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VIA Online Filing:

Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, California 95814

Re: Martin v. Twin Rocks Estate Vineyards and Winery Inc., et al.

Dear Labor Commissioner:

I am submitting this notice on behalf of my client, Mazie Martin ("Plaintiff"). I am writing to provide you, and the following employers notice pursuant to California Labor Code section 2699.3:

Twin Rocks Estate Vineyards and Winery Inc.
6635 Cavitt Stallman Road
Granite Bay, CA 95746

Angela Sehr
5180 Vardon Drive
Windemere, FL 34786

Jim Sehr
6635 Cavitt Stallman Road
Granite Bay, CA 95746

This letter sets forth the facts and theories to support each of the counts below. Please notify me of your intent to investigate any or all of the claims alleged herein against Twin Rock Estate Vineyards and Winery Inc., Angela Sehr and Jim Sehr ("Defendants"). Should you decide not to investigate, Plaintiff requests you allow her to bring a civil action on behalf of herself and Aggrieved Employees, pursuant to Labor Code section 2699(a). Aggrieved Employees shall include but is not limited to all non-exempt, hourly employees, including individuals Defendants misclassified as exempt, who have, or continue to, work for Defendants in California at any time from one (1) year prior to the date of this letter to the present.

I. FACTS

Plaintiff and Aggrieved Employees worked for Defendants as non-exempt employees. Defendants own and operate a winery and events venue called Twin Rocks Estate Winery. Plaintiff and Aggrieved Employees were paid an hourly rate and were also supposed to be paid tips. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week, incurring overtime.

Defendants failed to pay Plaintiff and Aggrieved Employees all regular and overtime wages they were owed. Defendants failed to accurately track and compensate Plaintiff and Aggrieved Employees for all hours worked, resulting in the systematic underpayment of both regular and overtime wages. Employees were required to clock in and out using an app, however, the app was faulty and Defendants frequently asked employees to reconstruct and submit hours after the fact even though they had properly clocked in and out. In multiple cases, hours submitted through the app were either lost, unrecorded, or altered without employee knowledge or consent.

Plaintiff and Aggrieved Employees were subject to a tip pooling system with no transparency. Defendants regularly withheld or misallocated tips meant to be distributed to employees. In the case of private events, gratuity often exceeded thousands of dollars, yet employees were only paid an hourly rate with no visibility into the actual distribution of those funds, if any, as tips allegedly paid out were not recorded on their wage statements. Plaintiff and Aggrieved Employees were told that tips were included in amounts they were paid, but these representations were never substantiated.

Defendants failed to provide Plaintiff and Aggrieved Employees with all legally required meal and rest periods. The way Defendants structured their business operations, did not provide Plaintiff and Aggrieved Employees with the opportunity to take meal and rest periods because they were consistently understaffed and there was no one to relieve them from their work. Defendants failed to pay Plaintiff and Aggrieved Employees all meal and rest premiums they were owed.

Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones for work to record their time and communicate with management. However, Defendants failed to reimburse Plaintiff and Aggrieved Employees for such use.

Defendants failed to pay Plaintiff and Aggrieved Employees paid sick time. When employees were ill they were denied use of their paid sick days and were not compensated although they had paid sick time available to them.

Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, paid sick time, tips, meal and rest period premiums, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had regular wages, overtime, sick time, tips, and meal and rest period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees all wages they are owed.

Angela Sehr and Jim Sehr were officers, directors, shareholders, and/or managing agents of Twin Rocks Estate Vineyards and Winery Inc. and responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. Accordingly, they are liable under Labor Code section 558.1.

II. LABOR CODE VIOLATIONS

Count One – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order No. 5, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See e.g.*, IWC Wage Order MW-2024; IWC Wage Order No. 16, § 4; Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked at the applicable minimum wage rate. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked.

Count Two – Violation of Labor Code §§ 510, 1194; IWC Wage Order No. 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hour worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and Aggrieved Employees are entitled to recover all unpaid overtime wages.

Count Three – Violation of Labor Code §§ 226.7, 512; IWC Wage Order No. 5, § 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 10(A) require employers to provide employees with meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 10(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay all meal period premiums for their failure to provide meal periods.

Count Four – Violation of Labor Code § 226.7; IWC Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees with paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees.

Count Six – Violation of Labor Code § 2802 (Failure to Reimburse Expenses)

Labor Code section 2802(a) states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of objecting the directions, believed them to be unlawful.” Defendants failed to pay Plaintiff and Aggrieved Employees all reimbursement owed for the use of their personal cellphones in the discharge of their duties.

Count Seven – Violation of Labor Code § 201-203 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including regular wages, overtime wages, tips, paid sick time, and meal and rest premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203.

Count Eight – Violation of Labor Code §§ 246, 246.5, 248.5 (Paid Sick Time)

Labor Code sections 246, et seq., mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must

allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiffs and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA.

Count Nine – Violation of Labor Code § 558 (Provisions Regulating Hours and Days of Work in IWC Wage Order No. 5)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of the sections within Chapter 1 of the Labor Code or any order of the Industrial Welfare Commission. As described above, Defendants violated Plaintiff's and Aggrieved Employees' rights provided for under Labor Code section 558 as well as Wage Order No. 5 and incorporated statutes therein.

Count Ten – Violation of Labor Code § 223, 351 (Failure to Pay Gratuities)

Labor Code section 351 states “no employer or agent shall collect, take, or receive any gratuity or part thereof that is paid, given to, or left for an employee by a patron.” Labor Code section 223 provides it is unlawful for employer to secretly pay a lower wage than one required by statute or contract, while claiming to pay the wage designated by law or agreement. For the reasons stated above, Defendants failed to pay Plaintiff and Aggrieved Employees all tips they were owed.

If you require any additional information or have any questions, please contact me directly.

Sincerely,

Brittany Berzin
Brittany W. Berzin