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VIA CERTIFIED U.S. MAIL – Return Receipt Requested

September 10, 2024

Labor and Workforce Development Agency
(via online submission)

Chooljian Bros. Packing CO., Inc.
Agent for Service: Michael H. Chooljian
3192 South Indianola Avenue,
Sanger, CA 93657

Richard A. Gonzales
3192 South Indianola Avenue,
Sanger, CA 93657

Re: Labor Code §§ 2699 and 2810.3 Notice by Aggrieved Employees Maria de Lourdes Moreno, Rigoberto Vargas Jr., and Rigoberto Vargas Sr.

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, et seq. (“PAGA”). Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against CHOOLJIAN BROS. PACKING CO., INC.(a California Corporation and RICHARD A. GONZALES (collectively, “DEFENDANTS”), and their agents, managers and supervisors (collectively “Defendants”), for violations of the California Labor Code described below. I am writing on behalf of Maria de Lourdes Moreno, Rigoberto Vargas Jr., and Rigoberto Vargas Sr., the aggrieved employees represented by this law firm (hereinafter “Aggrieved Plaintiffs”) who seek to assert a PAGA claim on behalf of the State



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of California and all other similarly situated current or former employees who have been employed by DEFENDANTS in California during the relevant time period. Specifically, this notice is given on behalf of the following category of aggrieved employees:

All non-exempt employees of CHOOLJIAN BROS. PACKING CO., INC. (a California Corporation and RICHARD A. GONZALES (unknown business entity) (collectively, “DEFENDANTS”) who performed work in California for DEFENDANTS.

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 the claims of the 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) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records of customers of the facilities that 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 nonpayment 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.

Further, pursuant to California Labor Code §§ 210, 558, 1197.1, and other provisions of the Labor Code, please consider this a notice to DEFENDANTS’ owners, supervisors, managers, agents, and all other persons acting on behalf of DEFENDANTS and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. As used herein, “DEFENDANTS” refers to all liable persons and entities, including owners, supervisors, managers, agents, and any other person acting on behalf of DEFENDANTS who “caused” the violations at issue.

RICHARD A. GONZALES is an employer and/or operates as a labor contractor who contracted with CHOOLJIAN BROS. PACKING CO., INC. and., to provide employees in Fresno County among other counties. In so doing, CHOOLJIAN BROS. PACKING CO., INC. directly



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and/or jointly employed Aggrieved Plaintiff and similarly situated aggrieved employees. Aggrieved Plaintiff worked for RICHARD A. GONZALES and/or CHOOLJIAN BROS. PACKING CO., INC providing seasonal agricultural services to land leased or owned by CHOOLJIAN BROS. PACKING CO., INC. Aggrieved Plaintiffs worked for DEFENDANTS since on or about 2023 until 2024. In the alternative, Richard is an employee of Chooljian.

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 compliance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of DEFENDANTS' violations is a policy of: systematically failing to pay all wages earned, systematically failing to pay overtime wages for all hours worked by employees in excess of eight hours in a work day and/or 40 hours in a workweek; 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 failing to provide accurate wage statements and systematically failing to pay all wages owed upon separation from employment. These violations are a uniform policy applied to all non-exempt employees who performed work for DEFENDANTS.

The facts and theories giving rise to these violations include, without limitation the following:

- DEFENDANTS failed to record and compensate piece-rate employees nonproductive time, failed to properly calculate and compensate for rest and recovery periods in violation of Cal. Labor Code sections 226.2, 226, and 1197.1.
- DEFENDANTS failed to authorize and permit Aggrieved Plaintiff and other workers to take timely full and complete off-duty meal and/or rest breaks and or automatically deducted meal and rest breaks without a corresponding record of when the meal or rest break was taken in violation of 226.7.
- DEFENDANTS subjected employees to employer control, or knowingly suffering or permitting them to work without compensating for all hours worked at Minimum Wage in violation of Labor Code section 1197, 1197.1 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.
- DEFENDANTS paid Aggrieved Plaintiffs cash and did not provide accurate wage statements that reflect actual hours worked and amounts earned as employees' wage



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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, 226.7, 1174, and applicable Wage Orders.

- As a result of the foregoing violations, DEFENDANTS failed to pay all wages due and owed, and therefore failed to issue accurate itemized wage statements, as such statements failed to reflect wages earned for overtime and minimum wages, as well as premium wages for meal and rest break violations.
- In addition, as a result of the wage payment violations described above, DEFENDANTS failed to timely pay all wages upon termination to those employees who separated from DEFENDANTS' employment.
- Chooljian Bros. Packing CO., Inc. and Richard A. Gonzales failed to reimburse employees for equipment necessary for work in violation of Labor Code § 2802.

Liability under the PAGA may be based on a wide variety of Labor Code predicate provisions, including but not limited to sections 98.6, 98.7, 201, 202, 203, 204, 210, 216, 218, 218.6, 223, 225, 226, 226.2, 226.7, 510, 512, 2810.5, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, and 2802, 2810.3. 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 of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code. If no action is taken within 65 days, we will assume that we may pursue this action under the theories described above against described entities above and their managers, agents, owners and other liable persons and entities (pursuant to sections 210, 558 and 1197.1 (and other provisions)). 2699 et seq.

PLEASE TAKE NOTICE THAT IS ALSO statutory notice to CHOOLJIAN BROS. PACKING CO., INC., 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



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labor contractor. Accordingly, pursuant to Labor Code section 2810.3(b) CHOOLJIAN BROS. PACKING CO., INC. is a client employer who shares with RICHARD A. GONZALES all civil legal responsibility and civil liability for all workers supplied by RICHARD A. GONZALES to CHOOLJIAN BROS. PACKING CO., INC. and for the payment of wages.

As defined in Labor Code section 2810.3(a)(4), “wages”:

- a. Has the same meaning provided by section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

A client employer cannot shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by a labor contractor. (See Cal. Labor Code 2810.3(c)) As such, CHOOLJIAN BROS. PACKING CO., INC., is liable for RICHARD A. GONZALES’s wage and hour violations, regardless of the extent to which RICHARD A. GONZALES may have created such violations. The violations for which CHOOLJIAN BROS. PACKING CO., INC., shares liability with RICHARD A. GONZALES are noted in this letter above.

Aggrieved Plaintiffs Maria de Lourdes Moreno, Rigoberto Vargas Jr., and Rigoberto Vargas Sr. may be contacted through our office: Mallison & Martinez Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

Sincerely,

Stan S. Mallison, Esq.