees is also commonly known by stakeholders. Among more than
9 two dozen complaints filed on June 30 and July 1, 2009 against agricultural employers involving
10 serious violations of the Heat Illness Prevention regulation, Cal-OSHA failed to contact a single
11 complainant. (See Appendix A, declarations attached concurrently herewith). Worse, several
12 declarants report returning to workplaces ten days after filing complaints on behalf of farm
13 workers who were denied access to shade and water, only to find the same life-threatening
14 conditions without any action having been taken by Cal-OSHA. (See Lopez Decl., 7/10/09;
15 Oropeza Decl., 7/10/09; Elenes Decl., 7/20/09). In continually failing to investigate workplaces
16 in response to employee complaints, and failing to undertake investigations in a timely manner,
17 Cal-OSHA has breached its mandatory duties under the California Occupational Safety and
18 Health Act. (Cal. Labor Code §§ 6309, 6321).

19 30. Even where Cal-OSHA inspects or investigates a workplace and issues a citation
20 or abatement order, Cal-OSHA often fails in “arguably [its] most important function,” to “verify
21 abatement or correction of many of the citations it does issue.” (Two Faces of Cal/OSHA at p. 3.)
22 Since 2006, Cal-OSHA district offices have failed to verify that a hazardous condition was
23 corrected or abated in almost 40 percent of private sector citations that were issued. (*Id.*) Some
24 Cal-OSHA enforcement offices report a hazard correction verification rate as low as *50 percent*.
25 (*Id.*) A Cal-OSHA spokesperson recently admitted that it is “not unusual” for Cal-OSHA to fail
26 to visit a company to determine whether the company has corrected violations Cal-OSHA has
27 identified. As noted, in the much-publicized heat-related workplace death of 17-year-old Maria
28 Isabel Vasquez Jimenez in 2008, Cal-OSHA had already fined the employer, Merced Farm

1 Labor, \$2,250 in 2006 for serious occupational safety violations, but had never collected the fine
2 or verified that the company was in compliance with regulations. Instead, as Cal-OSHA
3 admitted, investigators relied on company representations that the “abatement was done” and
4 failed to “make an actual field visit.”¹¹ Cal-OSHA Chief Len Welsh recently admitted that the
5 agency had made a “mistake” in its handling of the repeated heat safety violations that ultimately
6 led to the death of Maria Isabel Vasquez Jimenez.¹² In often failing to issue a citation and failing
7 to verify the timely correction of an abatement order or citation, Cal-OSHA has not fulfilled its
8 mandatory duties under the California Occupational Safety and Health Act. (Cal. Labor Code §§
9 6317, 6320).

10 31. Cal-OSHA’s failure to pursue serious, willful, or repeat heat regulation violators
11 has been particularly egregious. A “serious” violation arises when there is a “substantial
12 probability that death or serious physical harm could result from a violation,” (Cal. Labor Code §
13 6432), and a violation is “willful” when an employer “knew that what it was doing constituted a
14 violation of a safety law or was aware of an unsafe or hazardous condition and made no
15 reasonable effort to eliminate it.” (Cal Code Regs. Title 8, § 334(e)). Despite widespread
16 violation of the Heat Illness Prevention regulation—as recognized by the State itself in its 2009
17 Finding of Emergency—only *one* employer, Merced Farm Labor, has ever been cited for willfully
18 violating the heat regulation, in the death of Maria Isabel Vasquez Jimenez. Publicly available
19 information from Federal OSHA indicates that at least 23 farm employers have been cited
20 multiple times by Cal-OSHA for heat safety violations, but only one, YNT Harvesting, has ever
21 been cited as a “repeat” violator. One employer, Giumarra Vineyards Corporation, had one of its
22 farm worker employees die from heat stroke in 2004, and has been cited *six* times for heat
23 regulation violations since 2005, twice for serious violations, and yet it has never been cited for
24 “willful” or “repeat” violations of the heat regulation. Under the State’s lax regulatory regime,
25 employers like Giumarra and YNT Harvesting operate with near-impunity.

26
27 ¹¹ Susan Ferriss, “Farmworker’s Employer Fined in ’06 Violations,” 5/30/2008 Sacramento Bee.

28 ¹² Susan Ferriss, “Cal-OSHA To Review Handling Of Heat Cases,” 12/31/2008 Sacramento Bee.

1 32. Penalties issued by Cal-OSHA are often too small to create a reasonable deterrent
2 or to accomplish substantial justice, and penalties are typically reduced even further upon review
3 by the Appeals Board. Although the base penalty amount for a “serious” violation under the
4 Labor Code is \$18,000, penalties for violations that resulted in heat-related farm worker deaths
5 have averaged less than \$10,000, and in some instances have dropped to as low as \$250. (Cal.
6 Labor Code § 6428.) For example, Eladio Hernandez died in May 2007 after picking peaches in
7 95 degree Fahrenheit heat. Because his employer, YNT Harvesting, had not provided its work
8 crews with first aid kits or telephones to communicate with emergency services, and had not
9 trained his supervisor in first aid, critical time lapsed and Mr. Hernandez died before the
10 paramedics arrived. YNT Harvesting was initially cited for two serious safety violations and was
11 assessed \$25,310 in penalties. After a settlement, Cal-OSHA “deleted” a serious violation and
12 reduced the penalty to \$7,310. YNT Harvesting was cited again in August 2008, and has yet to
13 pay *any* of its penalties. As earlier noted, the Appeals Board has undertaken policies calculated to
14 reduce a backlog of cases and to force Cal-OSHA to settle cases, often at drastically reduced
15 penalties. Consequently, Cal-OSHA inspectors have accused the Appeals Board of “dismiss[ing]
16 some violations, even in cases involving serious injuries, on technicalities ... [and] unilaterally
17 interpret[ing] legislation and ignor[ing] court rulings ‘so as to restrict the Division's ability to
18 enforce the law.’” (Cease and Desist).

19 33. Although Cal-OSHA has recently stepped up its heat illness prevention efforts by
20 increasing the number of inspections and shutting down 10 farm labor contractors in 2009, Chief
21 Len Welsh admits that Cal-OSHA is “maxed out” and that enforcement efforts are not
22 sustainable. (Great Reservations). In failing to maintain the capacity to receive and act upon
23 complaints at all times and to employ as many investigators and other employees as is necessary
24 to ensure safe and healthful working conditions, Cal-OSHA has not fulfilled its mandatory duties
25 under the California Occupational Safety and Health Act. (Cal. Labor Code §§ 6309, 6315).

26 34. The Heat Illness Prevention regulation has itself also proven inadequate. Unlike
27 many other existing safety standards, the Heat Illness Prevention regulation does not create an
28 environmental “trigger” that would require employers pro-actively to monitor environmental

1 conditions (such as air temperature, humidity, and radiant heat exposure) that affect the heat
2 burden on employees and take steps to decrease or halt work activities when heat stress
3 approaches human tolerance limits. A heat “trigger” that regulates employee work rates is
4 recommended by the American Conference of Governmental Industrial Hygienists (*Heat Stress
5 and Strain Threshold Limit Values* (2001)), and federal agencies such as the National Institute for
6 Occupational Safety and Health, the Department of Labor, and the Environmental Protection
7 Agency, and has been the practice of the United States Army and Marine Corps for decades.
8 Recently, Cal-OSHA proposed (but did not adopt) emergency regulations with a “trigger,” but
9 one that would regulate when *shade* must be provided rather than regulating work-rate activities;
10 it was a proposed standard without scientific basis because federal agencies are in agreement that
11 shade should *always* be made available. Worse, the current heat regulation does not give
12 employees the right to take a rest break until they recognize that they are already experiencing
13 symptoms of heat illness—when it may already be too late to prevent injury—and only then are
14 employees allowed a *five minute* recovery period, a duration of time that doctors agree is
15 insufficient to recover from heat illness.

16 35. The Heat Illness Prevention regulation is inadequate for a more fundamental
17 reason: it places the burden entirely on the individual worker to request shade or seek a
18 preventative recovery period. Farm laborers throughout the state report feeling pressured to work
19 without rest, even during periods of intense heat, and fearful of being fired if they complain to
20 their employer or file a complaint with Cal-OSHA. Notwithstanding employees’ statutory right
21 to be free from retaliation for filing a complaint, (Labor Code §§ 6310-11), low-wage farm
22 workers often do not ask for help because they fear they will lose their jobs. Finally, the
23 regulation does not require employers to supervise employee acclimatization to heat — despite the
24 State of California’s recognition that “acclimatization is critically important in effective programs
25 for heat illness prevention.” (Final Statement, at 49).

26 36. In short, California does not employ accepted procedures for effective prevention
27 and treatment of heat-related illness in agricultural fields. By comparison, pro-active monitoring
28 and management of employee heat stress and acclimatization to heat are established best practices

1 and have been implemented by employers in other industries such as the United States Army and
2 Marine Corps. The Army expressly recognizes the importance of heat stress control in providing
3 a safe and efficient working environment:

4 “Successful management of heat stress depends on proper education of leaders and
5 troops exposed to heat. Leaders must implement procedures to alert troops of
6 dangerous heat stress levels and must apply interventions to reduce exposure and
7 increase resistance of exposed soldiers. Being alert to signs of soldier distress in
8 the heat is critical so that management procedures can be adjusted accordingly.”¹³

9 37. The Army and Marine Corps actively manage employee heat stress in several
10 ways: by closely monitoring soldiers’ acclimatization to heat during the first three weeks of heat
11 exposure; by monitoring heat index levels and employing a “flag system” that regulates work/rest
12 cycles; by ensuring that water is consumed continuously throughout the day by providing a
13 canteen for each soldier and scheduling intermittent rest periods with enforced water breaks; by
14 training both soldiers and command officers to recognize and respond to symptoms of heat
15 illness; and by instituting rapid emergency response procedures so that soldiers experiencing heat
16 symptoms are moved to a cool shady area, given water, cooled with sprayed water, ice packs and
17 loosened clothing, and monitored by CPR-trained medical responders. (*Id.*)

18 38. When the State enacted the Heat Illness Prevention regulation in 2005, it
19 recognized the “need to monitor the effectiveness of the standard in preventing a recurrence of the
20 large number of serious incidents that occurred in 2005 and be prepared to make appropriate
21 amendments should it become necessary to do so.” (Final Statement, p .37) Since the
22 regulation’s adoption, eleven farm workers have died from heat-related illnesses and hundreds
23 more have become seriously injured. Although these facts demonstrate that significant
24 amendments to the heat regulation are necessary, the State has failed to adopt more effective
25 standards. The direct and proximate consequences of the State’s failure to create and enforce a
26

27 ¹³ Army Technical Bulletin: *Heat Stress Control and Heat Casualty Management* (TB MED
28 507/AFPAM 48-152 Mar. 7, 2003, at p. 11.

1 reasonably adequate system to protect workers from heat exposure has been a tragedy felt by
2 plaintiffs and many other farm workers.

3 39. Plaintiff Margarita Alvarez Bautista's mother, Maria de Jesus Bautista, died on
4 August 2, 2008 from health complications arising from exposure to extreme heat in Riverside
5 County. Maria de Jesus Bautista had worked in the fields all her life and had never before been
6 sick from the heat. On or about July 16, 2008, Maria de Jesus Bautista complained to her sister of
7 a headache, nausea and cold sweats while picking grapes in 110 degree weather, but she
8 continued working for the rest of the day because her employer did not provide any shade and she
9 felt pressured to keep pace with her co-workers. Over the next two weeks, her headache
10 persisted, she became disoriented and was unable to recognize family members, and she was
11 hospitalized on three separate occasions. On August 2, 2008, Maria de Jesus Bautista was
12 pronounced dead.

13 40. Plaintiff Ana Rosa Bautista, the niece of Maria de Jesus Bautista, has worked in
14 the fields of Riverside and Kern Counties for 20 years. She prunes grapes in December and
15 January, removes leaves from vines in March and April, and picks grapes in the hot months of
16 May through July when temperatures can exceed 110 degrees Fahrenheit. Ana Rosa Bautista has
17 experienced heat illness in the past. Approximately five years ago, she developed a severe
18 headache and began trembling and feeling nauseated while working in the fields one day. She did
19 not know what she was experiencing and was too embarrassed to report her symptoms. Her
20 headache later worsened and she vomited that night. Now, whenever she gets hot she has
21 headaches and feels nauseated. Ana Rosa Bautista is afraid of becoming sick again from heat
22 exposure.

23 41. In May 2008, Ana Rosa Bautista's employer in Riverside County began training
24 employees about heat illnesses for the first time. Prompted by the many recent heat exposure
25 deaths, her employer began holding daily morning training sessions where workers learn how to
26 recognize and respond to heat illness. Ana Rosa Bautista's experience with employers has varied
27 greatly, however. A different employer for whom she recently worked in Kern County also
28 provided water, training and shade, but the shade was inadequate. The shade consisted of a tarp

1 poised seven feet from the ground with chairs and a water cooler, but it accommodated only four
2 or five people at one time, out of as many as 100 people who needed shade.

3 42. Plaintiffs Socorro Rivera and Mauricia Calvillo both work for the largest table
4 grape grower in the country, Giumarra Vineyards Corporation (“Giumarra”). Socorro Rivera has
5 picked grapes for Giumarra in Kern and Tulare County for 29 years, while Mauricia Calvillo has
6 picked grapes for Giumarra for 14 years. The grape-picking season runs from April to late
7 October. In the summer months, the heat intensifies as early as 8 am.

8 43. Shade is often not provided to Giumarra employees. (For example, see Lopez
9 Decl., 7/9/09 at p.2). When shade is provided, it is often inadequate under the Heat Illness
10 Prevention regulation. It typically consists of a plastic tarp slung over three rows of vines. The
11 tarp hangs five feet from the ground when taut and only a few feet when slack. Workers do not
12 use the tarp because it is hotter underneath—where the air does not circulate—than under direct
13 sunlight. Workers are forced to take refuge under grape vines, where it “feels like an oven”
14 according to Socorro Rivera, but where the heat is less oppressive. Socorro Rivera complained
15 once to her supervisor about the shade and threatened to report it to Cal-OSHA. Her supervisor
16 then personally purchased a tarp capable of providing cover for 30 people and outfitted the
17 shaded area with tables and chairs and a water cooler. Only the workers in her sector (roughly 40
18 employees) have access to this shade. Employees who work in other sectors, such as Mauricia
19 Calvillo, must make do with the inadequate shade. Mauricia Calvillo and the employees of her
20 sector have also complained to their supervisor about the inadequacy of the shade, and they even
21 offered to purchase a canopy with their own money. The supervisor responded that only the
22 employer Giumarra may provide shade. Their complaint went unanswered.

23 44. Giumarra employees are routinely discouraged from drinking water even in
24 extreme heat conditions. Socorro Rivera filed a complaint with Cal-OSHA on May 29, 2009,
25 stating that the 24 workers in her crew that day had not had sufficient access to water and had
26 been threatened with suspension or termination because they had been drinking water. Cal-
27 OSHA never contacted Ms. Rivera regarding that complaint and to her knowledge Cal-OSHA has
28 not investigated it.

1 45. Training at Giumarra varies from sector to sector but is inadequate according to
2 what is required by the Heat Illness Prevention regulation. For Socorro Rivera, training consists
3 of a supervisor reading a list of heat illness symptoms to all the employees in her sector once a
4 year, sometime in July. Employees are instructed to stop working if they feel these symptoms.
5 Employees are also told that they are responsible for one another. However, employees are not
6 given the list of symptoms or any other written material about heat illness, and they are not told
7 how to acclimatize to heat or what to do in case of an emergency. The heat illness training lasts
8 no more than ten minutes.

9 46. In 2005, Mauricia Calvillo's employer, Giumarra, selected her and three other
10 employees from her sector to undertake a full day of training related to heat illness prevention.
11 Mauricia was instructed on the symptoms of heat illness and what to do in an emergency, and she
12 was given a certificate that expires in 2008. She and the other three employees were designated
13 point persons for emergencies in her sector. However, these four employees were the *only*
14 employees in her sector who received training regarding heat illness prevention, in violation of
15 the Heat Illness Prevention regulation which requires that *all* employees receive some form of
16 training. (Cal Code Regs. Title 8, § 3395(e)(1)). Plaintiffs are informed and believe that
17 Giumarra has not trained anyone in her sector since Mauricia's training in 2005.

18 47. Even if Giumarra adequately trained its employees about the importance of
19 hydration, acclimatization, and the recognition of heat illness symptoms—and it does not—
20 Giumarra undermines any training employees receive by pressuring them to keep working
21 without rest. Workers are grouped in teams of three — two pickers and one packer — and slower
22 groups are told they will be fired if they do not keep pace with the output of the fastest groups.
23 Employees seen to be congregating around a water cooler or in line for the bathroom are
24 pressured to get back to work. Employees are afraid to take preventive breaks even during
25 periods of extreme heat because they fear they will be fired. As a result of the pressure placed
26 upon them, employees frequently faint from heat exposure. Not surprisingly, Giumarra has been
27 cited six times for heat-related violations, twice for “serious” violations. Despite Giumarra's
28 woeful record of multiple serious heat safety violations, and the fact that on July 28, 2004, a farm

1 worker employed by Giumarra, Jose Asuncion Valdivia, died of heat stroke, Giumarra has yet to
2 pay for \$37,850 in accumulated penalties since July 2007 or apparently to abate its dangerous
3 workplace conditions.

4 48. Plaintiff Natividad Carrillo's brother, Ramiro Carrillo, died of heat stroke after
5 picking nectarines in 112 degree weather in Fresno County. At ten in the morning on July 10,
6 2008, Ramiro Carrillo complained to his employer of feeling sick from the heat. He was made to
7 wait for three or four hours. At that point, his employer had him taken home rather than to an
8 emergency room or doctor. He died that evening on his front porch in Selma, California. Ramiro
9 Carrillo's employer, Sun Valley Packing, was fined \$25,585 for failing to provide employee and
10 supervisor training. The employer has appealed the fine.

11 49. Plaintiff Natividad Carrillo has fainted and vomited from heat exposure while
12 working in the fields on multiple occasions. She currently picks oranges for an employer who
13 offers no shade and no training either to help her identify symptoms of heat illness or to learn the
14 steps to take in the event of an heat-related emergency. When Natividad Carrillo feels sick from
15 the heat, she sits under a tree and waits for her illness to pass. She is not paid while she rests and
16 recovers from the heat. Her previous employer, one of the largest nurseries in the state, did not
17 offer any shade, and employees were discouraged from taking breaks by supervisors who called
18 them lazy and threatened to fire them for standing around. Natividad Carrillo fears that one day
19 she may end up like her brother, but her employers have not responded to employee complaints
20 and she has not known how to file a complaint with Cal-OSHA.

21 50. Plaintiffs are but a subset of farm workers who have suffered the personal loss of
22 the death of a loved one or who have felt the fear and indignity of working under substandard
23 conditions in the fields as a result of California's failure to establish and implement an effective
24 program to prevent heat-related illness. In the summer of 2008, six farm workers died from heat
25 stroke or other health complications caused by their exposure to conditions of extreme heat. The
26 deaths of Ramiro Carrillo and Maria de Jesus Bautista have been described above. In addition,
27 Maria Isabel Vasquez Jimenez was seventeen years old when she died of heat stroke on May 16,
28 2008 after picking grapes that day in Merced County for 9 hours in 95 degree heat. It had been

1 her third day of work and she had not acclimatized to the heat. Her employer had not provided
2 any shade or training and had provided only limited access to water in coolers 1200 feet away
3 from the farm workers at opposite ends of the field. Maria Isabel Vasquez Jimenez was taken to
4 the hospital and never regained consciousness. Her core body temperature exceeded 108 degrees
5 Fahrenheit.

6 51. Cal-OSHA fined Maria's employer, a farm labor contractor named Merced Farm
7 Labor, a record \$262,000 and suspended its license. Merced Farm Labor had already been fined
8 \$2,250 in 2006 by Cal-OSHA for heat safety violations but had never paid or appealed the fine.
9 Nevertheless, Cal-OSHA renewed Merced Farm Labor's contractor license. Plaintiffs are
10 informed and believe that, at the time of Maria Isabel Vasquez Jimenez's heat exposure, Cal-
11 OSHA rarely performed inspections on Merced Farm Labor or the grower, West Coast Farming,
12 despite the employer's record of multiple heat regulation violations. When Cal-OSHA did
13 perform inspections, the employer was notified in advance.

14 52. Audon Felix Garcia died July 9, 2008 after working loading grape boxes into a
15 truck in 112 degree weather from morning to early afternoon that day in Kern County. He was 42
16 years old and had had 15 years of experience with field work. An ambulance was called, but he
17 could not be revived in time. Audon Felix's core body temperature was 108 degrees Fahrenheit
18 at the time of his death.

19 53. Jose Macarena Hernandez, 63, died June 20, 2008 from heat stroke after
20 harvesting strawberries that day in Santa Barbara County in record-breaking 110 degree heat. He
21 was found dead in the fields by a co-worker.

22 54. Jorge Herrera was 37 years old when he died on July 31, 2008 from heat stroke.
23 He had been working loading table grapes in Kern County when he collapsed on July 9, 2008 and
24 was taken to the hospital. He had a core body temperature of 108 degrees and was diagnosed
25 with kidney failure and brain damage. He died after remaining in critical condition for two
26 weeks. He left behind a wife and two children, ages 4 and 7.

27 55. According to a recent study, county coroners frequently underreport heat-related
28 deaths, in part because body temperature at the time of death is often not ascertained and because

1 there are no widely accepted, systematic criteria for defining a “heat-related” death.¹⁴
2 Consequently, deaths from other causes, such as cardiovascular and respiratory diseases that can
3 be exacerbated by heat stress, are often not classified as heat-related when they should be. (*Id.*)
4 The study estimated that actual heat-related mortality from the July 2006 California heat wave
5 was 2-3 times greater than coroner estimates. (*Id.*) Accordingly, it is likely that many more farm
6 workers have died due to the effects of heat than has been officially reported to.

7 56. In addition to the tragic heat-related deaths that have continued since the
8 promulgation of the Heat Illness Prevention regulation, there continue each year to be hundreds of
9 serious heat-related injuries among farm workers. The Standards Board has acknowledged that
10 “at least 300 cases of heat-related illness annually are recorded by employers or are the subject of
11 claims for Workers Compensation Insurance . . . in a wide range of industries and occupations,”
12 including farm work.¹⁵ These heat-related injuries can have devastating lifelong impacts on the
13 injured workers. In addition, the daily risk of such injury pervades the work life of all California
14 farm workers and robs them of an experience of safety in their work days.

15 57. Plaintiffs are informed and believe that additional farm workers have suffered
16 serious heat illnesses and injuries this Summer following the State’s failure to adopt an effective
17 emergency heat safety regulation and failure to respond adequately to widespread violations of
18 the current Heat Illness Prevention regulation.

19 58. Cal-OSHA’s failure to take action to prevent or prohibit the hazardous heat-related
20 conditions in the fields described above is arbitrary and capricious, as well as foreseeable. Cal-
21 OSHA reasonably should have expected that more farm laborers would die or be in imminent
22 danger if it did not urgently act to enforce existing safety provisions and the 2005 Heat Illness
23 Prevention regulation. Likewise, the State should have known that Cal-OSHA’s paltry number of
24 total inspectors, only a subset of whom could be expected to inspect agricultural work places,

25 _____
26 ¹⁴ Bart D. Ostro et al., *Estimating the Mortality Effect of the July 2006 California Heat Wave*,
Environmental Research 109 (2009) at 614-619.

27 ¹⁵ Finding of Emergency Government Code Section 11346.1 Occupational Safety and Health
28 Standards Board Readoption of Emergency Amendments to Title 8 California Code of
Regulations Section 3395 of the General Industry Safety Orders, January 6, 2006, at 1.

1 would be insufficient to the task of ensuring workplace safety in routinely hot outdoor conditions
2 among an employer force that has a lengthy public history of resisting safety compliance
3 generally and specifically with respect to heat conditions. Notwithstanding that foreseeable
4 inadequacy of Cal-OSHA to the task the State set it, and the multiyear experience of failure of
5 effective enforcement from Cal-OSHA, the State has failed either to increase capacity at Cal-
6 OSHA or to structure an alternate system to safeguard heat-related workplace safety for farm
7 workers.

8 59. After the fifth farm worker fatality in 2005, Governor Schwarzenegger expressly
9 acknowledged the “tragedy” of heat-related deaths in agriculture and committed “to do
10 everything it takes to prevent this from happening again.”¹⁶ When another farm worker death
11 followed in the summer of 2006, Governor Schwarzenegger’s then-Labor and Workforce
12 Development Agency Secretary Victoria Bradshaw promised the State’s “vigorously pursuing
13 investigations of violations of the emergency heat illness prevention regulations” and the use of
14 “every means at our disposal to hold those responsible accountable.”¹⁷ Most recently, the
15 Governor reiterated the State’s view that “the men and women who work under the sun can rest
16 assured that I will continue my work to strengthen and improve California’s heat illness
17 standards.” (7/16/09 Press Release).

18 60. Despite these promises and the State’s most recent Finding of Emergency, none of
19 the readily available means of stopping the tragedy of heat-related deaths in California agriculture
20 has been implemented. Plaintiffs, along with other stakeholders, advocated passage of the
21 compromise Heat Illness Regulation in 2005, when no regulation existed; then advocated for
22 improvement of the regulation over time; then through counsel met with State officials in the
23 hope of achieving improvements without the necessity of a lawsuit; and then supported and
24 provided detailed recommendations for improvements to the emergency regulation twice this heat
25 season. These efforts have to date been futile, however. Plaintiffs are left with no choice but to
26

27 ¹⁶ Mark Martin, State Seeks to Halt Farmworker Deaths, San Francisco Chronicle 8/3/2005.

28 ¹⁷ Business Wire, Cal/OSHA Investigates First Possible Heat Illness Fatality, 7/21/2006.

1 ask the Court to require the State to take action to prevent more farm workers from suffering
2 serious heat illness or dying.

3 **FIRST CAUSE OF ACTION -- VIOLATION OF ARTICLE 14, SECTION 4**
4 **OF THE CALIFORNIA CONSTITUTION**

5 61. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
6 60.

7 62. The California Constitution (Article XIV, § 4) vests the California Legislature
8 with plenary power and exclusive authority “to create, and enforce a complete system of workers’
9 compensation.” The constitutionally-mandated system of workers’ compensation must include,
10 among other things, “full provision for securing safety in places of employment” and “full
11 provision for vesting power, authority and jurisdiction in an administrative body with all the
12 requisite governmental functions to determine any dispute or matter arising under such
13 legislation, to the end that the administration of such legislation shall accomplish substantial
14 justice in all cases” The California Constitution further declares that all of the provisions of
15 Article XIV, § 4 are “the social public policy of this State, binding upon all departments of the
16 State government.”

17 63. Article XIV, § 4 creates a constitutional duty on the part of the State of California
18 to create and enforce a system of workers’ compensation that reasonably and adequately protects
19 the safety of workers in California, including farm workers. Article XIV, § 4 creates a
20 corresponding right in the workers of this State to the creation and enforcement of such a system
21 of workers’ compensation.

22 64. Defendant State of California has failed to satisfy this constitutional duty and has
23 therefore violated the rights of Plaintiffs and all farm workers in California. The State has failed
24 to satisfy its constitutional duty and has violated Plaintiffs’ rights by:

25 (a) Failing to adopt reasonably adequate requirements for monitoring for heat
26 stress and the provision of rest breaks, drinking water, shade, training and emergency services to
27 farm workers during periods of extreme heat in the fields;

28 (b) Failing reasonably and adequately to impose such requirements on the

1 entities and persons with the economic incentive and ability to require compliance with them —
2 the growers who own the fields and the crops;

3 (c) Failing to structure an effective system to enforce the Heat Illness
4 Prevention regulation, including by failing to employ a reasonably adequate number of inspectors
5 and other personnel and by failing to conduct a reasonably adequate number of inspections and
6 follow-up inspections to identify hazardous conditions and to determine compliance with
7 regulations;

8 (d) Failing to issue reasonably adequate citations and impose reasonably
9 adequate penalties to deter serious, willful, and repeat violations of the Heat Illness Prevention
10 regulation;

11 (e) Failing to make penalties meaningful by reducing penalties against
12 employers for serious violations to inconsequential sums, automatically staying enforcement of
13 all abatement orders and penalties pending an appeal, and failing to collect fines once imposed.

14 65. The “system of workers’ compensation” that the State of California has created, as
15 it relates to the protection of farm workers against heat-related illness and death, constitutes a
16 violation of the State’s constitutional duty and of Plaintiffs’ rights because that exclusive
17 regulatory system is designed to fail, and unreasonably fails, to protect farm workers against heat-
18 related death and illness and to accomplish “substantial justice”:

19 (a) The system does not contain reasonably adequate requirements for the
20 monitoring of heat stress and the provision to farm workers of rest breaks, drinking water, shade,
21 training and emergency services.

22 (b) The system does not provide for a sufficient number of inspectors or
23 inspections reasonably to detect violations of those requirements that do exist.

24 (c) The system imposes responsibility and liability only on “employers”
25 defined narrowly; because farm workers are often employed directly by farm labor contractors
26 rather than growers, the system does not reasonably or adequately create requirements or
27 incentives for those who own the land and the crops to ensure that heat-related safety
28 requirements are being complied with in their fields.

1 (d) The system does not provide for or result in reasonably adequate penalties
2 for violations of heat-related regulations, such that even direct employers of farm workers have
3 little or no economic incentive to ensure compliance.

4 66. Plaintiffs are informed and believe that, absent declaratory and injunctive relief
5 from this Court, Defendant State of California will continue to fail to perform its constitutional
6 duty and will continue to violate Plaintiffs' rights in the manner described above. As a result,
7 Plaintiffs and other farm workers in California — who, in most instances, have no alternative
8 means of supporting themselves or their families — will continually be at risk of serious illness,
9 death or other irreparable injury from heat exposure in California's fields. Plaintiffs have no
10 adequate remedy at law.

11 **SECOND CAUSE OF ACTION -- WRIT OF MANDATE UNDER CALIFORNIA**
12 **CODE OF CIVIL PROCEDURE § 1086**

13 67. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
14 66.

15 68. Defendant Cal-OSHA is under a mandatory duty to inspect places of employment
16 and enforce safety provisions under the California Occupational Safety and Health Act (Labor
17 Code §§ 6300 et seq.). Among its mandatory duties are:

18 (a) The duty to ensure safe and healthful working conditions through the
19 enforcement of effective safety standards (Labor Code §§ 6300, 6309);

20 (b) The duty to undertake unannounced investigations of places of
21 employment after receiving employee complaints charging a violation (Labor Code §§ 6309,
22 6321);

23 (c) The duty to investigate the causes of any employment accident that is fatal
24 or results in serious injury or illness (Labor Code § 6313);

25 (d) The duty to issue a citation against an employer who has violated any
26 standard, rule, order or regulation, where the violation is serious, repeated, willful or arises from a
27 failure to abate (Labor Code § 6317);

28 (e) The duty to conduct a reinspection to determine compliance where a

1 serious, willful or repeated violation has not been abated or a special order has not been complied
2 with (Labor Code § 6320);

3 (f) The duty to impose a civil penalty for serious, willful, or repeat violations
4 or where an employer fails to correct violations in a timely manner (Labor Code §§ 6428, 6429,
5 6430);

6 (g) The duty to collect civil penalties within three years from the date that a
7 penalty becomes final (Labor Code § 6651);

8 (h) The duty to maintain the capacity to receive and act upon complaints at all
9 times and to employ as many investigators and other employees as is necessary to ensure safe and
10 healthful working conditions (Labor Code §§ 6309, 6315).

11 69. The foregoing duties are mandatory. (Labor Code § 15.) Defendant Cal-OSHA is
12 required to investigate complaints of violations in a timely manner, to issue citations against
13 employers for serious, willful, or repeated violations, or where an employer has failed to abate, to
14 verify that violations have abated or been corrected, to impose and collect penalties, and to
15 maintain the capacity to receive and act upon complaints at all times.

16 70. Defendant Cal-OSHA has failed to enforce these mandatory safety provisions.
17 Cal-OSHA has failed to hire and staff a reasonably adequate number of safety inspectors and
18 other officers sufficient to respond promptly and adequately to complaints and to close
19 inspections in a timely fashion. Cal-OSHA has also failed to undertake unannounced inspections
20 of workplaces in response to employee complaints, and has refused to inspect complaints of
21 employer heat regulation violations by concerned members of the public. Cal-OSHA has also
22 failed to issue citations for serious, willful, and repeated violations of the Heat Illness Prevention
23 regulation, even against employers with a record of multiple serious heat regulation violations or
24 who have had prior heat-related employee injuries or fatalities. Cal-OSHA has also improperly
25 invalidated or cancelled many serious violations, such that its actions have imperiled employees
26 working at those workplaces. Cal-OSHA has also failed to take reasonable steps (*i.e.*, beyond
27 relying on a company's representations) to verify that citations it issues have been corrected or
28 abated. Cal-OSHA has also failed to impose mandatory penalties for serious, willful, and

1 repeated violations, and has failed to collect those penalties in a timely manner. Finally, Cal-
2 OSHA has utterly failed to ensure the safe and healthful working conditions of California's farm
3 workers.

4 71. Plaintiffs have a beneficial right to the performance of these mandatory duties.

5 72. Plaintiffs do not have any other plain, speedy, or adequate remedy at law.

6 73. Serious and specific efforts have been made to notify Cal-OSHA about workplace
7 safety violations. To continue to do so would be repetitive and futile.

8 **THIRD CAUSE OF ACTION -- WRIT OF MANDATE UNDER**
9 **LABOR CODE § 6327.5**

10 74. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through
11 73.

12 75. Cal-OSHA is required to prevent or prohibit any conditions or practices in any
13 place of employment in which a danger exists that could reasonably be expected to cause death or
14 serious physical harm immediately or before the imminence of such danger can be eliminated
15 through other available means.

16 76. Since the Heat Illness Prevention regulation was adopted in 2005, Cal-OSHA
17 reasonably should have expected that more farm laborers would die or be in imminent danger
18 from heat-related illnesses if it did not act promptly and urgently to investigate and prevent or
19 prohibit dangerous conditions in the fields such as inadequate monitoring, access to drinking
20 water, shade, rest, training, and emergency services. In farms which resulted in death or serious
21 illness, Cal-OSHA was notified or on notice of the existence of violations of safety regulations.

22 77. Defendant Len Welsh, as Director of Cal-OSHA, arbitrarily and capriciously
23 failed to take action to prevent or prohibit said dangerous conditions by:

24 (a) failing to investigate workplaces where a danger exists that could reasonably be
25 expected to cause death or serious physical harm immediately or before the imminence of such
26 danger can be eliminated through other available means;

27 (b) failing to issue a citation or order or to take other appropriate action to prevent
28 or prohibit said imminent dangerous conditions;

1 (c) failing to verify that hazardous conditions posing imminent danger to farm
2 workers have abated or been corrected; and

3 (d) failing to impose and collect adequate penalties that reasonably would deter
4 further hazardous conditions from parties responsible for violations of the Heat Illness Prevention
5 regulation, including from growers that contract with serious or repeat farm labor contractor
6 offenders.

7 78. Serious and specific efforts have been made to notify Cal-OSHA about workplace
8 safety violations. To continue to do so would be repetitive and futile.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiffs pray for judgment as follows:

11 1. For a declaration that the State of California has failed reasonably and adequately
12 to perform its constitutional duty to create and enforce a system of workers' compensation that
13 makes full provision for securing the safety of farm workers against heat-related illness or death;
14 and that the State has thereby violated the rights of Plaintiffs and other farm workers in
15 California.

16 2. For preliminary and permanent injunctions mandating that the State of California
17 create and enforce a system of workers' compensation that makes full provision for securing the
18 safety of farm workers against heat-related illness or death.

19 3. For a peremptory writ of mandate requiring that Cal-OSHA fulfill its mandatory
20 duties as specified above.

21 4. For an award of Plaintiffs' attorneys fees and costs.

22 5. For such other and further relief as the Court deems appropriate.

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DATED: July 30, 2009

MUNGER, TOLLES & OLSON LLP
ACLU OF SOUTHERN CALIFORNIA

By: 
Bradley S. Phillips

Attorneys for Plaintiffs
MARGARITA ALVAREZ BAUTISTA; ANA
ROSA BAUTISTA; SOCORRO RIVERA;
MAURICIA CALVILLO; NATIVIDAD
CARRILLO; UNITED FARM WORKERS OF
AMERICA

Appendix A

Declaration of Erika Oropeza

I, Erika Oropeza, declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On June 30, 2009 at approximately 10:00am, near Huron California I saw four crews with approximately 35 workers each for a total of approximately 140 workers picking grapes. I saw that none of the 4 crews had shade and each crew only had 2 bathrooms. The temperature when I was there was approximately 90 degrees to the thermometer in my car. The workers to whom I spoke told me they were employees of Manuel Murillon, Farm Labor Contractor for DJ Forry Co., Inc out of Reedley, California under the crew bosses of Alicia Prudencio, Ramir, Manuel and others. The exact location of the fields was near the Utica Avenue exit off of North 15 near Huron. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

Also on June 30, 2009 at approximately 11:00 am near the Lassen Ave exit off the 15, also near Huron, California, I saw one crew of about 27 workers picking onions. They had no shade at all. The temperature was approximately 90 degrees according to the thermometer in my car. The workers to whom I spoke told me the crew boss was Ruben Jimenez for West Side Farms. I filed a complaint on behalf of these workers with Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as exhibit B to this declaration is a photo I took showing the absence of shade for these workers

On July 1st, 2009 at approximately 10:45am, I saw 7-8 machines picking melons off of Jayne St near Huron California. Each machine had 30 workers for a total of approximately 210 workers. They had no shade. The temperature was approximately 95 degrees according to the thermometer in my car. The workers to whom I spoke told me the crew boss was Luis and they worked for the Turlock Fruit Company. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as exhibit C to this declaration is a photo I took showing the absence of shade for these workers

Also on July 1, 2009 at approximately 12:35 I found approximately 150 workers picking garlic without any shade whatsoever. The temperature was 95 degrees according to my car's thermometer. They were located on S. Butte Ave and W. Gale Avenue in Huron, California. The information located on the bathrooms said GTO packing Inc, 149 Nestle R, Soledad CA 93960. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on July 1, 2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as exhibit D to this declaration is a photo I took showing the absence of shade for these workers.

I Erika Oropeza declare under penalty of perjury according to the laws of the state of California that the foregoing is true and correct, executed this 9th day of July 2009.

Erika Oropeza

Erika Oropeza

I Jeannette Mosqueda declare I am fluent in both English and Spanish and have translated the document.

Jeannette Mosqueda

Exhibits To Declaration of Erika Oropeza

Exhibit A

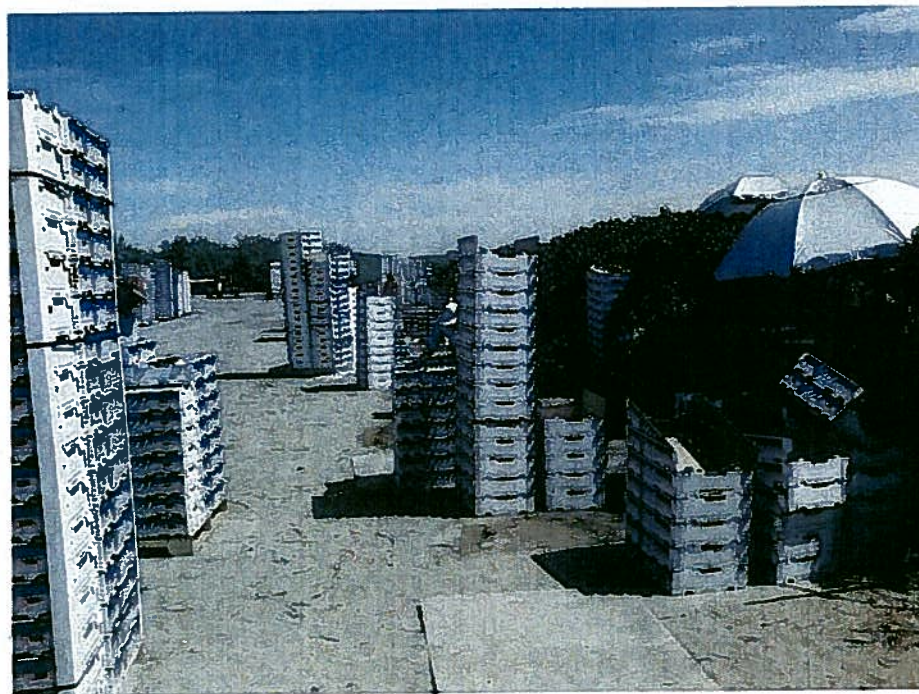


Exhibit B



Exhibits To Declaration of Erika Oropeza

Exhibit C



Exhibit D



Declaration of Erika Oropeza

I, Erika Oropeza, declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On July 10, 2009 at approximately 11:30 am near the Lassen Ave exit off the I5, also near Huron, California, I saw one crew of about 10 workers picking onions. They had no shade at all. The temperature was approximately 92 degrees according to the thermometer in my car. The workers to whom I spoke told me the crew boss was Ruben Jimenez for West Side Farms. I filed a complaint on behalf of these workers with Fresno office of Cal/OSHA on 07/10/2009 regarding the shade.

Also on July 10, 2009 at approximately 1:10 pm between Lassen Ave and the Palmer Ave. In Huron, California, I saw one crew of about 50 workers picking garlic. They had no shade at all. The temperature was approximately 92 degrees according to the thermometer in my car. I filed a complaint on behalf of these workers with Fresno office of Cal/OSHA on 07/10/2009 regarding the shade.

I Erika Oropeza declare under penalty of perjury according to the laws of the state of California that the foregoing is true and correct, executed this 10 day of July 2009.

A handwritten signature in black ink, appearing to read "Erika Oropeza", written over a horizontal line.

Erika Oropeza

Declaration of Armando Elenes

I, Armando Elenes, declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On July 1st, 2009 at approximately 11:35 am, near Firebaugh, California, I saw a crew with approximately 25 workers weeding honeydew melons with hoes. I saw that there was no shade available for the workers. The workers only recourse was to sit in the bus in which they are transported to the fields that had been sitting in the hot sun all morning. The temperature when I was there was 100 degrees, indicated by my car's temperature gauge. I spoke with the Foreman Juan Garcia and he informed me that they worked directly for the Turlock Fruit Company and I saw that the bathrooms had the initials of T.F.C. The location of the field was directly behind a melon processing facility located at 51579 W. Nees Ave., Firebaugh, California. I filed a complaint with Cal-OSHA's Fresno office on July 2nd and have yet to hear from them on the results of the investigation if any was conducted. Attached as exhibit A is a photo of workers without shade.

I recall filing complaints with Cal-OSHA about these same or very similar conditions a year ago against Turlock Fruit Company but do not know if an investigation was conducted by Cal-OSHA. I am aware that similar conditions were identified in other crews of Turlock Fruit Company based on verbal reports given to me by the organizers I supervise.

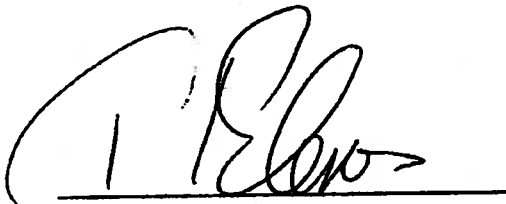
Also on July 1st, 2009 at approximately 12:10 pm, near Firebaugh, California, I saw a crew of approximately 21 workers weeding tomatoes. I saw that the workers were working extremely far away from any available shade, bathrooms or water. I saw part of the crew walking towards where the shade was and so I waited for the crew to come back to the area where the bathrooms, water and shade were so that I could speak to them. As I waited, I noted that it took approximately 20 minutes for the workers to get there. The foreman Amaya indicated to me that they were working on the property of NE David Farms through Jaguar FLC with license number 21440. The FLCs mailing address is P.O. Box 1870, Delano, CA 93216. The tomato fields where the crew was working were located along W. Nees Ave and Russell Avenue. I filed a complaint with Cal-OSHA's Fresno office on July 2nd and have yet to hear from them on the results of the investigation if any was conducted. Attached as exhibit B is a photo showing the aluminum can with the top cut off that was provided for the workers to drink water from; I saw no other cups or containers available for drinking water.

Also on July 1st, 2009 at approximately 1pm I came upon a crew of 35 workers who were working for Foreman Eleuterio through J&J FLC with the mailing address of P.O. Box 1055, Riverdale, California, 93656 and on the property of Tierra Linda Farms near south of Mendota.

The crew was working along Highway 33 and California Avenue. The field was directly across from a prison and a large water tower. The workers had no shade available and the water and bathrooms were more than 10 minutes walking distance on only one side of the field. I filed a complaint with Cal-OSHA's Fresno office on July 2nd and have yet to hear from them on the results of the investigation if any was conducted. Attached as exhibit C is a photo of workers without shade and inadequate access to bathrooms and drinking water.

Also on July 9th, 2009 I received a complaint from a worker regarding Dan Avila & Sons. The worker informed me that he was working in a crew that was picking watermelons outside of Hilmar, California. He indicated that the water available was more than 10 minutes walking distance and that the water was hot. He also indicated that there was no shade available to them. I immediately filed a complaint on the same day with Cal-OSHA's Modesto office. I never received a reply from Cal-OSHA and so I called the worker to find out if someone had visited his work area to investigate the complaint. He indicated to me that the conditions had not changed and that no one had come to do an investigation. I filed a second complaint on July 17, 2009 with Cal-OSHA's Modesto office and I have not heard back from Cal-OSHA. I also remember that I filed similar complaints against Dan Avila & Sons last year and have pictures of the muddy water jugs used by the crew to drink water.

I, Armando Elenes, declare under penalty of perjury in accordance with the laws of the state of California, that the foregoing declaration is true and correct. Executed in the County of Kern this 20th day of July, 2009

A handwritten signature in black ink, appearing to read 'Armando Elenes', is written over a horizontal line. The signature is stylized and cursive.

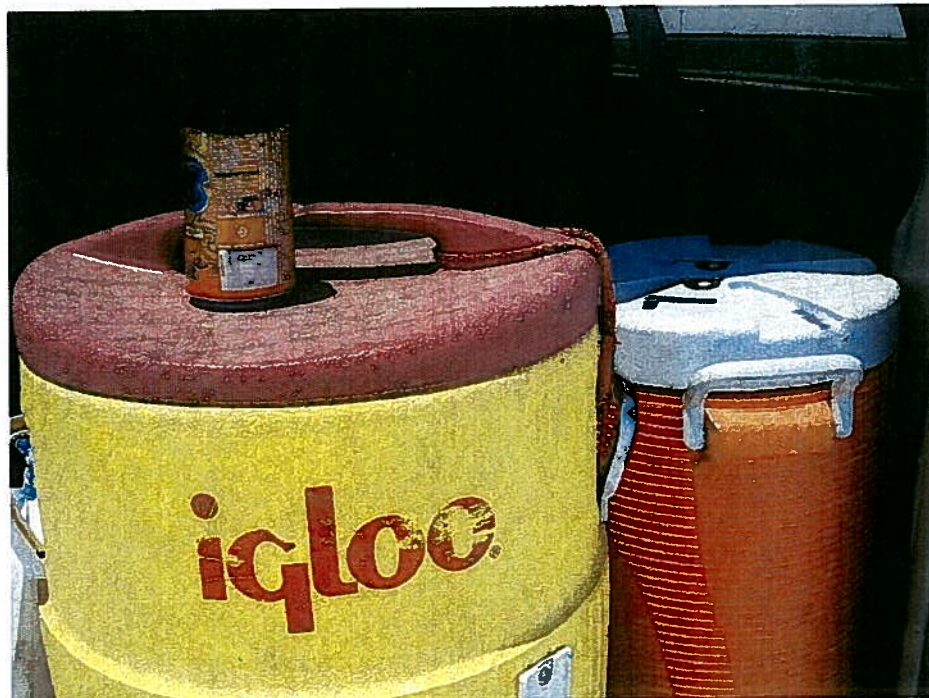
Armando Elenes

Exhibits To Declaration of Armano Elenes

Exhibit A



Exhibit B



Exhibits To Declaration of Armano Elenes

Exhibit C



Declaration of Juan Lopez

I, Juan Lopez declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On June 30th 2009 I was in Bakersfield City looking for violations regarding fieldworkers, including insufficient shade, bathrooms and water. I found the following:

At about 9:30AM on June 30,2009, I found a farm labor crew with about 100 people with insufficient shade. They had one canopy for the entire crew. The temperature was approximately 95 degrees according to the news reports. The crew was working on the southwest of Panama Road and Fairfax Road. The forewoman's name was Rosa and the contractor was M & M Nunez, according to one of the workers I spoke to. I filed a complaint with the Fresno office of Cal/OSHA on June 30,2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

The second crew I found around 10:00AM on June 30,2009 with little shade was located on the Northeast of Panama Road and Fairfax Road. The company was Indy Brothers according to one of the workers. The foreman's name was Jose Garcia and there were about ten people working at the time. The temperature was approximately 95 degrees according to the news reports. I filed a complaint with the Fresno office of Cal/OSHA on June 30,2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit B to this declaration is a photo I took showing the absence of shade for these workers.

The third crew I found at 11:00 AM on June 30,2009. They were located on the Northwest of Panama Road and Fairfax Road. The foreman's name was Ramon and the contractor's name was Gallardo, according to the workers I spoke to. I saw that the crew size was about 130 people. There was only one tent as shade. The tent was located at the very end of the field block, therefore not accessible to workers in the event of heat stroke as it was more than ¼ mile away. The temperature around 95 degrees according to the news reports. I filed a complaint with the Fresno office of Cal/OSHA on June 30,2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit C to this declaration is a photo I took showing the absence of shade for these workers.

The fourth crew I found at 1:00PM on June 30,2009. It was located on the north corner of Redbank Road and Wyatt Street. Rosa, the forewoman,told me there were about 24 people working at the time. The only umbrellas provide for shade were very few and there were a great distance, about ¼ mile from the workers. The temperature was about 95degrees according to the news reports. I filed a complaint with

the Fresno office of Cal/OSHA on June 30,2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit D to this declaration is a photo I took showing the absence of shade for these workers.

The fifth crew I found on June 30,2009 was located on Southwest of Weedpatch Highway and Bengston Avenue. The owner of the farm was Shily according to one of the workers. There were about 10 people working there. I did not see any shade and the temperature was 95 degrees according to the news reports. I filed a complaint with the Fresno office of Cal/OSHA on June 30,2009 regarding the lack of shade. I have not heard back from Cal/OSHA.

On July 1st 2009, I found 3 crews without proper shade. The first crew was located south of Bear Mountain Boulevard on the west side of Adobe Road and it was around 10:00 AM. I spoke to the forman who told me his last name was Costa. The foreman would not give me the name of the company. The name printed on the side of the cardboard box that the vegetables were being packed in was "W International". There was not shade available to the workers. The temperature was about 95 degrees according to the news reports. . I filed a complaint with the Fresno office of Cal/OSHA on July 1,2009 regarding the lack of shade. I have not heard back from Cal/OSHA.

I found a second crew without shade on July 1,2009 at about 12:00PM. I saw that there were about 10 workers there. The name of the company was Guimarra and the foreman was Luis Pena according to one of the workers. I also saw a supervisor truck with the numbers 05-16 on the side. There was no shade in the work area. The temperature was about 95 degrees according to the news reports. . I filed a complaint with the Fresno office of Cal/OSHA on July 1,2009 regarding the lack of shade. I have not heard back from Cal/OSHA.

The third crew I found without shade on July 1,2009 was located Northeast of Buena Vista Boulevard and Vineland Road. It was about 1:00PM. There was no shade, water or bathrooms. The foreman was not present and the workers told me only knew the foreman by his nickname "Rojo". The contractor was Manuel . The temperature was about 95 degrees according to the news reports. . I filed a complaint with the Fresno office of Cal/OSHA on July 1,2009 regarding the lack of shade. I have not heard back from Cal/OSHA.

I, Juan Lopez declare under penalty of perjury according to the laws of the state of California that the foregoing declaration is true and correct. Executed in the county of Kern this 9th of July 2009.



Juan Lopez

Exhibits To Declaration of Juan Lopez

Exhibit A



Exhibit B

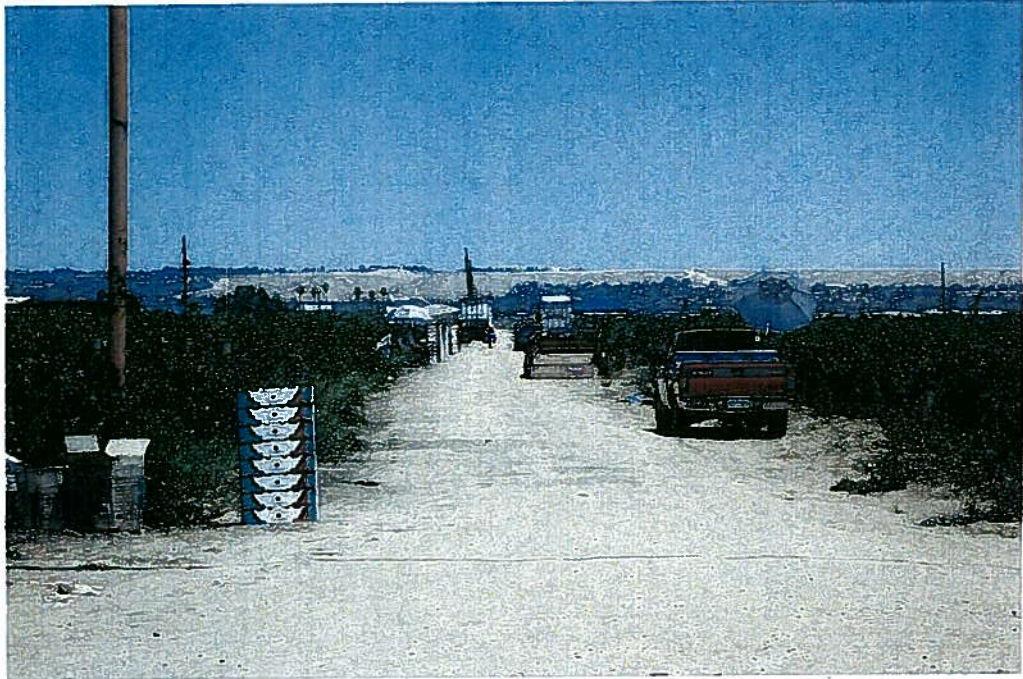


Exhibits To Declaration of Juan Lopez

Exhibit C



Exhibit D



I, Juan Lopez declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On July 10th 2009 I was in Lamont and Bakersfield City looking for violations regarding fieldworkers, including insufficient shade, bathrooms and water. I found the following:

At about 9:30AM I found the same crew I had reported previously filed a complaint against for lack of shade, on the date of July 1st 2009. The foreman's last name is Costa. They were working south of Bear Mountain Boulevard on the west side of Adobe Road. The workers still lacked access to shade. The temperature was close to 90 degrees at the time and according to news reports reached a high of 108 on this day. I filed a complaint with the Fresno office of Cal OSHA on 07/10/2009 on behalf of these workers. Attached is exhibit A showing the lack of shade.

The second crew I found around 10:30AM, they were working at 5062 Buena Vista Blvd. I had previously filed a complaint for inadequate shade on June 30th 2009. Their employer was Indy Brothers. The workers were approximately 1/4 of a mile away from the shade they did have. This estimate was done using the tenth decimal of my car's speedometer. I filed a complaint with the Fresno office of Cal OSHA on 07/10/2009 on behalf of these workers. Attached is exhibit B showing the shade.

The third crew I found around 11:00AM. It was located within 20 feet, right of the house with the address 9258 Buena Vista Boulevard Lamont CA. There were approximately 7 people working. The contractor's name was Esparza contracting. They were picking melons. They did not have any shade available. I filed a complaint with the Fresno office of Cal OSHA on 07/10/2009 on behalf of these workers. Attached is exhibit C showing the lack of shade for these workers.

Around 12:30PM I found 4 crews. The crews were located about 1/4 of a mile northeast of Buena Vista Boulevard and Vineland Rd. A worker informed me that one of the foreman's nicknames was "Rojo". The worker only knew the foreman by his nickname. The second foreman's name was Sosimo; his phone number was (661) 363-3423. There were approximately 15 workers in his crew. The crews did not have any chairs in their designated shade area. I filed a complaint with the Fresno office of Cal OSHA on 07/10/2009 on behalf of these workers. Attached is exhibit D showing the lack of shade for these workers.

I, Juan Lopez declare under penalty of perjury according to the laws of the state of California that the foregoing declaration is true and correct. Executed in the county of Kern this 13th July 2009.

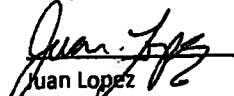

Juan Lopez



Exhibit A



Exhibit B



Exhibit C

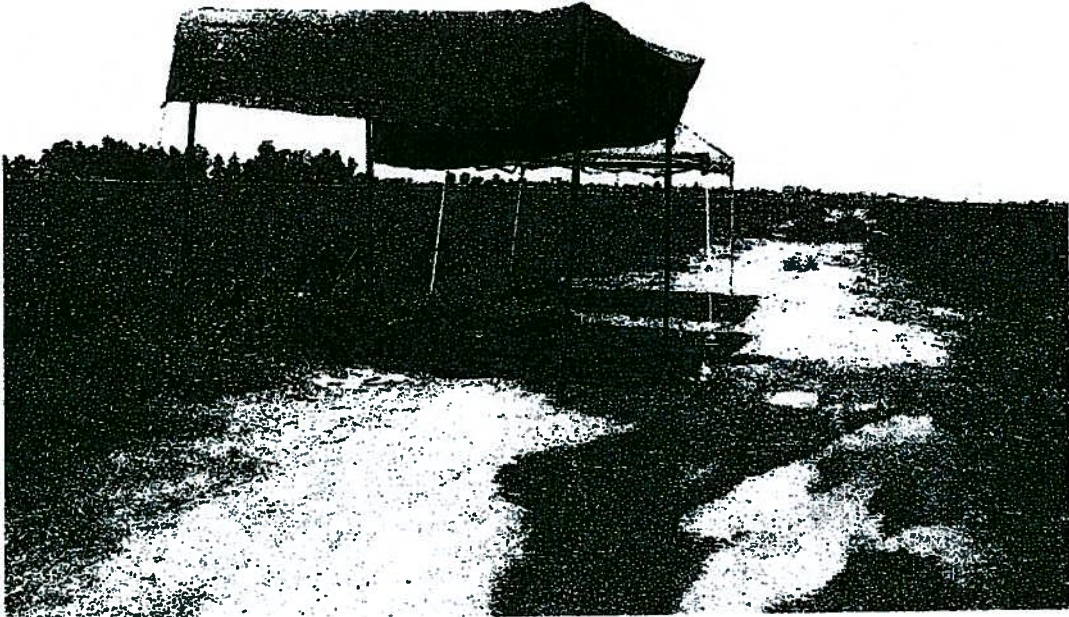


Exhibit D

Declaration of Vianey Torres

I, Vianey Torres, declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On June 30, 2009 at between 9:30 and 10:30am I found two crews working for Juvenal Montemayor, a farm labor contractor, according to one of the workers I spoke to. The crews had about 80 people located at Avenue 128 and Sierra and also at Avenue 128 and Washington St. in Earlimart California.. Neither crew had access to water and it was 90 degrees at the time according to radio reports. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

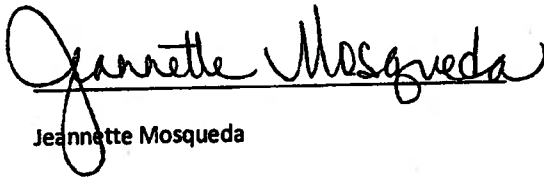
At about 12:00pm on June 30, 2009 I located a crew hoeing. The owner of this field was Indio and they were located at RD 42 and Ave 128 in Richgrove. This crew of about 10 workers had no shade or bathrooms. The water they did have was out in the hot sun and a great distance from the workers, about ¼ mile away. The temperature at that time was over 90 degrees. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as exhibit B to this declaration is a photo I took showing the absence of shade for these workers.

I Vianey Torres declare the above to be true and correct under the penalty of perjury according to the laws of the State of California, executed this 9th day of July 2009.



Vianey Torres

I declare that I am fluent in both English and Spanish and have read and translated this document to Vianey Torres.



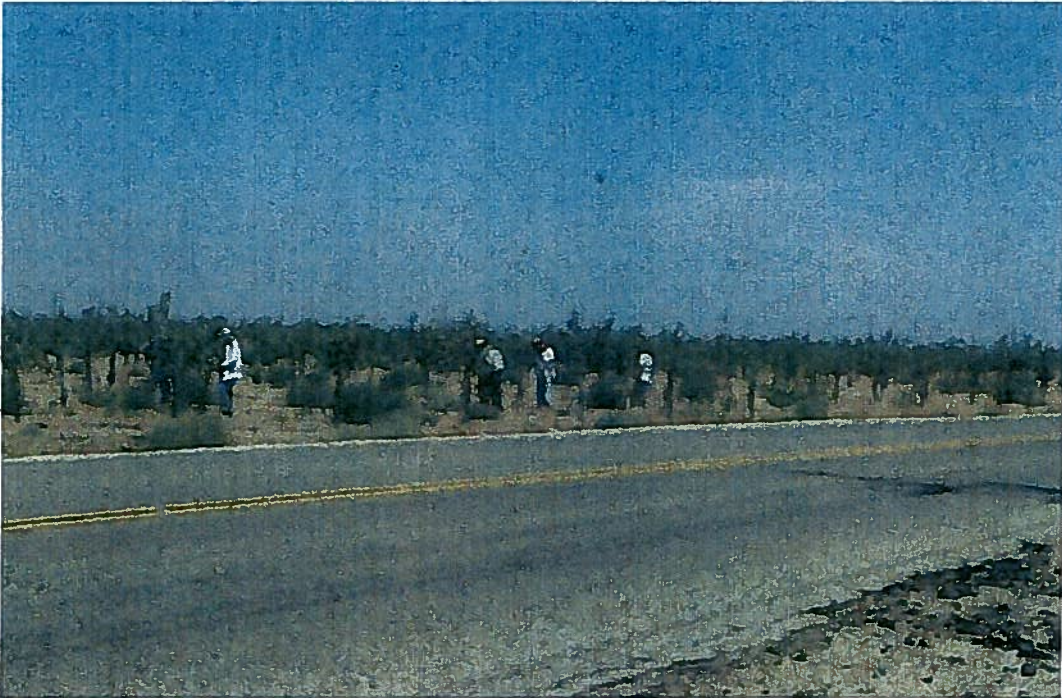
Jeannette Mosqueda

Exhibits To Declaration of Vianey Torres

Exhibit A



Exhibit B



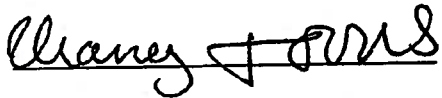
Declaration of Vianey Torres

I, Vianey Torres, declare the following:

I make this declarations based on my own personal knowledge and if called to testify I could and would do so competently as follows:

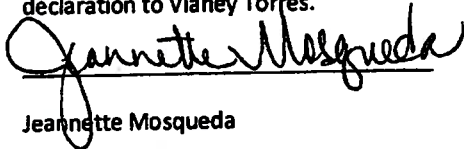
On July 10, 2009 at approximately 12:30pm, I saw five crews from the company Lagomarsino LLC working at Road 240 and Road 140 near Visalia, California. The boxes in the field said this name. The crews had approximately 40-50 workers each for a total of approximately 200 workers. There was no shade at all for these workers and the water was uncovered in the hot sun. The temperature according to news accounts that day, reached 93 degrees. I filed a complaint with the Fresno office of Cal OSHA on 07/10/2009 regarding the lack of shade. Attached is exhibit A showing the lack of shade for these workers.

I Vianey Torres, declare under the penalty of perjury according to the laws of the state of California that the foregoing declaration is true and correct. Executed this 13th day of July, 2009.



Vianey Torres

I Jeannette Mosqueda declare that I am fluent in English and Spanish and have read and translated this declaration to Vianey Torres.



Jeannette Mosqueda

Declaration of Jose Luis Alvarez

I, Jose Luis Alvarez, declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

At about 1030am on June 30, 2009 in Kerman City California, along 6th Avenue, on the way to Corcoran, to the north of Racine Avenue, I saw a field of cotton in which 25 workers were working under the crew boss Maricela of McCragger Co. of Wasco as I was told by the workers. I saw that the workers had an approximate 4ft tall shade canopy. According to the reports on wunderground.com which I checked later that day, temperatures for Mendota, 3 miles south of Kerman reached a high of 94.8 degrees. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/Osha. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

Further ahead, along Kamm Avenue and Walnut, at approximately 12:30pm, also on June 30, 2009 I found an almond orchard where 15 workers I spoke to from Campos Brothers, were working without any shade or bathrooms. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA.

Going towards the city of Easton, at Elm Street and Adams Street, behind Big Potato Market, at approximately 1:30pm on June 30, 2009 I found an orange orchard where 10 workers from Ray Moles Farms were working without any shade. This was according to a sign on one of the bathrooms. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA.

On July 1st, 2009 at approximately 11am, in the Kerman City area, at Highway 145 where American Avenue intersects, near a refuse disposal site, I found two work crews with approximately 50 workers total working the grape vineyards. I inspected the bathrooms and found them to be filthy and they had no shade. The crew bosses were Raquel and Estela from Gerawan Farming according to the workers. According to the reports on wunderground.com which I checked later that day, temperatures for Mendota, 3 miles south of Kerman reached a high of 95.6 degrees. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 07/01/09 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as Exhibit B to this declaration is a photo I took showing the absence of shade for these workers.

Going towards San Joaquin City at about 12pm, on July 1, 2009 on Manning and East Lassen Street, in front of Thomas Farms, I found 4 crews on Terranova Ranch property. The first crew was working in the tomatoes, with about 35 workers, with no shade and not enough bathrooms for the crew. The second crew at this location was also working the tomatoes without shade or bathrooms. Along the same farm, working in the onion fields. I saw the third crew of about 30 workers without shade. Access to the field was blocked by a locked fence but I could see there was no shade available. To the west, I found the fourth crew of about 30 workers without shade and insufficient bathrooms, but again I was unable to

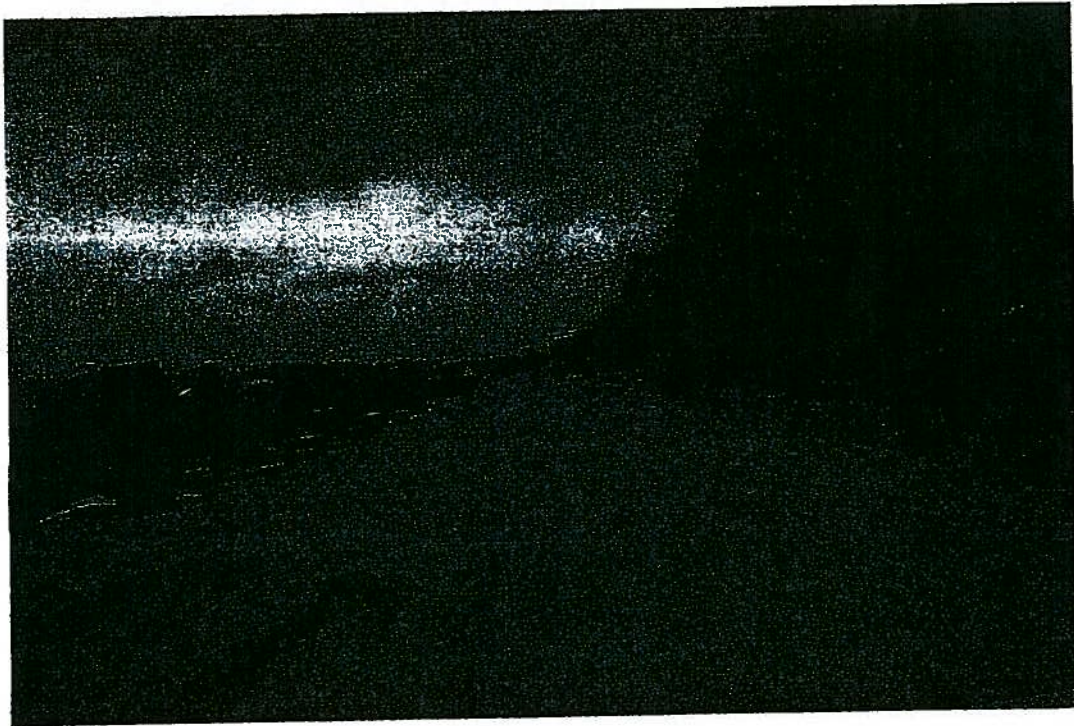



Exhibit A

enter due to the locked gate. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 07/01/09 regarding the lack of water and shade. I have not heard back from Cal/OSHA. Attached as Exhibit C to this declaration is a photo I took showing the absence of shade for these workers.

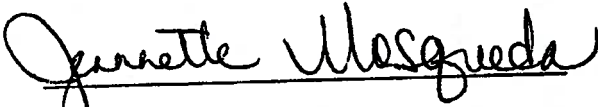
Along Highway 145 and Kamm Avenue, near Five Points, at about 2pm on July 1,2009, I found another crew of approximately 15 workers in a pistachio field who had no shade. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 07/01/2009 regarding the lack of water and shade. I have not heard back from Cal/OSHA.

I Jose Luis Alvarez declare the above to be true and correct under penalty of perjury according to the laws of the state of California. Executed this 9th day of July,2009.



Jose Luis Alvarez

I declare that I am fluent in both English and Spanish and have read and translated this document to Jose Luis Alvarez.



Jeannette Mosqueda

Exhibits To Declaration of Jose Luis Alvarez

Exhibit A

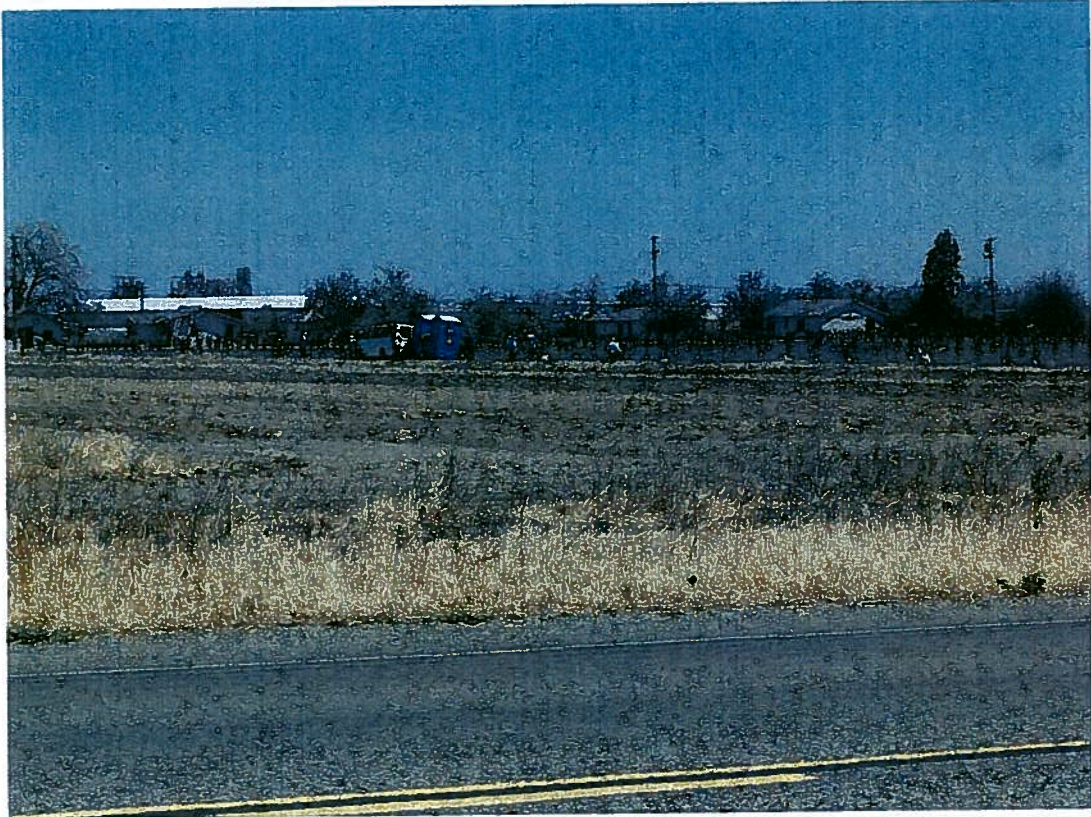


Exhibit B



Exhibits To Declaration of Jose Luis Alvarez

Exhibit C



DECLARATION OF JUANA CARBAJAL

I, Juana Carbajal declare the following:

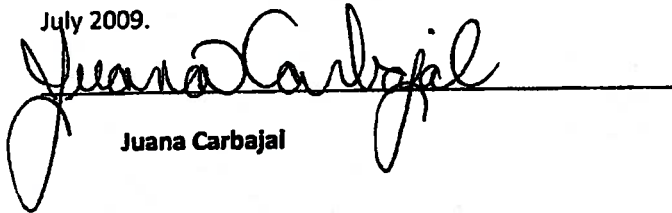
I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On Tuesday, June 30, 2009, I started from 7 Standard Road heading towards north, searching to see how many fields were following the heat regulation. The first location that I found was on Hwy. 46 & McCoy Ave, near Wasco, California where I saw about 15 people working in the roses. The workers were in the middle of the field, the bathrooms were approximately one mile away, I didn't see any water around the field, and I saw only two small umbrellas, similar to the kind used at the beach. The company was Irish Farms, Inc., I was told by a worker there. This was approximately 11:57a.m. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

I continued driving on Highway 46 & Wildwood Road, in Wasco California when I saw 6 men working in a field moving pipes. They didn't have any water in sight and there was no shade for these 6 field workers. According to the trucks on site, the company was Grimmway and the Contractor was A & J contracting. This was also on Tuesday, June 30, 2009. This was at approximately 12:19pm and the temperature was approximately 95 according to radio reports. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 06/30/2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit B to this declaration is a photo I took showing the absence of shade for these workers.

On Wednesday, July 1, 2010, I drove north on Hwy 99 and saw to the west of the freeway, near Merced Ave, approximately 50 or more workers working in a tomato field. I didn't see water, and there was no shade anywhere in the fields. The company was GTO Packing FIC with Lic. #33100 on one of the busses on the field. This was 10:35 a.m. approximately. I filed a complaint on behalf of these workers with the Fresno office of Cal/OSHA on 07/01/2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

I, Juana Carbajal declare under penalty of perjury according to the laws of the state of California that the foregoing declaration is true and correct. Executed in the county of Kern this 9th day of July 2009.

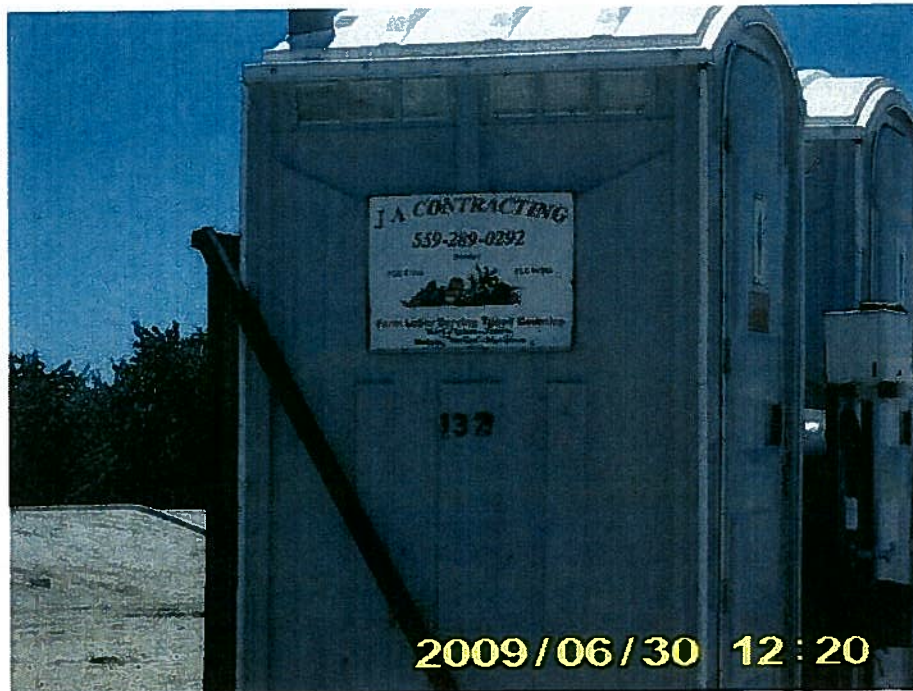

Juana Carbajal

Exhibits To Declaration of Juana Carbajal

Exhibit A



Exhibit B



Exhibits To Declaration of Juana Carbajal

Exhibit C



Declaration of Oscar Mejia

My name is Oscar Mejia and I declare the following:

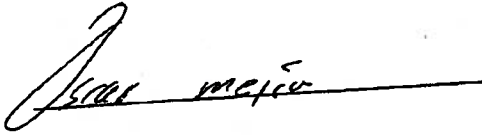
I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On Tuesday, June 30, 2009 at approximately 10:30 am, with the temperature already above 90 degrees I saw five crews picking vegetables, for a total of 100 workers. These crews were on Teal Road, near Wheeler Ridge and Adobe Road in Lamont California. These workers had very little shade and it was also a great distance from the workers, about ¼ mile away.

I was informed by these crews belonged to El Brillante Labor Contracting under the crew boss of Tomas.

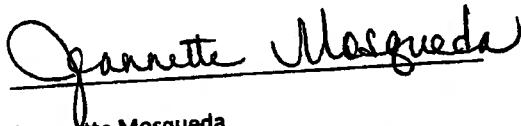
I filed a complaint on behalf of these workers with the Visalia office of Cal/OSHA on 06/30/2009 regarding the lack of shade. I have not heard back from Cal/OSHA. Attached as exhibit A to this declaration is a photo I took showing the absence of shade for these workers.

I, Oscar Mejia declare under penalty of perjury according to the laws of the state of California that the above declaration is true and correct. Executed in the county of Kern this 2nd day of July, 2009.



Oscar Mejia

I Jeannette Mosqueda do hereby declare that I am fluent in Spanish and English and have read and translated the declaration and the declarant affirmed that the facts are true and correct.



Jeannette Mosqueda

Exhibits To Declaration of Oscar Mejia

Exhibit A



Declaration of Oscar Mejia

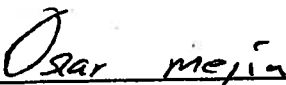
I, Oscar Mejia, declare the following:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

On Friday July 10, 2009 I returned to the previous locations of the crews previously identified as being in violation of the heat and water regulations to see if the more than 100 workers exposed were now being protected. At around 11:00am, I located two of the crews with approximately twenty workers and this time they did have shade and access to water.

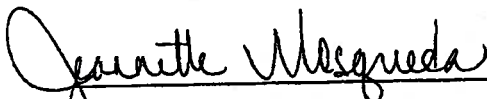
I spoke to one of the crew bosses and he commented to me that an inspector for Cal OSHA had visited his area the previous Monday, but he was unable to provide me any more details.

I, Oscar Mejia, declare under penalty of perjury according to the laws of the state of California that the foregoing declaration is true and correct. Executed this 13th day of July, 2009.



Oscar Mejia

I, Jeannette Mosqueda, declare that I am fluent in English and Spanish and have read and translated the declaration to Oscar Mejia.



Jeannette Mosqueda

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE**

Case Number _____

BC418871

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Elihu M. Berle	1	534	Hon. Holly E. Kendig	42	416
Hon. J. Stephen Czuleger	3	224	Hon. Mel Red Recana	45	529
Hon. Luis A. Lavin	13	630	Hon. Aurelio Munoz	47	507
Hon. Terry A. Green	14	300	Hon. Elizabeth Allen White	48	506
Hon. Richard Fruin	15	307	Hon. Conrad Aragon	49	509
Hon. Rita Miller	16	306	Hon. John Shepard Wiley Jr.	50	508
Hon. Richard E. Rico	17	309	Hon. Abraham Khan	51	511
Hon. Helen I. Bendix	18	308	Hon. Susan Bryant-Deason	52	510
Hon. Judith C. Chirlin	19	311	Hon. John P. Shook	53	513
Hon. Kevin C. Brazile	20	310	Hon. Ernest M. Hiroshige	54	512
Hon. Zaven V. Sinanian	23	315	Hon. Malcolm H. Mackey	55	515
Hon. Robert L. Hess	24	314	Hon. Jane L. Johnson	56	514
Hon. Mary Ann Murphy	25	317	Hon. Ralph W. Dau	57	517
Hon. James R. Dunn	26	316	Hon. Rolf M. Treu	58	516
Hon. Yvette M. Palazuelos	28	318	Hon. David L. Minning	61	632
Hon. John A. Kronstadt	30	400	Hon. Michael L. Stern	62	600
Hon. Alan S. Rosenfield	31	407	Hon. Kenneth R. Freeman	64	601
Hon. Mary H. Strobel	32	406	Hon. Mark Mooney	68	617
Hon. Charles F. Palmer	33	409	Hon. Edward A. Ferns	69	621
Hon. Amy D. Hogue	34	408	Hon. Soussan G. Bruguera	71	729
Hon. Gregory Alarcon	36	410	Hon. Ruth Ann Kwan	72	731
Hon. Joanne O'Donnell	37	413	Hon. Teresa Sanchez-Gordon	74	735
Hon. Maureen Duffy-Lewis	38	412	Hon. William F. Fahey	78	730
Hon. Michael C. Solner	39	415	Hon. Carl J. West*	311	CCW
Pending Assignment	40	414	Other		
Hon. Ronald M. Sohigian	41	417			

***Class Actions**

All class actions are initially assigned to Judge Carl J. West in Department 311 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk
By _____, Deputy Clerk