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July 14, 2025

PAGA NOTICE AND FILING FEE
SUBMITTED ELECTRONICALLY

Department of Industrial Relations
Attn: Accounting Unit
455 Golden Gate Avenue, 10 Floor
San Francisco, California 94102

Re: California Labor Code § 2699 Notice Letter
On Behalf of Aggrieved Employee Michael Thomas Baca, Jr.

Employer: Yellow Dream Farm Inc.
17331 Muskrat Avenue, #16
Adelanto, California 92301

To whom it may concern:

This letter shall constitute Michael Thomas Baca, Jr.'s ("Mr. Baca") notification under the Labor Code §2699.3 (hereinafter, the "PAGA Notice"). We submitted the $75 filing fee electronically through the California Labor and Workforce Development Agency/Department of Industrial Relations' website for PAGA filings, along with a copy of this PAGA Notice.

The PAGA Notice concerns Mr. Baca's allegations that his former employer, Yellow Dream Farm Inc. ("YDF"), has a policy or practice of not compensating employees for all hours worked, including overtime wages. Labor Code §1197 states the California requirement that employees must be paid at least minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code §1194 entitles "any employee receiving less than the minimum wage… to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No, 9-2001 obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour that employee worked for which they were not paid. Therefore, it is unlawful when an employer fails to pay for any particular hour that an employee works, even if the employers averages the employee's total pay for all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Additionally, Labor Code §510 provides, in relevant part: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any workweek… shall be compensated at the rate of no less than one and one-half times the regular of pay for an employee."

Mr. Baca, who was employed as a cultivator for YDF, contends that YDF has a policy and practice of requiring Mr. Baca and its non-exempt employees to work off-the-clock without compensation. For instance, Mr. Baca contends that he and other non-exempt employees were required to change into and out of employer-mandated scrub uniforms and security bag checks prior to clocking-in and after clocking-out. YDF must pay Mr. Baca and other employees for "all hours worked." "Hours worked" is "the time during which an employee is subject to the control of an employer and includes all the time an employee is suffered or permitted to work, whether or not required to do so. See Wage Order 9-2001, Subd. 2(K); see also *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. "[I]t is only necessary that the worker be subject to the control of the employer in order to be entitled to compensation." *Morillion v. Royal Packing Co.* 22 Cal.4th 575,584 (2000). An employee is under the employer's control and entitled to compensation when the employer "directs, commands or restrains an employee." Id. at 583 (citation omitted).

Under *Morillon,* the level of control that employers exert over an employee during an activity determines whether the activity is under employer's control and, thus, entitles the employee to compensation: "The level of the employer's control, rather than the mere fact that the employer requires the employee's activity is determinative." *Id.* at 587 (emphasis added). In *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, the California Supreme Court reaffirmed the *Morillion* holding, and found that time employees spent during bag searches at their shifts' end was compensable. *Id.*

> We also emphasize that whether an activity is required remained probative in determining whether an employee is subject to the employer's control. But, at least with regard to cases involving onsite employer control activities, the mandatory nature of an activity is not the only factor to consider. We conclude that courts may and should consider additional relevant factors – including, but not limited to, the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures – when evaluating such employer-controlled conduct.

Employees are free of the employer's control for purposes of "hours worked" if they are free to use their time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th at 583. As indicated above, YDF required Mr. Baca and other non-exempt employees, to perform work-related activities off the clock and without compensation. Mr. Baca, and other non-exempt employees, could not use this time for their own purposes. As such, YDF exercised sufficient control over Mr. Baca, and other non-exempt employees.

Furthermore, <u>Labor Code</u> §1197.1 authorizes a civil penalty, wage restitution, and liquidated damages for employees paid less than applicable state or local law's, or Commission order's, fixed minimum as follows: (1) for any initial, intentionally committed violation, one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee is underpaid; and (2)for each subsequent violation for the same specific offense, two hundred fifty dollars ($250.00) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, YDF failed to compensate Mr. Baca, and all aggrieved employees, for all hours worked. Accordingly, through PAGA and to the extent legally permissible, YDF's <u>Labor Code §</u>

1197.1 violations entitle Mr. Baca, and other employees, to recover liquidated damages. These same factual allegations entitle Mr. Baca, and other employees, to penalties under Labor Code § 1199.

Similarly, Labor Code §1194.2 authorizes employees to recover wages to recover liquidated damages for Labor Code §1194 violations. When an employee, such as Mr. Baca and the other employees are not paid for all hours worked under Labor Code §1194, they may recover minimum wages for the time during which they received no compensation and PAGA penalties for not receiving pay for that time.

Consequently, YDF violated California Labor Code §§200, 1194, 1197, and 1197.1 based on its practice of not paying Mr. Baca, and other employees, for all work they performed under its control, including all earned overtime wages. YDF would also be liable for civil penalties pursuant to California Labor Code §§558 and 2698.

Mr. Baca further alleges that YDF maintains a policy or practice of compelling its employees to work more than five (5) and ten (10) hours per day without uninterrupted thirty (30) minute meal period. Pursuant to Labor Code §§226.7 and 512 and applicable Wage Orders, an employer must provide meal periods to its non-exempt employees or compensation in lieu thereof, i.e., premium wages. Here, Mr. Baca, and other non-exempt employees would be prevented and discouraged from taking their meal periods due to workplace interruptions and from being short staffed. Mr. Baca and other non-exempt employees were also not provided with second meal periods when they worked shifts greater than 10 hours in a day. Mr. Baca was not paid premiums at the regular rate of pay for missed meal periods. Premium for missed meal periods must be paid at the employee's regular rate of pay, encompassing both hourly wages and all nondiscretionary payments for work performed by the employee. *Ferra v. Loews Hollywood Hotel, LLC* (2021)11 Cal.5th 858, 878 confirmed that the term "regular rate of compensation" in Labor Code §226.7 has the same meaning as "regular rate of pay" in Labor Code §510 and encompasses not only hourly wages, but also nondiscretionary payments for work performed by the employee. This interpretation of Labor Code §226.7 comports with the state's labor laws are to be liberally construed in favor of work protection. *Id.* Additionally, the application of this holding is placed retroactively. *Id.* at 880. Consequently, YDF violated Labor Code §§226.7 and 512. YDF is also liable for civil penalties pursuant to Labor Code §§558 and 2698.

Mr. Baca also alleges that YDF maintains a policy or practice of compelling its employees to work over a four (4) hour period (or a major fraction thereof) without authorizing or permitting them to take a paid ten (10) minute rest period during which they are completely relieved of all their duties. Pursuant to Labor Code §226.7 and applicable Wage Orders, employers must provide rest periods or compensation in lieu thereof to their non-exempt employees. Furthermore, Mr. Baca was not paid premium wages at the regular rate of pay for missed rest periods. Premiums for missed rest periods must also be paid at the employee's regular rate of pay, encompassing both hourly wages and all nondiscretionary payments for work performed by the employee. *Id.* at 878. Consequently, YDF violated Labor Code §226.7. YDF is also liable for civil penalties pursuant to Labor Code §2698.

As a result of, including but not limited to, YDF's failure to pay wages for all hours worked (as described above), it also intentionally failed, and continues to fail, to furnish employees with itemized wage statements, as requisite under California Labor Code §226(a), that provided the employer's address, accurately reflect all hours worked, wages earned at all applicable hourly rates, net and gross wages earned, and premium wages due for missed meal and rest periods. Mr. Baca, and other employees, also suffered legal "injury", for purpose of Labor Code §226(e), insofar as they were unable to readily and easily determine the requisite information under Labor Code §226(a). For example, Mr. Baca, and other employees, could not determine their hours worked, wages earned at all applicable hourly rates, and gross and net wages earned due to YDF's failure to pay for all hours worked and failure to provide meal and rest periods or compensation in lieu thereof. Please also see *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788 (holding "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.* (2018) 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)"). Consequently, since YDF failed to comply with Labor Code §226(a), Mr. Baca, and other similarly situated employees, are entitled to recover penalties under Labor Code §§226(e) and 2698.

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." YDF failed to provide Mr. Baca and other employees with accurate itemized wage statements as indicated above. Consequently, since YDF failed to comply with Labor Code §226(a), Mr. Baca and other employees would be entitled to recover penalties under Labor Code §226.3 and 2698, in lieu of the normal penalties provided for in Section 226.

YDF also failed and refused, and continues to fail and refuse, to timely pay compensation to Mr. Baca, and other similarly situated terminated or resigned employees, including but not limited to, all wages owed due to YDF's failure to pay wages for all hours worked, and failure to provide meal and rest periods or compensation in lieu thereof. Under Labor Code §§201 and 202, an employer must provide employees wages at discharge or within up to seventy-two (72) hours of resignation. Labor Code §203 provides " if an employer willfully fails to pay… any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty…" for up to thirty (30) days. Labor Code §203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492. In addition, Labor Code §256 provides that the Labor Commissioner "shall impose a civil penalty in an amount not exceeding 30 days' pay" as waiting time under Section 203's terms. Consequently, YDF is liable for waiting time penalties for its Labor Code §§ 201, 202, and 203 violations. YDF is also liable for civil penalties pursuant to Labor Code § 2698.

Labor Code §204 expressly requires that "[a]ll wages… earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Due to YDF's failure to pay Mr. Baca, and other non-exempt employees, on a timely basis for all applicable wages, including overtime and premium wages for missed meal and rest periods (due to the faulty compensation practice described above), YDF failed to pay Mr. Baca, and other non-exempt employees, all wages owed within seven (7) days after the payroll period closed, in accordance with Labor Code §204, on a regular and consistent basis. Labor Code §210(a) provides that "in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)for any violation, one hundred dollars ($100) for each failure to pay each employee; (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

YDF also has a policy or practice of issuing out of state paychecks in violation of Labor Code § 212 since Mr. Baca and other employees would be issued paychecks from a Michigan bank and as a result they were subjected to fees and/or delay when cashing their paychecks. Consequently, YDF would be liable for civil penalties pursuant to Labor Code §2698.

Pursuant to Labor Code §2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the PAGA Notice's postmark date as to whether you offices intends to investigate the violations alleged herein. Our office understands that, if we do not receive a response from your office within sixty-five (65) calendar days of the PAGA Notice's postmark date, Mr. Baca may immediately thereafter pursue his, and similarly situated aggrieved employee's, interests with a civil complaint against YDF for its violations of the Labor Code.

Sincerely,

/s/ Ana Galdava
Ana Galdava, Esq.
THE NOURMAND LAW FIRM, APC.

cc: Yellow Dream Farm Inc. (by U.S. Certified Mail)