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November 2, 2020

via CERTIFIED MAIL

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Mr. KENT H STEPHENS
SUNVIEW VINEYARDS OF CALIFORNIA, INC.
31381 POND RD STE 4
MCFARLAND CA 93250

In Re Benito Hernandez Lucas v. Sunview Vineyards of California, Inc.

Dear PAGA Administrator:

Our firm represents the interests of **Benito Hernandez Lucas** (Plaintiff), former employee of **Sunview Vineyards of California, Inc.** (referred to as the "Defendant"). Plaintiff was employed by Defendant for the period of 2013 to May 7, 2020 as a laborer for \$13.10/hour.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);
2. Violation of Labor Code §§226.7, 512, and 1198 (Missed Meal Breaks);
3. Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);
4. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked)
5. Violation of Labor Code § 204 (Failure to Pay All Wages Earned)
6. Violation of Labor Code §§246(a), 246.5 (Failure to Pay for Sick Days)

7. Violation of Labor Code § 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements)
8. Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation)
9. Civil Penalties Pursuant to Labor Code section 2699 (PAGA penalties)

During the relevant timeframe, Defendant employed Plaintiff as non-exempt hourly employee beginning in January of 2013. Plaintiff was employed as a general laborer/vineyard worker. He worked from 6:00 a.m. to 2:30 p.m. on five days per week, during Monday, Wednesday, Thursday, Friday and Saturday. Plaintiff was paid \$13.10 per hour.

His superiors were named Victor Mora, Ali and Alejandro. At times, his superiors asked Plaintiff and other employees to stay after clocking out to put down tables. Such tasks lasted minimum 10-15 minutes. Defendants failed to pay for these off clock time and overtime wages at the legal rates of pay for all overtime hours worked.

Also when it was raining, Plaintiff's superior would tell employees to work six straight hours without any rest and meal break, even if the shift lasted over 5 hours, and then would let them go home sooner than a full day shift.

Plaintiff had to occasionally buy a pair of scissors out of his own pocket in order to do his job, but Defendants never reimbursed him for the cost. There was also another employee Juvenal who asked for reimbursement, but was refused by Defendant to be reimbursed.

Plaintiff was not allowed to take a sick day unless he had a doctor's note. Defendants had made it mandatory that Plaintiff could take sick days as long as he had a doctor's note. Defendant has refused to produce Plaintiff's time sheet documents despite Plaintiff's request on June 22, 2020. Plaintiff was not paid for several of his sick days.

During the relevant timeframe, Plaintiff worked shifts of over five hours, and at times, was not given a thirty-minute, uninterrupted meal break for each such shift. Plaintiff worked during the meal periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff to take his meal breaks in middle of his shift. Also, Plaintiff was not allowed to leave the work premises during the meal break.

Defendants failed to compensate Plaintiff at the required rate for each occasion in which Defendants failed to provide rest breaks and meal breaks. As such, Defendants failed to pay for all the hours worked and all wages earned by Plaintiff.

Defendants failed to maintain accurate payroll records, such that Plaintiff was given wage statements that did not accurately reflect his true compensation and all the hours worked.

Plaintiff had worked for Defendant for over a decade. On or about May 7, 2020, Defendant through Alejandro terminated Plaintiff's employment on the alleged basis that he refused to build resting houses for the employees. At the time of the termination, Plaintiff was [REDACTED]. Plaintiff was suffering from several medical conditions, and was not able to work at the unreasonable pace that Defendant demanded. In fact, only several months prior to the termination - on January 6, 2020 - Plaintiff was evaluated by a physician with [REDACTED].

[REDACTED] Defendants were aware of Plaintiff's medical conditions and his need for work accommodations. A while before January 6, 2020, Plaintiff complained about not feeling well, he felt dizzy and couldn't breathe. His supervisor (Alejandro) allowed him to go home early. Plaintiff went to his doctor by the name of [REDACTED]. That doctor referred him to go see a [REDACTED]. Plaintiff's superior and Defendant became aware of Plaintiff's use of the [REDACTED] and his need to take it easier than before, not to burden his lungs.

Once he returned to work in January 2020, Defendant treated Plaintiff differently, creating a hostile work environment. Plaintiff was forced to make a police report on 2/13/2020, reporting about his superior hostile, aggressive and threatening behavior towards him. Interestingly, the incident report is missing from Plaintiff's personnel file. Clearly, as of February 2020, Defendants were planning and plotting to set up a scenario to force Plaintiff quit his job because he was using [REDACTED] and not as healthy and as fast as younger employees.

On May 7, 2020, Defendant and Supervisor (Alejandro) became angry with Plaintiff that he was very slow and then at the same time ordered him to build shades for other employees to rest and also complete his daily chores, despite the fact that Plaintiff was supposedly slower than other employees. At Defendant's direction, Alejandro kept picking on Plaintiff and tried hard to provoke him to a physical altercation and told Plaintiff he better leave and pointed him towards human resources which Plaintiff complied and went to human resources and complained about Alejandro. Human resources staff advised Plaintiff to come back in two days to accommodate him and find a solution at work or another position for him. After two days, he returned and went to the office to find out what solution Defendant had to stop the harassment but to his shock, Plaintiff was immediately fired because according to them he left his job voluntarily. But that is false since Plaintiff had to leave when the supervisor told him to leave. Plaintiff kept explaining that he had to leave because Alejandro told him to leave but Defendant refused to listen to him because it was their intention to use it as a pretext to fire him. Plaintiff never left his shift without Defendant's instruction/permission.

Defendant replaced Plaintiff with a younger employee, about 24 years old. This is age discrimination.

Defendants did not issue an accurate final paycheck to Plaintiff in accordance with the timeframes prescribed by law.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiff was hired to work shifts of over four hours, and at times was not allowed to take a ten-minute, uninterrupted rest break for each such shift. Plaintiff worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take their rest breaks.

Plaintiff and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed rest and meal breaks, nor accounted for overtime pay for hours employees worked in excess of 8 hours per work shift and beyond 40 hours per week. Therefore, Defendant failed to maintain accurate payroll records, such that employees were given wage statements that did not accurately reflect their accurate hours worked and did not reflect the required and due compensation for all the hours worked and breaks missed and/or interrupted.

Defendant failed to compensate Plaintiff at the required rate for each occasion in which Defendant failed to provide rest breaks. Also at times Plaintiff had to work more than 8 hours a day but got paid for only 8 hours and not more. As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff.

Therefore, Plaintiff claims that Defendant did not provide him and all other past and present employees with uninterrupted rest breaks or meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiff with their statutory breaks. Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest break and/or meal break. As a result, Defendant failed to pay its employees for all wages earned.

None of the wage stubs of Plaintiff indicates the actual hours he worked. Defendant was issuing him a wage stub, which was inaccurate. Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break or meal break, and failed to pay them overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees' wage statements did not accurately reflect all

the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Moreover, Defendant failed to compensate Plaintiff and all past and present employees, at the required rate for each occasion in which Defendant failed to provide rest breaks and meal periods.

As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff. During Plaintiff's employment, Defendant failed to pay Plaintiff all overtime wages at the legal rates of pay for all overtime hours worked and also given the number of the hours Plaintiff was working, his pay rate fell below minimum wage.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant. He was terminated on May 7, 2020 but Defendant paid him after 10 days.

Plaintiff claims that Defendant's conduct, as stated herein, including not paying its employees all wages owed, including wages for all hours worked, overtime, missed meal and rest breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through his attorney of record:

Farrah Mirabel, Esq.
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1070 Stradella Rd.
Los Angeles, California 90077

Plaintiff and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiff, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections **98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-552, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5 and 2698-2699, 2699.5 and 2802.**

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CALIFORNIA LWDA

Private Attorneys General Act Notice

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Page 6

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel

Farrah Mirabel, Esq.

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