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September 26, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Rancho Bonita Farms, Inc.
1245 Ken Avenue
Santa Maria, CA 93455
Via Certified Mailing #9589 0710 5270 1151 8456 91

Rancho Bonita Farms, Inc.
c/o Agent for Service of Process
Individual
Vincent Martinz
215 North Lincoln
Santa Maria, CA 93458
Via Certified Mailing #9589 0710 5270 1151 8457 07

Re: Rosa Jimenez Perez; Samuel Moreno Flores v. Rancho Bonita Farms, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Rosa Jimenez Perez and Samuel Moreno Flores (collectively, “Plaintiffs”) and a proposed group of current and former employees working for RANCHO BONITA FARMS, INC. (“Defendant”) in the State of California. 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 the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant’s aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by RANCHO BONITA FARMS, INC., in the State of California, who worked one or more pay periods since one (1) year prior to the date of this letter

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and continuing to the present. (“aggrieved employees”).

Plaintiffs and the aggrieved employees worked for Defendant in or near Santa Barbara County, California as seasonal agricultural workers. Plaintiffs and the aggrieved employees worked in the cultivation and harvest of strawberries, and doing other agricultural work, on land owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendant.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and require an employer to compensate its employees at one and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

Here, Plaintiffs and the aggrieved employees were not paid at the proper corresponding rate for all hours worked, including overtime. Plaintiffs and the aggrieved employees often worked a sixth consecutive day of work in a workweek, but Defendant did not pay overtime for this sixth day. Instead of Defendant paying Plaintiffs and the aggrieved employees overtime for the 4-5 hours that they worked on the sixth day, Plaintiffs and the aggrieved employees were paid on a piece rate basis and in cash. This resulted in Plaintiffs and the aggrieved employees regularly working in excess of eight hours in one workday and in excess of 40 hours in one workweek and not being compensated at the appropriate overtime rate for all hours worked.

Further, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and the aggrieved employees. Plaintiffs and the aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. Plaintiffs and the aggrieved employees were not properly compensated for all hours worked because Defendant fails to pay Plaintiffs and the aggrieved employees for each and every hour worked. Plaintiffs and the aggrieved employees routinely worked “off the clock” and performed compensable activities before, during, and after each working shift for which no pay was provided as detailed below.

With regard to pre-shift work, Plaintiffs and the aggrieved employees are required to report to work approximately ten (10) to thirty (30) minutes prior to Plaintiffs’ and the aggrieved employees’ scheduled shift and perform work. Specifically, Plaintiffs and the aggrieved employees are required to prepare their tools and/or equipment, such as gloves, carts, boxes and scissors, and record their attendance, all of which is performed while “off the clock”. Additionally, Plaintiffs and the aggrieved employees are often required to wait next to Defendant’s fields before they can commence performing their work duties. Further, during the rainy season, Plaintiffs and the aggrieved employees are routinely required to wait approximately an hour (1) until the crops are dry or ready to harvest before Plaintiffs and the aggrieved employees can begin their scheduled

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shifts. This waiting time and work performed prior to the Plaintiffs' and the aggrieved employees' scheduled shift occurs daily and Plaintiffs and the aggrieved employees are not compensated for this wait time or work performed. These activities and time are compensable, but Defendant fails to pay Plaintiffs and the aggrieved employees for this time worked.

Defendant required Plaintiffs and the aggrieved employees to travel between fields once Plaintiffs and the aggrieved employees are done picking at one field. Plaintiffs and the aggrieved employees either use their own vehicle(s) or walk to travel to at least one different field approximately 2-3 times per week. The time spent by Plaintiffs and the aggrieved employees to travel between fields is approximately five (5) minutes and when walking between fields it takes approximately ten (10) minutes. Plaintiffs and the aggrieved employees are not compensated for this travel time, nor is Plaintiffs and the aggrieved employees reimbursed for use of their personal vehicle to perform required work.

With regard to post-shift work, Plaintiffs and the aggrieved employees are consistently required to spend approximately one (1) hour after their scheduled shift has ended, finishing a row of remaining crops for said shift and lining up to drop off the boxes once Plaintiffs and the aggrieved employees finished their work in the row. Instead of paying Plaintiffs and the aggrieved employees at the overtime rate for this time worked, Defendant pays Plaintiffs and the aggrieved employees on a piece rate basis. This time spent was performed after being "clocked out" and as such, Plaintiffs and the aggrieved employees are not properly compensated for this time worked even though this time is compensable.

As a result of Defendant failing to compensate Plaintiffs and the aggrieved employees for all hours worked and compensating them at the appropriate rate overtime pay for all hours worked, Plaintiffs and the aggrieved employees were paid less than the required legal minimum wages for all hours worked. Additionally, Plaintiffs and all aggrieved employees were required to purchase specialized tools necessary to perform their work duties and were not reimbursed for these expenses. Such specialized tools are expensive and the cost of these tools, without reimbursement, also results Plaintiffs and all aggrieved employees earning less than the required legal minimum wage for all hours worked. Labor Code §1194.2 provides that in any action under to recover wages because of the payment of a wage less than the minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Defendant fails to record the waiting time, including work performed off-the-clock, and failed to compensate Plaintiffs and the aggrieved employees for all hours worked.

In pertinent part, IWC Wage Orders 14, paragraph 7(A) provides that every employer shall keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period and total hours worked in the payroll period. Here, in each pay period during the relevant period, Defendant has violated IWC Wage Order 14 by failing to record accurate information with respect to, among other things, when Plaintiffs and the

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aggrieved employees have begun and ended each work shift and the total hours worked. Additionally, Defendant does not maintain accurate records of meal periods for Plaintiffs and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

Defendant also maintains a consistent policy of unlawfully deducting wages from Plaintiffs and all aggrieved employees in violation of Labor Code §221. Specifically, Defendant deducts any new tools that Defendant provides to Plaintiffs and the aggrieved employees from Plaintiffs' and the aggrieved employees' paychecks. By making these unauthorized deductions from Plaintiffs and all aggrieved employees' earned wages, Plaintiffs and all aggrieved employees were paid less than the applicable minimum wage required under California law.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hour of the shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was no provided, was not provided in full, or was not provided in a timely manner.

Defendant fails to apprise Plaintiffs and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs and the aggrieved employees compliant meal periods; and (2) failing to pay Plaintiffs and the aggrieved employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of failing to pay meal period premiums in compliance with California law.

Pursuant to Labor Code § 226.7 and Wage Order 14-2001, employers are required to provide employees with paid rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant fails to apprise Plaintiffs and the aggrieved employees of their rights associated with rest periods and failed to provide all required ten (10) minute rest periods. In addition, Plaintiffs and the aggrieved employees were not compensated with one (1) hour of wages for each compliant rest period not provided as required by Labor Code § 226.7. As discussed

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above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a consistent policy of failing to pay rest premiums in violation of Labor Code § 226.7.

Labor Code § 2802 provides that an 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 obeying the directions, believed them to be unlawful. During the relevant period, Plaintiffs and the aggrieved employees are entitled to reimbursement of all business-related expenses Plaintiffs and the aggrieved employees incurred throughout the duration of their employment. Specifically, as discussed above, Defendant deducts any new tools that it provides to Plaintiffs and the aggrieved employees from Plaintiffs' and the aggrieved employees' paychecks. Sometimes, instead of deducting these expenses from Plaintiffs' and the aggrieved employees' paychecks, Defendant requires Plaintiffs and the aggrieved employees to pay these expenses in cash to Defendant's foreman. Additionally, Defendant has failed to reimburse Plaintiffs and the aggrieved employees the cost of vehicles for business related purposes. As explained above, Defendant required Plaintiffs and the aggrieved employees to use their own vehicle to travel between fields in the middle of their shifts. Plaintiffs and the aggrieved employees were not reimbursed for their vehicle use, such as gas, for travel between Defendant's fields during the course of a work shift. By failing to provide Plaintiffs and the aggrieved employees with the necessary transportation and tools reimbursement, Defendant has burdened Plaintiffs and the aggrieved employees with the cost of using their own vehicles and purchasing their own tools to perform required work.

As a result of the claims alleged above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, and the name and address of the legal entity that is the employer, among other requirements.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiffs and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiffs are aggrieved employees within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiffs and all aggrieved employees.

Also, Defendant issued to Plaintiffs and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding

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number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiffs and the aggrieved employees did not include the hours worked at each hourly rate, including meal/rest period premiums.

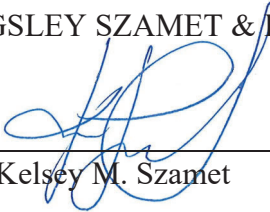
Labor Code § 203(a) provides: If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. The aggrieved employees, including Plaintiffs, no longer work for Defendant. Furthermore, Defendant's work is seasonal. This means that Plaintiffs and all aggrieved employees did not receive all wages owed when they were discharged, laid off, or quit each season. As such, Defendant has failed to pay Plaintiffs and the aggrieved employees all wages owed to them at the time they quit or are laid off or discharged, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Further, under Labor Code § 2699.3, Defendant, if it employed fewer than 100 employees in total during the relevant time period, may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, may submit to the LWDA a confidential proposal to cure one or more of the alleged violations, specifying which of the alleged violations it proposes to cure.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 221, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802, and IWC Wage Order-14 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: 

Kelsey M. Szamet

KMS/km

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
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