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8 WHATCOM COUNTRY DISTRICT COURT
STATE OF WASHINGTON

9	STATE OF WASHINGTON)	
10)	Infraction No. L&I I00014502
	v.)	
11	SARBANAND FARMS, LLC,)	DEFENDANT’S REQUEST FOR
12)	MITIGATION OF PENALTY
	Defendant.)	WITHOUT HEARING
13	_____)	

14
15 COMES NOW Defendant Sarbanand Farms, LLC (“Sarbanand”) and requests that this
16 Court consider mitigation without hearing of the above-referenced penalty levied against
17 Sarbanand for the reasons that follow.
18

19 IRLJ 3.5 permits the Court to consider mitigation and render a decision based on
20 written statements. The Rule specifically provides that “[a] mitigation hearing based on a
21 written statement may be held in chambers and shall take place within one hundred twenty
22 (120) days after the defendant filed the response to the notice of infraction.” Here, Sarbanand
23 filed its initial response to the notice of infraction on about March 8, 2018, and the parties
24 subsequently stipulated to continue the hearing and have the matter decided based on written
25 statements.
26

1 The Department of Labor & Industries (L&I) cited Sarbanand for \$73,000.00 for failure
2 to provide timely meal period and failure to provide all required rest periods for 292 employees
3 on one day. The violation date was July 27, 2017. According to L&I’s press statement
4 regarding the fine, “[i]t’s the largest penalty ever assessed by the state Department of Labor &
5 Industries (L&I) for these types of violations.”¹
6

7 This citation arose after an audit by L&I during which Sarbanand cooperated timely and
8 completely at all times. During the course of the audit, L&I found that all 292 employees
9 received two rest breaks and two meal breaks during the course of the workday. Despite this,
10 L&I concluded that one of the meal breaks was provided later than required and that the
11 employees should have received a third rest break.
12

13 Sarbanand submits that the available guidance at the time of infraction regarding the
14 specific timing of the required rest break was less than clear. Notably, WAC 296-131-020 did
15 not specify when within the stated “four-hour period of employment” a break was required to
16 be given. Notably, WAC 296-131-020 differed in this regard from WAC 296-126-092, which
17 defines the timing of required rest breaks for *non-agricultural* workers in a more specific
18 manner. The Administrative Policy cited by L&I, ES.D.2, is a Policy regarding “recordkeeping
19 requirements for agricultural employment,” and it too does not set forth the required specific
20 timing for the rest break within the given period of employment. Neither source explained how
21 and whether the presence of an intervening meal break affects the timing of any subsequent rest
22 breaks.
23

24 _____
25 ¹ See: <http://lni.wa.gov/News/2018/pr180201a.asp>
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1 Nonetheless, Sarbanand, for purposes of this mitigation request, elects not to dispute the
2 merits of the Infraction. Rather, Sarbanand requests that this Court entertain mitigation for
3 equitable reasons.

4 Sarbanand has not been previously cited by L&I for meal and rest break violations.
5 Yet, it now confronts what it understands to be one of the largest, if not the largest, fines ever
6 assessed by L&I. Imposing a historic maximum penalty for a first offense disproportionately
7 and inequitably punishes Sarbanand. This is especially true when taking into account RCW
8 3.62.090, which provides that the Court may add an assessment to the fine already assessed in
9 an amount up to 105% of the amount of the penalty. Perhaps this might be reasonable if
10 confronting evidence of intentional or reckless conduct. Such is not the case here.


11 This is not a circumstance where an employer has sought to avoid its obligations or
12 responsibilities. Rather Sarbanand not only cooperated throughout L&I's audit process, but
13 subsequently took proactive steps to further insure compliance with all of the state's wage and
14 hour obligations. This included Sarbanand's proactively developing new meal and rest break
15 policies specifically tailored to L&I's recent directives and guidance. Worker health and safety
16 have been and continue to be utmost priorities for Sarbanand. Given its efforts, and based on
17 its cooperative interactions with L&I since the date of infraction, Sarbanand is confident that it
18 will avoid similar issues in the future.

19 Imposing the historic penalty carries with it potential negative economic impacts on the
20 Whatcom County farm industry at large. The region already faces a severe shortage of
21 available farm labor. Allowing the massive penalty to stand could effectively discourage
22 agricultural employers from providing jobs to significant numbers of Whatcom County
23 workers.

1 For the reasons discussed above, Sarbanand respectfully requests that the Court reduce
2 the \$73,000 penalty by a reasonable but significant degree. Sarbanand submits that reducing
3 the penalty by 50%, to \$36,500, is more than sufficient to deter it and the public from similar
4 future violations.

5 Respectfully submitted this 12th day of June, 2018.
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8 Lybeck Pedreira & Justus, PLLC

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10 By: Benjamin Justus (WSBA # 38855)
11 Attorneys for Defendant
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2 **CERTIFICATE OF SERVICE**

3 I hereby declare under penalty of perjury under the laws of the State of Washington that
4 I have served a true and correct copy, except where noted, of the below described documents
5 upon the individual(s) listed by the following means:
6

7 James Mills 8 Senior Counsel 9 OFFICE OF THE ATTORNEY GENERAL 10 1250 Pacific Avenue, Suite 105 11 P.O. Box 2317 12 Tacoma, WA 98401	<input checked="" type="checkbox"/> U.S. Postal Service (First Class) <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Postal Service Express Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via Email
13 Service of: 14 DEFENDANT'S REQUEST FOR MITIGATION OF PENALTY WITHOUT HEARING	
15 DATED: June 12, 2018	16 By: <u> /s/ Alicia Ashford _____</u> 17 Alicia Ashford 18 Title: Legal Assistant