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VIA U.S. CERTIFIED MAIL

RE: California Labor Code section 2699 (Private Attorneys General Act) Notice by Aggrieved Employees Juventino Ortiz and Mariano Carranza

May 7, 2024

FLC Farm Labor Contracting
Attn: Fernando Lugo Cervantes
601 N Citrus Street
Woodlake, CA 93286

Barbie B Ranch LLC
Attn: Barbara Baloin
7176 West Tenaya Ave
Fresno, CA 93723

Duarte Jose R
24013 E Lincoln Ave,
Reedley, CA 93653

Howard Ranch
8443 N 4th Street,
Fresno, CA 93720

Labor and Workforce Development Agency
(via online submission)

Dear PAGA Administrator:

Our office represents Juventino Ortiz and Mariano Carranza (“Aggrieved Employees”). This constitutes statutory notice pursuant to Labor Code section 2699.3(a)(1) for purposes of bringing a

claim under the Private Attorneys General Act (“PAGA”), Cal. Labor Code section 2699, *et seq.* Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against FLC Farm Labor Contracting (“FLC”) and its agents, managers, supervisors, and/or owners – including, without limitation, Fernando Lugo Cervantes (“Lugo”), Barbie B Ranch LLC, Jose R Duarte, Howard Ranch (collectively “Defendants”) for violations of the California Labor Code as described below. On information and belief, Cervantes had complete authority to implement and carry out the illegal wage and hour policies at issues herein. As such, the Individual Defendants were on notice, whether actual or constructive, of all violations described above, and failed to prevent or address them. Aggrieved Plaintiffs seek to assert a PAGA claim on behalf of the State of California and all other current and/or former non-exempt agricultural workers who have been employed by Defendants in California.

Further, pursuant to, without limitation, California Labor Code sections 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Defendants and all other persons acting on behalf of Defendants and the employer – including, without limitation– Lugo who controlled and caused to be violated any provision of the California Labor Code or Wage Orders during the relevant time period by making illegal policies, implementing illegal policies, or failing to correct illegal policies as the owner of FLC.

In particular, the policies described above, and the violations set forth below relate to all the non-exempt workers employed by FLC in California:

1. FLC failed to record and compensate piece-rate employees nonproductive time, failed to compensate rest breaks separate from piece-rate compensation, failed to properly calculate and compensate for rest and recovery periods, and altered employees’ piece-rate units in violation of Cal. Labor Code section 226.2 and Minimum Wage violations.
2. FLC did not schedule or provide meal or rest periods for non-exempt employees, which resulted in failure to provide or authorize and permit proper thirty-minute meal periods and proper 10-minute rest breaks to which non-exempt employees are entitled, and failure to pay premium meal and rest period wages in lieu of meal and rest periods, in violation of Cal. Labor Code sections 226.7 and 512, Wage Orders, and California case law.
3. FLC subjected employees to employer control, or knowingly suffering or permitting them to work off the clock without compensating for all hours worked at Minimum Wage in violation of Labor Code section 1191 and when unpaid time exceeded the statute overtime thresholds, failed to pay the applicable premium rate in violation of Labor Code section 510, 1194, and applicable Wage Orders.
4. FLC failed to reimburse employees for equipment necessary for work in violation of Labor Code § 2802.
5. FLC failed to provide accurate wage statements that reflect actual hours worked and amounts earned as employees’ wage statements failed to include the actual piece-rate units completed and compensation for nonproductive time and failed

to properly calculate compensation for rest and recovery periods in violation of Labor Code §§ 226, 226.2, 1174, and applicable Wage Orders.

6. FLC failed to pay all wages earned (as described above) including unpaid minimum and overtime wages and failed to pay all additional wages in lieu of providing all meal and rest periods immediately or within 72 hours upon separation from employment.

Additionally, this letter constitutes statutory notice pursuant to Labor Code section 2810.3(d) for purposes of bringing a civil action against a client employer for violations covered by Labor Code section 2810.3(b). Pursuant to Labor Code section 2810.3(1)(A) a “client employer” is a business entity regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor. We are informed and believe that Defendants owned, controlled, or operated a business or establishment who may have contracted as a client employer within the relevant time period to obtain agricultural workers in the State of California, and therefore shares civil legal responsibility and civil liability for the payment of wages. *See* Labor Code section 2810.3(a)(4). As defined in Labor Code section 2810.3(a)(4) and pursuant to California Code of Regulations section 13830, “wages” includes:

- a. Any minimum, regular, overtime, or other premium wages that are due to the worker, including but not limited to any wages due under Labor Code section 226.2, 226.7, 227.3, 246, and 2802;
- b. Any damages or penalties that are due to the worker or the state based upon any failure to pay wages, as provided by law, including but not limited to those set forth under Labor Code sections 203, 203.1, 210, 225.5, 226, 226.3, 248.5, 558, 1194.2, and 1197.1;
- c. Any applicable interest due for any sum described in this section.

This investigation request and notice of California Labor Code violations and shared liability under Labor Code section 2810.3 concerns the systematic failure by FLC 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. At the core of FLC’s violations is a policy of systematically failing to pay piece-rate workers for nonproductive time and rest periods separate from piece-rate compensation, systematically failing to pay overtime wages for all hours worked by employees in excess of eight hours; systematically refusing to provide rest periods or to provide premium wages in lieu thereof, systematically refusing to provide meal periods or to provide premium wages in lieu thereof; systematically altering employee piece-rate units to show less units than actually completed, systematically failing to provide accurate wage statements and systematically failing to pay of all wages owed upon separation from employment. These violations are a uniform policy applied to all non-exempt workers at FLC.

Additional facts and allegations are set forth in Aggrieved Employee’s complaint. Liability under the PAGA may be based on a wide variety of Labor Code predicate provisions, including but not limited to sections 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.2, 226.7, 510, 512, 2810.5, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2673.1(a), and 2802, Industrial Welfare Commission Wage Orders, sections 2699 *et seq.* and all of the provisions listed in

Labor Code section 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serve as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

The above provisions do not include all the derivative penalties associated with the above provisions, which are listed throughout the Labor Code and are PAGA penalties.

Aggrieved Employees Juventino Ortiz and Mariano Carranza may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

Sincerely,



Cody A. Bolce

Associate Attorney

MALLISON & MARTINEZ