

PERSONAL AND CONFIDENTIAL
(California Evidence Code §§ 1152, 1154)

September 8, 2021

Sent via Certified Mail:

Agro Labor Services, Inc.

Attn: ANTONIO PACHECO JR, Agent for Service of Process
183 S CENTRAL VALLEY HWY
SHAFTER CA 93265

Sent via Certified Mail:

Durst Organic Growers, Inc.

Attn: JAMES M. DURST, Agent for Service of Process
26100 COUNTY RD. 16
ESPARTO CA 95627

Sent via Certified Mail:

Grimmway Enterprises, Inc.

Attn: CT Corp. System (C0168406), Agent for Service of Process
330 N Brand Blvd.
Glendale, CA 91203

Sent via Certified Mail and Electronically Filed

Department of Industrial Relations

Accounting Unit

455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: **Rita Imelda Aguilar Figueroa v. Agro Labor Services, Inc., et al.**

**NOTICE OF LABOR CODE VIOLATIONS AND DEMAND PURSUANT TO
CALIFORNIA LABOR CODE SECTION 2699 ET. SEQ. AS TO THE
INDIVIDUAL AND CLASS MEMBERS**

To Whom This May Concern:

PLEASE TAKE NOTICE that pursuant to the procedures specified in California Labor Code Section 2699.3, et seq., Rita Imelda Aguilar Figueroa, and those similarly situated employees (hereinafter "EMPLOYEES") claim that Agro Labor Services, Inc., Durst Organic Growers,

Inc., Grimmway Enterprises, Inc., James M. Durst, and Antonio Pacheco Jr. (hereafter "EMPLOYER" or "YOU" and/or referred to with "YOUR" and "YOURS") violated California Labor Code Sections as follows, but not limited thereto: 201-203, 226, 226.2, 204, 226.3, 226.7, 403, 404, 510, 512, 558, 1102.5, 1174, 1197, 1198.

With regard to those Labor Code sections for which no Private Attorney General Act (hereinafter "PAGA") notice is required, we provide this correspondence in a further effort to resolve this matter informally without the time and expense of further court proceedings.

EMPLOYEES will seek these penalties on their own behalf and on behalf of YOUR other current and former EMPLOYEES. See *Arias v. Superior Court* (2009) 209 P.3d 923, 95 Cal. Rptr. 3d 588 (no class certification required for representative action for civil penalties).

The facts and theories which support the violations of these Labor Code provisions are as follows:

FACTS:

The facts of the above named matter include, but are not limited to, the facts named or identified or referenced herein. As discovery is ongoing, Rita Imelda Aguilar Figueroa, and the putative class members reserve the right to present and/or reference further evidence as it is discovered.

Pursuant to the job duties and policies YOU set forth for Non- Exempt Employees in California, Rita Imelda Aguilar Figueroa, and the putative class members (hereinafter collectively referred to as "EMPLOYEES" and "COMPANY EMPLOYEES") worked overtime without pay or proper pay, and worked off-the-clock time when asked to perform various duties in and outside their job description.

Additionally, Rita Imelda Aguilar Figueroa and other COMPANY EMPLOYEES did not receive pay for preparing to work and/or cleaning up after their work shifts were complete. It was YOUR practice to have EMPLOYEE perform tasks inside and outside of their normal duties before and after their scheduled shifts, including, cleaning their uniforms and work areas, dressing for work, and other services which were inside and outside their job description for which they were either not on the clock or not compensated for. Therefore, these EMPLOYEES have accumulated countless unpaid wages.

Additionally, YOU failed to pay EMPLOYEE for off the clock time even though YOU have them do work related duties and other things with regard to their work or related activities. Rita Imelda Aguilar Figueroa, and other EMPLOYEES work for hours well above and beyond those hours for which they are actually compensated.

Moreover, YOUR failure to properly keep records of Rita Imelda Aguilar Figueroa, and other EMPLOYEE'S actual hours worked led directly to YOU failing to keep proper records of Rita Imelda Aguilar Figueroa, and other EMPLOYEE'S records, as required by law.

EMPLOYEES at YOUR work sites are also routinely not provided with ten (10) minute breaks, and if they are, these ten minute breaks are routinely interrupted and/or cut short to work, or by

YOU requiring them to be on call to perform YOUR work on demand while on breaks. Additionally, being allowed to use the restroom does not equate to a ten (10) minute break, which unfortunately is also not permitted by YOU.

Rita Imelda Aguilar Figueroa, and EMPLOYEES were also forced to either work through their thirty (30) minute meal periods, and/or YOU interrupted their meal periods. Although we understand that some EMPLOYEES were permitted to eat lunch, requiring them to be on call to perform YOUR work on demand while on breaks or interrupting EMPLOYEES meal breaks to perform YOUR work, is not a legal uninterrupted meal break. Thus, Rita Imelda Aguilar Figueroa, and YOUR other EMPLOYEES are either working straight through their rest and meal periods, or are not provided with full uninterrupted breaks.

Furthermore, YOU have failed to pay Rita Imelda Aguilar Figueroa and EMPLOYEES some and/or all overtime compensation for work they performed above and beyond eight (8) hours per day and/or forty (40) hours per week. Many, if not all, of the facts described above occur throughout Rita Imelda Aguilar Figueroa's employment with YOU.

LEGAL THEORIES:

These legal theories are meant to foster communications in an effort to reach an amenable resolution to this legal matter; they are not intended to be a fully exhaustive list of the Labor violations attributed to YOU and YOUR company.

Labor Code Sections 226, 226.2 and 226.3:

EMPLOYER failed to furnish, at the time of each payment of wages, to Rita Imelda Aguilar Figueroa, and each EMPLOYEE, an accurate itemized wage statement for all hours worked by the EMPLOYEE and to do all things required by this statute. YOUR policy and practice is to refuse to furnish to each of YOUR EMPLOYEE, at the time of each payment of wages, an accurate itemized wage statement for all hours worked by the EMPLOYEE, up to and exceeding, 40 hours per week.

YOUR policy and practice violates Labor Code Section 226. Labor Code Section 226 requires the employer to provide a statement with each payment of wages that includes: 1) Gross earnings, 2) Total hours worked, 3) Number of piece rate units earned, 4) Deductions, 5) Net wages, 6) Dates paid for, 7) Name of employee and last four digits of employee's Social Security number, 8) Name and address of the legal entity of the employer, and 9) a list of all hourly rates worked by the employee, up to and exceeding 40 hours per week, in the corresponding period.

YOUR policy and practice also violates Labor Code Section 226.2 as it did not comply with the requirements therein.

YOUR policy and practice of failing to furnish to each EMPLOYEE an accurate itemized wage statement for all hours worked by the EMPLOYEE, according to law, places you in violation of Labor Code Section 226. Further, Labor Code Section 226.3 states that any 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 citation 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 records required in subdivision (a) of Section 226.

YOU are in violation of Labor Code Section 226; therefore, Rita Imelda Aguilar Figueroa, and YOUR EMPLOYEES will be pursuing penalties pursuant to Labor Code Section 226.3.

Labor Code Section 226.7 and 512:

YOUR policies and practices are to refuse to allow each EMPLOYEE meal and/or rest periods as detailed above. Labor Code Section 512 requires the employer to provide an uninterrupted thirty (30) minute meal break to EMPLOYEES who work more than five (5) hours per day and a second (2ND) thirty (30) minute meal break to those working ten (10) or more hours per day. YOU regularly mandated that YOUR EMPLOYEE work through meal breaks. Therefore, YOUR policies and practices violate Labor Code Section 512.

Similarly, Labor Code Section 512 provide that an employer must provide a ten (10) minute paid rest break for every four (4) hours worked or fraction thereof. It is YOUR policy and practice to fail to provide EMPLOYEE with the required uninterrupted ten (10) minute rest period per four (4) hours worked or major fraction thereof.

YOUR policies and practices of refusing to allow each EMPLOYEE to take meal and/or rest periods, according to law, places you in violation of these Labor Code and California Code Regulation provisions. Labor Code 226.7 states in pertinent part that:

If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Thus, EMPLOYER owes meal period and rest period premiums to Rita Imelda Aguilar Figueroa, and its EMPLOYEES. As such, we intend to file civil claims for violations of Labor Code Sections 226.7.

Labor Code Sections 510, 1102.5, 1194, 1194.2, 1198 and 558:

EMPLOYER violated Labor Code Section 510 by not compensating Rita Imelda Aguilar Figueroa, and its EMPLOYEES at the premium overtime rate for overtime hours Rita Imelda Aguilar Figueroa, and its EMPLOYEES worked. EMPLOYER is thus subject to a civil penalty as set forth under this Labor Code Section 558.

YOUR policies and practices are to refuse to compensate each EMPLOYEE at the premium overtime rate for overtime hours worked by EMPLOYEES. YOUR policies and practices violate Labor Code Sections 510 and 1198. Labor Code Section 1198 prohibits employers from having EMPLOYEE work beyond the hours fixed by the Commission or under conditions prohibited by the Commission. Labor Code Section 510 sets forth the order of the Commission and thus requires the employer to compensate EMPLOYEE at the rate of no less than one and one-half (1½) times the regular rate of pay for an employee who works in excess of eight (8) hours in one (1) workday, works in excess of forty (40) hours in any one (1) workweek, or works on the seventh (7th) day of the workweek.

Labor Code Section 510 further requires that an employer compensate an employee at no less than twice the regular rate of pay for work in excess of ten (10) hours in any work day and for work on the seventh (7th) day of the work week in excess of eight (8) hours. YOUR policies and practices of refusing to compensate each EMPLOYEE at the premium overtime rate, in accordance with the law, places you in violation of Labor Code Section 510.

Labor Code Section 1194 states in pertinent part:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Furthermore, Labor Code Section 558 states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

Furthermore, Labor Code Section 1102.5 States:

(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to

investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

We therefore intend to file civil claims for violations of Labor Code Sections 510, 1102.5, 1194, 1194.2, 1198 and 558 for penalties, attorneys' fees, interest, and costs of suit.

Labor Code Sections 1174 and 1174.5:

EMPLOYER failed to maintain records required by Labor Code Section 1174. Labor Code Section 1174 requires that every person employing labor in this state shall keep in a central location, whereby it shall be accessible to the Commissioner, accurate and complete records of the following: a list of employee names and addresses and of minors under subsection (c), employment records, payroll records showing the hours worked daily by and the wages paid pursuant to subsection (d), and the number of piece rate units earned by and any applicable piece rate paid to, EMPLOYEE employed at the respective plants or establishments.

According to YOUR policies and practices, YOU failed to maintain Rita Imelda Aguilar Figueroa, and EMPLOYEE'S records as required by Labor Code Section 1174. Pursuant to Labor Code Section 1174.5, YOU are subject to penalties for failure to maintain EMPLOYEES contact information and/or accurate and complete payroll records. Therefore, EMPLOYEES shall pursue said penalties for failure to comply with Labor Code Section 1174.

Please be advised that, upon expiration of the time periods set forth in California Labor Code Section 2699.3, Rita Imelda Aguilar Figueroa, on behalf of herself and other similarly situated EMPLOYEES, will proceed to file a civil complaint including causes of action for civil penalties as provided under PAGA.

Please do not hesitate to contact the undersigned at the information above if you require any further information with respect to these claims. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shoham J. Solouki', with a stylized flourish at the end.

Shoham J. Solouki, Esq.,

Attorneys for Rita Imelda Aguilar Figueroa

cc: Client