

WINSTON LAW GROUP, P.C.

1880 CENTURY PARK EAST., SUITE 511 ♦ LOS ANGELES, CA 90067 ♦ (424) 288-4568

Attorneys

David Winston
Christian Na
Lior Barkodar*

*Indicates Of Counsel

September 30, 2021

Via Online Filing with the LWDA & by Certified Mail to Defendant

Grower Direct Nut Company, Inc.
888 Charles Rd
Hughson, CA 95326

Re: Maria Garcia vs. Grower Direct Nut Company, Inc. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as Grower Direct Nut Company, Inc. - California Labor Code §2699 Penalties

Gentlepersons:

This firm represents Maria Garcia, (“Plaintiff” or “Ms. Garcia”) and a proposed group of current and former employees working for Defendant Grower Direct Nut Company, Inc. and/or other entities doing business as Grower Direct Nut Company, Inc., (“Defendant”) in California for violations of California Labor Code § 226. The aggrieved employees are defined as:

- (1) all employees who were employed by Grower Direct Nut Company, Inc. for at least one pay period in California from April 5, 2020 and continuing into the present.¹

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all aggrieved employees.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 226(a) and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226. Labor Code § 226(a)(6) obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing, among other things, the inclusive dates of the period for which the employee is paid. However, the wage statements issued to Plaintiff and all aggrieved employees do not include the start date

¹ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 1, 2020. “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.” PAGA’s statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial Council.

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of the pay period in violation of Labor Code section 226(a)(6). As a result of Defendant's failure to include the start date of the pay period, the wage statements do not have the inclusive dates of the pay period. Further, due to such omission, it was not possible for Plaintiff and the other aggrieved employees to determine the inclusive dates of the pay period from their wage statement alone.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the "requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).").

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements that included the start date such that the wage statements did not contain the inclusive dates of the period for which the employee is paid. Such conduct entitles Plaintiff and the other aggrieved employees to recover Labor Code § 226.3 penalties

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of Plaintiff's claims. Plaintiff is also filing a class action lawsuit and separate claims related to the misclassification of her as an exempt employee in Stanislaus County Superior Court. Should Defendant wish to negotiate a settlement of such claims—including the class wage statement claims—please contact us or have any Counsel you choose to retain contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **October 22, 2021**.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: David Winston
DAVID S. WINSTON