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VIA CERTIFIED U.S. MAIL

March 9, 2020

Attention: PAGA Administrator
Acting Agency Secretary
California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Samuel Jr. Rubio
Diamond Harvesters, Corp.
2099 7th ST
Mendota, CA 93640

Samuel Jr. Rubio
Diamond Harvesters, Corp.
1801 Howard Rd.
Madera, CA 93637

Rancho San Lucas
59020 Paris Valley Rd.
San Lucas, CA 93954

Pinnacle Vineyards
1140 Panoche Rd.
Paicines, CA 95043

Red Rooster Co.
1355 M St
Firebaugh, CA 93622

March 9, 2020

Letter to PAGA Administrator, Diamond Harvesters, Corp. et al.

Re: Cal. Lab. Code § 2699 Notice by Aggrieved Employees

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RE: Labor Code §§ 2699 and 2810.3 Notice by Aggrieved Employees Rene Lopez (D.O.B. [REDACTED]) Gelacio Lopez (D.O.B. [REDACTED]) and Rey David Vargas (D.O.B. [REDACTED])

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, *et seq.* Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against Diamond Harvesters, Corp. (“Diamond Harvesters”); Rancho San Lucas, Pinnacle Vineyards, Red Rooster Co., Affiliated Companies, and their agents, managers and supervisors – including but not limited to Diamond Harvesters’ Chief Executive Officer, Chief Financial Officer, and Secretary Samuel Jr. Rubio, for violations of the California Labor Code described below. The aforementioned entities and individuals were aware of, complicit in, and actually caused the violations described below.

California Labor Code §2810.3 imposes liability on client employers and labor contractors for the employer’s failure to pay all wages. This constitutes statutory notice pursuant to Labor Code §2810.3(d) which requires that employers be notified of violations of Labor Code §2810.3(b). Diamond Harvesters failed to compensate Aggrieved Plaintiffs and other employees for all wages while contracting with Rancho San Lucas, Pinnacle Vineyards, Red Rooster Co., Affiliated Companies, and other entities, making all parties to the violation liable.

Diamond Harvesters is a farm labor contractor located in Mendota. Non-exempt employees perform agricultural labor for growers, including but not limited to Rancho San Lucas, Pinnacle Vineyards, and Red Rooster Co. This investigation request and notice of California Labor Code violations concerns the systematic failure by Diamond Harvesters, Rancho San Lucas, Pinnacle Vineyards, Red Rooster Co., Affiliated Companies, and their agents, managers and supervisors (hereinafter “PAGA Defendants”) to pay current and former California non-exempt employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission.

I am writing on behalf of Rene Lopez, Gelacio Lopez, and Rey David Vargas, Aggrieved Employees represented by this law firm (hereinafter “Aggrieved Plaintiffs”) who seek to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed by PAGA Defendants, seeking all penalties available under PAGA, as well as injunctive and declaratory relief.

At the core of PAGA Defendants’ violations is the systematic failing to keep accurate time and payroll records; requiring, suffering or permitting employees to perform unpaid work outside their scheduled worktime; refusing to provide proper rest and meal periods or to provide premium wages in lieu thereof; failing to pay premium wages for all hours worked in excess of

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the overtime thresholds set forth in the Labor Code and Wage Orders; requiring employees to make purchases necessary for work out of their own pockets without reimbursement; failing to provide accurate wage statements; and failing to pay all wages owed upon separation from employment.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) (“PAGA”) may be based on a wide variety of Labor Code predicate provisions, including but not limited to §§ 98.6, 201, 202, 203, 204, 205, 206, 208, 209, 212, 210, 213, 216, 218, 218.6, 221, 222, 223, 225, 226, 226.2, 226.3, 226.7, 227, 230, 231, 233, 234, 246, 510, 512, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.* and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of the state of California. The PAGA Defendants caused the violations described below by enforcing and carrying out the illegal policies of the business entities that employed Aggrieved Plaintiffs:

1. PAGA Defendants have failed to pay Aggrieved Plaintiffs and other non-exempt employees all wages earned, including minimum wages and overtime premium wages, in violation of Cal. Labor Code §§ 201, 202, 221, 226.2, 1194 and 558, and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, and by failing to pay for all hours worked.

Specifically, PAGA Defendants did not keep track when non-exempt employees began and finished working, failed to keep accurate records of hours of work and piece-rate units completed, and paid non-exempt employees a sum of money with no accompanying breakdown or explanation of how that sum was calculated. On information and belief, although non-exempt employees were expected to show up to work earlier than their scheduled start time, there was no additional pay for this extra time because there was no timekeeping.

Employees were informed that they were paid on a piece-rate basis yet received no separate compensation for breaks.

2. PAGA Defendants have violated California’s rest and meal break provisions, including Labor Code §§ 226.2, 226.7, 512 and 558 and the Wage Orders, by discouraging rest and meal breaks, not providing all requisite rest and meal breaks, not relieving employees of all duty during break time, and requiring employees to take their meal breaks late.

Non-exempt employees were paid on a piece-rate basis and were denied separate compensation for rest breaks. PAGA Defendants also failed to provide non-exempt employees with a second rest break in conformance with the Labor Code.

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3. PAGA Defendants have failed to pay proper premium/overtime wages at one and one half the regular rate of pay for shifts longer than the legal overtime threshold and failure to pay proper premium/double-time wages at double the regular rate of pay for shifts longer than overtime threshold, in violation of Labor Code § 510 and the IWC Wage Orders.

Specifically, PAGA Defendants required non-exempt employees to work shifts in excess of these thresholds without proper compensation. Overtime provisions of the Labor code and IWC Wage Orders were violated by inaccurately keeping records of actual hours worked and wages earned by requiring, suffering or permitting employees to work without compensation, by not compensating workers for all hours worked, including overtime hours and proper overtime pay and by not compensating for off-the-clock time and by failing to pay for all hours worked within the meaning of the IWC Wage Orders.

4. PAGA Defendants have failed to reimburse employees for garments and equipment necessary for work in violation of Labor Code § 2802.

Non-exempt employees were required to provide their own tools and equipment, including but not limited to Scissors, sharpeners, oil, scissor blades, glasses, and gloves. They were not reimbursed for these costs.

5. For the above reasons, PAGA Defendants have failed to keep accurate time records and to provide accurate wage statements that reflect the actual hours worked and amounts earned, in violation of Labor Code sections 226, 1174 and the Wage Orders.

In addition, wage statements provided to non-exempt employees were deficient in that they completely failed to include the following information, (correct or otherwise):

- (1) Gross wages earned
 - (2) Total hours worked
 - (3) The number of piece-rates units earned and applicable piece rate
 - (4) All deductions
 - (5) Net wages earned
 - (6) The inclusive dates of the period for which the employee is paid
 - (7) The last four digits of the employee's social security number or an employee identification number other than a social security number
 - (8) The name and address of the legal entity that secured the services of the employer
 - (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee
6. Given the numerous violations indicated above, it is reasonable to conclude that PAGA Defendants did not pay all wages owed to its non-exempt employees upon termination in violation of the Cal. Lab. Code section 203.

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PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiffs, the state and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records with employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code §§ 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Diamond Harvesters; Affiliated Companies, and owners, supervisors, managers, agents and all other person acting on behalf of Diamond Harvesters, including but not limited to Chief Executive Officer, Chief Financial Officer, and Secretary Samuel Jr. Rubio, and other individuals who, on behalf of PAGA Defendants, caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. The above-named entities and individuals have complete authority to implement and carry out the illegal payroll policies at issue herein. These violations are a uniform policy applied to all non-exempt workers at Diamond Harvesters.

Samuel Jr. Rubio, as the Chief Executive Officer, Chief Financial Officer, and Secretary of Diamond Harvesters, is in charge of making all major corporate decisions and managing the operations of the corporation. As such, he was on notice, whether actual or constructive, of all of the violations described above, and failed to prevent or address them. In addition, he failed to prevent and/or address these violations.

Aggrieved Plaintiffs who worked as agricultural laborers for Diamond Harvesters during the past year may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 65 days, we will assume that we may pursue this action under the theories described above against the Defendants described above and their managers, agents,

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owners and other liable persons and entities (pursuant to §210, 558, 1197.1, 2699(f), 2810.3 (and other provisions)).

Sincerely,

A handwritten signature in black ink, appearing to read "LS.", is positioned above the typed name.

Leanna Marie Sac, Esq.
MALLISON & MARTINEZ