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June 3, 2020

VIA ELECTRONIC FILING

CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL

Sunview Vineyards of California, Inc.
1998 Road 152
Delano, CA 93215

Sunview Vineyards of California, Inc.
31381 Pond Road
McFarland, CA 93250

**Re: Arturo Maldonado and Maria Paz Delgado's Notice of Claims/Labor Code
Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq.**

To the California Labor and Workforce Development Agency and Sunview Vineyards of California, Inc. ("Employer"):

WorkWorld Law Corp. represents Arturo Maldonado and Maria Paz Delgado, who intend to bring an action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, et seq., on behalf of themselves, approximately 2,000 similarly situated current and former aggrieved employees employed by Employer from June 3, 2019, through the conclusion of the action ("Statutory Period"), and the People of the State of California (hereinafter collectively "Employees").

PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Employees intend to bring a civil action to recover civil penalties for the violations identified

below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil penalties specifically set forth within the text of the California Labor Code. Those penalties are sought for violations committed against Employees of Employers.

* * *

Pursuant to Section 2699.3, the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, are as follows:

A. Failure to Pay Reporting Time Pay

“The maximum hours of work and the standard conditions of labor fixed by the commission [Industrial Welfare Commission] shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198.

The conditions of labor under the applicable Industrial Welfare Commission order includes a requirement that Employer pay reporting time pay under certain circumstances. Each workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day’s work, the employer shall pay him/her for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay, which shall not be less than the minimum wage.

Throughout the Statutory Period, Employer required Employees to report to work in the field at a time specified by Employer each morning where Employees, including Mr. Maldonado and Ms. Delgado, were assigned by Employer to work. Employees, including Mr. Maldonado and Ms. Delgado, did their part and reported to work as instructed each morning (in fact, Employer required Employees to report to work several minutes before their scheduled start time without pay or recording these pre-shift hours worked); however, Employer regularly advised Employees that there was no work for them to do upon reporting for work, and sent them home without pay. Although Employer’s labor needs were foreseeable, and Employer had the ability to provide reasonable notice to Employees prior to their scheduled shift time that there was no work for each day in the Statutory Period, Employer gave Employees neither notice nor reporting time pay as required by the applicable Industrial Welfare Commission order. For example, even if the Employer knew or should have known that rain was likely in the forecast, the Employer would nonetheless require Employees to report for work -- even if it was raining earlier that morning the same day. Worse yet, the Employer failed to pay reporting

time for such instances. Employer would send Employees home without paying them half of their usual or scheduled day's work (i.e., the maximum 4 hours required by the IWC order), in violation of Employer's legal duty. Employer is liable for civil penalties.

As a result of the Employer's foregoing acts and omissions, throughout the Statutory Period Employer also violated Labor Code sections 1174, 1197, 1198, 204, 204b, and 205.5 which required Employer to timely pay Employees the foregoing wages and record all hours worked; Employer also violated Labor Code section 226 by failing to accurately list all gross wages earned and net wages warned on Employees' wage statements at each time payment was due; for Employees who either were discharged or quit at any time during the Statutory Period, the failure to pay reporting time wages owed or waiting time wages also caused a derivative violation of Labor Code sections 201, 202, and 203. Employer is liable for additional civil penalties for violations of these additional Labor Code sections.

B. Failure to Pay at Least Minimum Wage for All Hours Worked During Rest Periods

Section 1197 provides that "[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." "[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour." Cal. Lab. Code, § 1182.12, subd. (a). "[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour." Cal. Lab. Code, § 1182.12, subd. (b).

Throughout the Statutory Period, Employer's policy and practices required Employees, including Mr. Maldonado and Ms. Delgado, to take two 15-minute rest breaks during their workdays; however, Employer paid them only approximately 10 minutes for these rest periods mandated by Employer where Employees were not free to leave the Employers' premises or otherwise free of the Employers' control. Because Employer required Employees to take 15-minute rest periods on the Employer's premises, during which they were subject to the Employer's control, Employer was required to pay Employees for the full 15 minutes of each rest period required by the Employer. Employer paid zero dollars for nonproductive time after 10 minutes during rest periods mandated by the Employer. Consequently, Employer violated the foregoing minimum wage laws.

As a result of the Employer's foregoing acts and omissions, throughout the Statutory Period Employer also violated Labor Code sections 1174, 1197, 1198, 204, 204b, 205.5, 226.2, and 226.7 which required Employer to record rest periods as hours worked and timely pay Employees the foregoing wages; Employer also violated Labor Code section 226 by failing to accurately list all hours worked, gross wages earned, and net wages warned on Employees' wage statements at each time payment was due; for Employees who were either discharged or quit at any time during the Statutory Period, the failure to pay minimum wages owed or waiting time wages also caused a derivative violation of Labor Code sections 201, 202, and 203. Employer is liable for additional civil penalties for violations of these additional Labor Code sections.

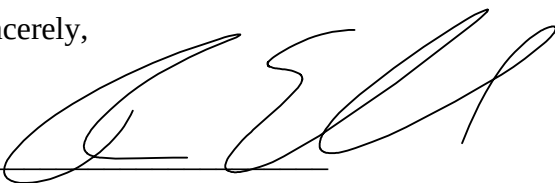
* * *

Mr. Maldonado and Ms. Delgado are also among the aggrieved employees on whose behalf Case No. LWDA-CM-487515-18 was filed by Juan Lopez. A copy of the claim is attached hereto and incorporated herein as is if fully set forth. Throughout the Statutory Period, Mr. Maldonado, Ms. Delgado, and all of the Employees on whose behalf this claim is filed experienced the same violations as Mr. Lopez based on the same facts and Labor Code sections identified in his claim.

* * *

Please do not hesitate to contact the undersigned if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruben Escobedo', written over a horizontal line.

Ruben Escobedo

LIDMAN LAW

222 N. SEPULVEDA BLVD. SUITE 1550, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

April 3, 2018

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Juan Lopez v. Sunview Vineyards of California, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Juan Lopez in claims arising from his employment with Sunview Vineyards of California, Inc. ("Defendant"). Mr. Lopez is an "aggrieved employee" as defined by Labor Code sections 2699, *et seq.* due to Defendant's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an "aggrieved employee" should be considered to include all current and former non-exempt employees of Defendant who have worked for Defendant during the one year preceding the date of this letter through the present date.

Defendant operates table grape farming operations in or around Kern County, and operate specific farms/fields in various areas, including Delano, Bakersfield, and Arvin. Mr. Lopez was hired by Defendant on or around May 22, 2017 and remains employed through the present. Mr. Lopez worked at various of Defendant's farm locations. Mr. Lopez was injured and commenced a leave of absence on or around October 5, 2017 and remains on leave of absence currently.

Mr. Lopez was employed by Defendant as a non-exempt employee responsible for various duties related to the farming and packaging of grapes grown by Defendant, including cultivating grape vines, and picking, de-stemming, sorting and packing grapes. Mr. Lopez was required to work outside in the field. Mr. Lopez worked at multiple locations in California, including Bakersfield, Laredo Highway, Delano and Arbin.

During his employment with Defendant, Mr. Lopez was typically *scheduled* to work nine-hour shifts, six days per week. Defendant did not require Mr. Lopez nor the other non-exempt employees to clock in or out for the day, and did not otherwise legally comply with record-keeping requirements by keeping track of the actual time worked by Mr. Lopez and the other non-exempt employees. Instead, Mr. Lopez was required to sign a log-in sheet but was not required to log out for the day. Further, throughout Mr. Lopez's employment with Defendant, Defendant would unlawfully shave his work time and/or

round his work time such that Mr. Lopez would not be fully paid for all time worked. This time-shaving/rounding practice utilized by Defendant was not even-handed over time and would almost exclusively round and shave in Defendant's favor such that Mr. Lopez was routinely underpaid for his time worked.

Throughout Mr. Lopez's employment with Defendant, Mr. Lopez was not provided all required meal periods in compliance with California law due to Defendant's meal period policies/practices. Specifically, Mr. Lopez and the other non-exempt employees were all required to take their meal period at the same time every day. The meal period could commence only when the supervisor on duty told Mr. Lopez and the other non-exempt employees that it was time to do so. Furthermore, during these meal periods, Mr. Lopez was not permitted to use the time as he saw fit, instead Defendant restricted Mr. Lopez and the other non-exempt employees by requiring that they remain in the work area. Accordingly, during the meal periods, Defendant maintained direction and control over Mr. Lopez and the other non-exempt employees, rendering the time spent taking meal periods compensable time. Defendant did not, however, compensate Mr. Lopez and the other non-exempt employees for this controlled work time. This resulted in the meal period provided to be non-compliant with California law, and further resulted in Defendant failing to pay at least minimum wages to Mr. Lopez and the other non-exempt employees for such controlled and compensable time. And, while Mr. Lopez was working in the field under the sun, Defendant failed to provide tents, water and shade for him and the other non-exempt employees.

Additionally, while Defendant claimed to theoretically allow Mr. Lopez and the other non-exempt employees 30 minutes for the meal period, in reality Mr. Lopez and the other non-exempt employees were required at least 5 minutes before the 30-minute meal period expired to prepare themselves to re-commence work duties. This preparation included, among other compensable work duties, sharpening scissors and putting gloves on. As a result of Defendant requiring Mr. Lopez and the other non-exempt employees to prepare to re-commence work before 30 minutes had elapsed, Mr. Lopez and the other non-exempt employees were routinely provided with meal periods which were less than 30 minutes, in violation of California law.

Further, Mr. Lopez along with other non-exempt employees would often commence their shift at 6:00 a.m. Defendant would then require that all employees, including Mr. Lopez, take a meal period at sometime between 11:30 a.m. and 12:00 p.m. The meal period would almost never commence earlier than 11:30 a.m. and Mr. Lopez and the other non-exempt employees were only permitted to take the meal period when their supervisor told them it was allowed. Accordingly, Mr. Lopez was regularly not provided the opportunity to take a meal period until after the end of the 5th hour of work, in violation of California law.

Although Mr. Lopez was not provided with all legally-compliant meal periods to which he was entitled (due to the meal periods being controlled, late and/or short), Defendant failed to compensate Mr. Lopez with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor

Code § 226.7. Upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

Mr. Lopez was also not authorized and permitted to take all required, and correctly paid rest periods due to Defendant's rest period policies/practices. Specifically, although Mr. Lopez was authorized and permitted to take two, 15-minute rest breaks during his work shifts, such rest periods were not always paid at the proper rate of pay as required by law. Indeed, the rate of pay for rest periods was paid as low as .21 cents per hour during some pay periods which was less than Mr. Lopez's regular rate of compensation/pay. On those occasions when Mr. Lopez was not authorized and permitted to take all legally-compliant and properly paid rest periods to which he was entitled, Defendant failed to compensate Mr. Lopez with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendant's failure to keep track of Mr. Lopez's actual time worked, failure to pay all minimum wages owed, and failure to pay all meal and rest period premium wages, Defendant failed to provide Mr. Lopez with accurate, itemized wage statements in violation of Labor Code § 226.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 14 ("Wage Order 14"):

Minimum Wage Violations

Defendant was required to pay Mr. Lopez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 14, § 4. Mr. Lopez and other aggrieved employees were not paid for all hours worked due to Defendant's timekeeping practices. As alleged above, Defendant maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Lopez and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Lopez and other aggrieved employees were deprived of all required minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Lopez and other aggrieved employees with all required and compliant meal periods. Defendant would restrict how Mr. Lopez and other aggrieved employees could use their time during meal periods, would schedule and only provide meal periods after the end of the 5th hour of work, and would

not provide at least 30 minutes of time for meal periods. These practices were in violation of California law. *See* Labor Code §§ 226.7 and 512; Wage Order 14, § 11. As a result, Mr. Lopez and other current or former employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

Defendant also failed to authorize and permit Mr. Lopez and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 14, § 12. Specifically, Mr. Lopez and other aggrieved employees worked shifts in excess of 3.5 hours, and were not always authorized and permitted to take a rest period for every 4-hour period worked which was paid at the correct rate of compensation. As a result, Mr. Lopez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods which were compensated properly. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Lopez and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum wages earned, meal period premiums, rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant’s failure to furnish Mr. Lopez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant’s reported data.

As an “aggrieved employee,” Mr. Lopez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Lopez’s own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Lopez and other aggrieved employees the statutory minimum wage for all hours worked;

- b) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Lopez and other aggrieved employees;
- c) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Mr. Lopez and other aggrieved employees;
- d) Defendant violated Labor Code § 226 by failing to furnish Mr. Lopez and other aggrieved employees with accurate and compliant itemized wage statements;
- e) Defendant violated Labor Code § 204 by failing to pay Mr. Lopez and other aggrieved employees all earned wages at least twice during each calendar month; and
- f) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Lopez and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

cc: Sunview Vineyards of California, Inc. (via U.S. Certified Mail)