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April 21, 2020

PAGA NOTICE FILED ELECTRONICALLY
PAGA FILING FEE BY U.S. MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
<https://dir.tfaforms.net/128>

Re: *Notice Letter of Erika Mora Garcia on Behalf of Herself and Aggrieved Employees Under California Labor Code sections 1197.1, 558 and 2699*

Employers: Cal Central Harvesting, Inc.
183 S. Central Valley Highway
Shafter, California 93263

Windset Farms (California), Inc.
1948 Spring Street
Paso Robles, California 93446

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the PAGA Notice was mailed along with a copy of the original PAGA Notice to the Department of Industrial Relations at the above-listed mailing addresses.

This PAGA Notice is being sent in connection with the employment of Erika Mora Garcia (“Ms. Mora”) with Windset Farms (California), Inc. (“Windset”), where Ms. Mora is informed and believes that she worked, and the staffing company through which Ms. Mora is informed and believes that she worked, Cal Central Harvesting, Inc. (“Cal Central”). Collectively, Windset and Cal Central shall be referred to herein as “Employers”. Ms. Mora is informed and believes she has been employed with Employers from approximately April of 2018 through November of 2019. During that time, Ms. Mora performed for Employers, among other duties, wrapping vines, picking agricultural products such as cucumbers and tomatoes, loading agricultural products to be placed in a refrigerated cooler, and also cleaned greenhouses with various chemicals. Other aggrieved employees that Ms. Mora seeks to represent are all other non-exempt employees of Employers in California.

Ms. Mora and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders, including, without limitation, Wage Orders 8, 13 and 14. Ms. Mora is informed and believes, and based thereon alleges that Employers had and have a policy or practice of requiring their non-exempt employees to work more than eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) straight work days in a work week without paying them proper overtime wages, as a result of, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by donning and doffing various work-related protective equipment, requiring that aggrieved employees arrive at Employers' facility early to sign in; manipulating and/or editing time entries to show lesser hours than actually worked; failing to include all remuneration, including piece-rate compensation, non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the purpose of calculating the overtime rate of pay; failing to otherwise pay employees at the proper overtime rate of pay (including, without limitation, by paying at a straight rate of pay); and failing to pay for all rest and recovery time, as well as non-productive time worked. Consequently, Ms. Mora is informed and believes, and based thereon alleges that Employers violated Labor Code sections 226.2, 510, 1194 and applicable Wage Orders based on their practice of providing total compensation that is less than the required legal overtime compensation, entitling Ms. Mora and/or other aggrieved employees to damages. Employers would also be liable for civil penalties under Labor Code sections 558, 2699, and 2810.3.

In addition, Ms. Mora is informed and believes, and based thereon alleges, that Employers failed and continue to fail to compensate Ms. Mora and other similarly aggrieved employees with minimum wages for all hours worked or otherwise under Employers' control due to, without limitation, editing or manipulating time entries to show less hours than actually worked; failing to accurately track and pay all hours worked or under Employers' control, including, without limitation, for off-the-clock work, for rest and recovery periods and for non-productive time (including, without limitation, requiring employees to arrive at Employers' facility early to sign in at security check point prior to entrance at the facility, donning and doffing various work-related protective equipment, preparing their work areas, gathering and returning work tools, walking to and from work stations, and forming a line with various other employees to punch in and out at timekeeping machines) that is separate and apart from any piece-rate wages due. As such, Ms. Mora is informed and believes, and based thereon alleges that Employers violated, without limitation, Labor Code sections 226.2, 1197 and applicable Wage Orders based on their continued failure to pay minimum wages for all hours worked on the clock and off the clock, including nonproductive time, and for rest and recovery periods, all at the correct regular rate(s) of pay, entitling Ms. Mora and/or other aggrieved employees to relief under, without limitation, Labor Code sections 1194 and 1194.2. Employers would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, 2699 and 2810.3.

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Ms. Mora is informed and believes that Employers maintain a policy or practice of compelling their employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely and complete 30-minute meal periods or compensation in lieu thereof. Consequently, Ms. Mora is informed and believes, and based thereon alleges that Employers violated Labor Code section 512, entitling Ms. Mora and/or other aggrieved employees to premium payments under Labor Code section 226.7. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699 and 2810.3.

Moreover, Ms. Mora is informed and believes, and based thereon alleges that Employers maintain a policy or practice of compelling their non-exempt employees, including, without limitation, Ms. Mora, to work over four-hour periods (or major fractions thereof) without authorizing and permitting their employees to take timely, paid, uninterrupted and complete ten-minute rest periods in which the employees are completely relieved of all of their duties. As such, Ms. Mora is informed and believes and based thereon alleges that she and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. Employers would also be liable for civil penalties pursuant to Labor Code sections 558, 2699 and 2810.3.

In addition to the above, Ms. Mora is informed and believes, and based thereon alleges, that Employers failed and continue to fail to keep adequate and/or accurate time records, including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Ms. Mora and other aggrieved employees to calculate their unpaid wages and/or premium payments. This would entitle Ms. Mora and/or other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

As a result of, among other things, Employers' herein-described practice or procedure of failing to: accurately record time, pay overtime and minimum wages for the reasons stated above, provide meal periods or compensation in lieu thereof, and failing to provide rest periods or compensation in lieu thereof, as described above, Ms. Mora is informed and believes, and based thereon alleges that Employers also intentionally failed and continue to fail to furnish employees, including, without limitation, Ms. Mora, with itemized wage statements that accurately reflect proper overtime pay at the proper rate(s), gross wages earned and owed in light of the proper overtime and minimum wages due, the total hours of compensable rest and recovery periods and total hours of non-productive time, as well as amounts due and owing for meal and rest break law violations, and other such information, as required by Labor Code sections 226.2, subdivisions (a)(2)(A-B), and 226, subdivision (a). Consequently, since Employers would have failed to comply with Labor Code section 226, subdivision (a), as well as Labor Code section 226.2, subdivision (a)(6)(A), Ms. Mora and/or other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226,

subdivision (e). Employers would also be liable for civil penalties pursuant to Labor Code section 2699 and 2810.3.

Ms. Mora is informed and believes, and based thereon alleges, that Employers also failed and refused, and continue to fail and refuse, to timely pay compensation to Ms. Mora and other terminated or resigned employees, including but not limited to, all wages owed at the proper rate(s) of pay as a result of Employers' practice or policy of failing to pay, among other wages, minimum wages, overtime wages, reimbursements, and/or premium wages. Consequently, Employers would be liable for waiting time penalties for having violated California Labor Code sections 201, 202 and 203. Employers would also be liable for civil penalties pursuant to Labor Code sections 558, 2699 and 2810.3.

Employers also failed and refused, and continue to fail and refuse, to reimburse employees, including, without limitation, Ms. Mora and other aggrieved employees, with their costs incurred purchasing required tools, face masks, and shoes/boots, including by deducting these amounts from aggrieved employee wages, as required by Labor Code 2802, and other statutory and common law offenses, including conversion. Indeed, Ms. Mora is informed and believes that Employers deducted or did not reimburse employees for the cost of tools face masks, and shoes/boots. Amongst other relief, aggrieved employees may collect from Employers in connection with these violations, civil penalties pursuant to Labor Code sections 558, 2699 and 2810.3.

Ms. Mora is further informed and believes, and based thereon alleges that Employers failed and refused, and continue to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by failing to provide Ms. Mora and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, the regular payday designated by Employers, the name of Employers, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employers under Labor Code section 2810.5. Ms. Mora is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay employees at rates of pay that were not agreed upon and violate overtime wage laws in California. Among other relief, aggrieved employees may collect from Employers in connection with these violations' civil penalties pursuant to Labor Code sections 558, 2699, and 2810.3.

Ms. Mora is further informed and believes, and based thereon alleges, that Employers have or had a policy or practice of failing to provide Ms. Mora and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California law (including, without limitation, Labor Code section 246, *et seq.*), and also did not permit its use upon request as contemplated under California law. As such, Employers would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558, 2699, and 2810.3.

Ms. Mora and similarly aggrieved employees are covered by Labor Code section 204. Ms. Mora is informed and believes, and based thereon alleges that Employers had and have a policy or practice of failing to pay employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following months. Ms. Mora is informed and believes, and based thereon alleges that Employers did not and do not pay their employees in accordance with Labor Code Section 204. As such, Ms. Mora is informed and believes, and based thereon alleges that Employers violated Labor Code section 204. Employers would be liable for civil penalties pursuant to Labor Code sections 210, 558, 2699, and 2810.3.

Ms. Mora is additionally informed and believes, and based thereon alleges that Employers failed and refused, and continue to fail and refuse, to provide employees, including, without limitation, Ms. Mora and other aggrieved employees, with suitable lockers, closets, or the equivalent for the safekeeping of employees’ outer clothing during working hours, including but not limited to, requiring both men and women to change their clothing or uniforms in the others’ presence. Under both Wage Order 8-2001 and Wage Order 13-2001, employers are required to provide changing rooms or equivalent space so that employees may change their clothing in reasonable privacy and comfort. Consequently, since Employers failed to provide such facilities, they failed to comply with Labor Code section 1198 by their violations of the Wage Orders. Thus, Ms. Mora and other employees would be entitled to recover penalties pursuant to Labor Code sections 558, 2810.3 and 2699.

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Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this amended notice whether the Labor Workforce Development Agency ("LWDA") intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Ms. Mora may immediately thereafter file a civil complaint against Employers to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Thank you for your consideration of the foregoing.

Very truly yours,

BIBIYAN LAW GROUP, P.C.



David D Bibiyan

cc: Cal Central Harvesting, Inc. (via Certified Mail, Return Receipt Requested)
Windset Farms (California), Inc. (via Certified Mail, Return Receipt Requested)