

MALLISON & MARTINEZ
ATTORNEYS AT LAW
1939 HARRISON STREET, SUITE 730
OAKLAND, CA 94612
TELEPHONE: (510) 832-9999
FACSIMILE: (510) 832-1101

STAN S. MALLISON*
HECTOR R. MARTINEZ
TANIA FONSECA
HEATHER M. HAMILTON
DANIEL KELLER
*MEMBER OF CA, NV, OR & WA BAR

VIA CERTIFIED U.S. MAIL—RETURN RECEIPT REQUESTED

November 2, 2021

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

Gema Berry Farms, Inc
Attn: Ivan Lopez, Agent for Service of Process, CEO, CFO, Secretary, Director
4316 Hartfield Court
Westlake Villages, CA 91361

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RE: Labor Code § 2699 Notice by Aggrieved Employee Cecilia Castillo and Fabiola Zuniga

Dear PAGA Administrator and All Entities and Persons listed herein:

Please consider this a request under Labor Code § 2699.3(a)(1) for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against the above addressed parties including Gema Berry Farms, Inc., Ivan Lopez, and their agents, owners, managers and supervisors (collectively "Defendants"), for violations of the California Labor Code described below. I am writing on behalf of Cecilia Castillo, Fabiola Zuniga and other aggrieved employees represented by this law firm who seek to assert a PAGA claim on behalf of

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the State of California and all other current or former employees who have been employed at facilities operated by Defendants.

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 Gema Berry Farms, Inc.'s owners, supervisors, managers, agents and all other person acting on behalf of Gema Berry and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. On information and belief, Mr. Ivan Lopez has complete authority to implement and carry out the illegal wage and hour policies at issue herein.

This investigation request and notice of California Labor Code violations concerns the systematic failure by 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. Defendants operate a business whereby workers are paid a hybrid piece/hourly rate which frequently results in employees receiving less than minimum wage. Employees are also paid partially in cash on certain workdays. Defendants provided late meal periods and failed to provide second rest breaks. Defendants also enforced a payroll policy whereby workers are not paid the statutorily required premium wages for late meal periods and denied rest breaks. Further, workers are not provided separate rest and recovery compensation on their wage statements, and these wage statements do not accurately reflect all of their hours worked and all of their wages. Defendant's policy and practice is to withhold piece-rate and hourly compensation for employees who arrive late to work, thus denying them pay for all their time worked. Furthermore, Defendant Gema Berry does not provide employees with gloves which are reasonably necessary for performing their duties safely and caused employees to incur the cost of buying gloves to perform such duties for the benefit of Defendants business.

Defendants are an agricultural employer hiring employees to grow and harvest strawberries. Defendants pay employees a base hourly rate of approximately \$5.75 per hour plus approximately \$1.75 to \$1.90 per box of strawberries picked. Employees work up to 45 hours per week. Depending on their productivity, employees would sometimes earn less than minimum wage for their time worked. Because employees were partially paid piece rate, they were not fully compensated for any rest or recovery time. This is demonstrated by employees' wage statements which fail to document separate rest and recovery pay in violation of Labor Code section 226.2.

Because supervisory personnel were motivated to increase employees' productivity, employees were not provided a second rest break during the workday. They compelled employees to work through the afternoon without any rest and recovery time and failed to provide premium pay for missed rest breaks. Defendants only recorded employees' start and end time by having them scan their badges on a scanner on the field. Meal periods were not recorded. Employees were tasked with showing up to work by approximately 7 am and relied on their foreman to excuse them for their first rest break and meal period. This resulted in nonconforming meal periods.

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Defendants enforced a policy whereby employees who were late to work were reprimanded and penalized for their tardiness by not allowing them to clock in upon arrival and counting their first picked box toward their day's tally, resulting in unpaid work. For example, Ms. Castillo and Ms. Zuniga were late to work several times due to issues with childcare. As is customary, they would immediately start working upon arrival on the field and fill up their first box of strawberries. Despite this they were not permitted to record their arrival time by scanning their badges resulting in time worked and unpaid. They would then wheel their box over to "puncher" Anabel Garcia, who was tasked with "punching in" or tallying the box so that they could receive credit for the box toward their piece rate. However, on days when they were late, Ms. Garcia refused to punch in their first boxes, thus denying Ms. Castillo and Ms. Zuniga credit for their work and resulting in unpaid work. When Ms. Zuniga once questioned this practice, she was told this was Defendants' policy.

Defendants failed to provide employees with paid sick leave and notice of sick leave on their wage statements. Thus, employees did not know how much, if any sick leave they had available, and did not receive paid sick leave. Employees also had to purchase their own gloves to perform the work of picking strawberries safely. Finally, employees frequently had to work in temperatures over 95 degrees without being provided shade or additional ten-minute cool-down rest breaks.

Additional facts and allegations set forth in Plaintiffs' the forthcoming complaint. Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") may be based on a wide variety of Labor Code provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.2, 226.7, 245, 246, 247, 248, 249, 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), California Code of Regulations §3395, among many 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 themselves and other current and former employees.

In particular, the policies described above, and the violations set forth below relate to all the non-exempt employees employed at Gemma Berry locations and worksites in California:

1. Failure to pay non-exempt employees all wages earned (minimum, contract, overtime, split shift, and reporting time wages, unpaid time), in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194, 1197.1, 558, and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, and by requiring, suffering or permitting employees to work without compensation for all hours worked.
2. Failure to properly provide/authorize (and discouraged) and permit non-exempt employees all required proper timely ten-minute rest breaks and proper timely 30-minute meal breaks to which they are entitled, in violation of Labor Code and Wage

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Orders, in violation of Cal. Labor Code §§ 226.7, 512 and 558, and failure to pay premium rest and meal period wages.

3. Failure to keep accurate time records, in violation of the Labor Code and Wage Orders.
4. Failure to properly provide/authorize and permit all paid ten-minute rest breaks to which non-exempt employees are entitled, and failure to pay premium rest period wages in lieu of rest breaks, in violation of Cal. Labor Code §§ 226.7, the applicable Wage Order, and California case law.
5. Failure to properly provide/authorize and permit proper meal breaks to which non-exempt employees are entitled, and failure to pay premium meal period wages in lieu of meal breaks, in violation of Cal. Labor Code §§ 226.7, 512, the applicable Wage Order, and California case law.
6. Failure to reimburse non-exempt employees reasonably necessary business expenditures, including but not limited to the purchase of gloves necessary for the performance of their duties as agricultural workers, in violation of Labor Code section 2802 and California case law.
7. Failure to provide accurate wage statements. Employee wage statements failed to include total hours worked, boxes picked, all applicable hourly rates, accurate gross and net wages earned, in violation of Labor Code §§ 226, 1174 and the Wage Orders.
8. Failure to provide separate rest in recovery time on wage statements, in violation of Labor Code §226.2 and Wage Orders.
9. Failure to provide additional ten-minute cool-down breaks when working in temperatures over 95 degrees in violation of California Code of Regulations §3395.

The above provisions do not include all the derivative penalties associated with the above provisions, which are listed throughout the Labor Code. Further facts and theories supporting the alleged violations are included in the enclosed complaint, which is incorporated into this notice.

This letter does not allege violations based solely upon the basis that Defendants failed to properly compensate employees for rest and recovery periods.

This is also a notice pursuant to 2810.3(d) for defendants' civil liability purposes based upon the failure to pay wages as described in the attached complaint.

The aggrieved employees can be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

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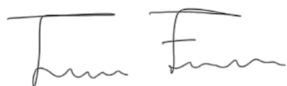
If no action is taken within 60 days, we will assume that we may pursue this action under the theories described above against the Defendants described above and their managers, agents, owners and other liable persons and entities (pursuant to §§ 210, 558, 1197.1, 2699(f) (and other provisions)).

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 Plaintiff, 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 employees), all timekeeping records, all rest and meal period records, all duty and responsibility records, all records which include 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.

If you have any questions, please do not hesitate to contact me.

Sincerely,

MALLISON & MARTINEZ

A handwritten signature in black ink, appearing to read 'Tania Fonseca', with a stylized, cursive script.

Tania Fonseca, Esq.