



STANSBURY BROWN

LAW

November 11, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Bruno Rosas v. Pacific Farm Management, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Bruno Rosas in claims arising from his employment with Pacific Farm Management, Inc. and DOES 1 through 100 (collectively "PFM") while performing work for DCB Farming, LLC, Lasgoity IC-Disc, Inc., Rosemary Lasgoity dba J.M. Lasgoity Ranches, Brandi Honey & Farming, LLC, & Harris Farms, L.P. (collectively "THE FARMS"). Mr. Rosas is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq.*, due to PFM's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

PFM is in the agricultural business and employees seasonal farm labor employees to harvest agricultural goods. Mr. Rosas commenced employment with PFM as a non-exempt farm labor employee on a seasonal basis from approximately 2016 until approximately December 2020 as a general agricultural laborer. Mr. Rosas' job duties included pruning vineyards, stacking brush, and maintaining almond trees, amongst other general farm labor tasks.

During Mr. Rosas' employment with PFM he performed work for THE FARMS. As such, THE FARMS are jointly liable with PFM for all civil legal responsibility and civil liability for the payment of wages, including sums payable to an employee or the state of California based upon any failure to pay wages, pursuant to Labor Code §2810.3.¹ Neither PFM, nor THE FARMS boarded or lodged Mr. Rosas during his employment.

For purposes of this letter, the "aggrieved employees" whom Mr. Rosas seeks to represent are the other aggrieved employees of PFM who performed work for THE FARMS in California at any time during the one year preceding the date of this letter through the present.

¹ Accordingly, based in part on Labor Code § 2810.3 and common law theories of joint employer liability, all allegations in this letter regarding unpaid wages alleged against PFM are also alleged against THE FARMS.

During Mr. Rosas' employment with PFM, Mr. Rosas and other aggrieved employees were compensated on both an hourly and on a piece-rate basis, depending on the nature of the work they were performing on a given shift. When he was paid piece-rate, Mr. Rosas was paid a set rate per vine pruned. For all other tasks, Mr. Rosas was compensated at a rate of \$13.00 per hour. PFM's forepersons allegedly recorded the hours Mr. Rosas worked; however, Mr. Rosas was only paid an hourly minimum wage if his earned piece-rate compensation did not exceed his minimum wages earned in a pay period. Furthermore, PFM's forepersons were in sole possession of the timesheets prepared for Mr. Rosas and other aggrieved employees and at no time were Mr. Rosas and other aggrieved employees made to confirm or sign off on the number of hours they worked in a given shift.

Mr. Rosas and other aggrieved employees and other aggrieved employees were not authorized to take all legally required rest periods regardless of whether they were working on a piece-rate or hourly basis. Despite PFM's failure to authorize and permit Mr. Rosas and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, PFM never provided Mr. Rosas and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, PFM maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Rosas and other aggrieved employees were not authorized to take lawful rest periods.

PFM has failed to accurately record and compensate Mr. Rosas and other aggrieved employees who are compensated on a piece-rate basis for non-productive time. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws). Mr. Rosas and other aggrieved employees were required to perform work duties and activities that were not directly compensated on a piece-rate basis, such as changing to different fields/rows/blocks, sharpening pruning shears, waiting for weather conditions to permit work to commence, bathroom and water breaks, waiting in lines, walking from the fields to attend meetings, and/or other mandatory duties that were not directly compensated on a piece-rate basis. The moving between rows and blocks alone was an at least daily occurrence, and would take anywhere from 15-45 minutes each day, all of which should have been compensated as non-productive time. While some of Mr. Rosas's wage statements do contain a "Rest and Recovery" item, the amount of time recorded under break is only enough to compensate Mr. Rosas for rest periods. Therefore, the "Rest and Recovery" item does not compensate Mr. Rosas for other non-productive time. Furthermore, Mr. Rosas alleges that the "Rest and Recovery" item did not accurately compensate he and other aggrieved employees for all required paid rest and recovery hours. Accordingly, Mr. Rosas alleges that PFM have not accurately tracked and compensated employees' non-productive time and rest and recovery time in compliance with Labor Code § 226.2.

PFM has also failed to record employees' total hours worked each workday accurately. For example, PFM's office manager would maintain timecards for all aggrieved employees, but on information and belief, such timecards did not accurately reflect the times that employees began and ended each workday. For example, although Mr. Rosas would typically work from 7:00 a.m. to 4:30 p.m. every workday (9.5 hours), his time cards would reflect that he only worked either 6.66 or 7.66 hours. This practice of underreporting the amount of hours worked was most prevalent on those occasions when Mr. Rosas and other aggrieved employees performed piece-rate work, but also applied to when they worked on an hourly basis. This discrepancy in hours was presumably because Mr. Rosas's wage statements were based on time records that were prepared by PFM's forepersons, which inaccurately listed he only worked either 6.66 hour or 7.66 hours per workday. As a result, PFM failed to ensure that Mr. Rosas and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Rosas and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14. Furthermore, Mr. Rosas and other aggrieved employees, as explained above, routinely worked in excess of 9 hours a day and/or 50 hours a week thus entitling them to overtime pay. However they rarely, if ever, received the requisite overtime compensation that they were owed for these hours. Finally, PFM required Mr. Rosas and other aggrieved employees to travel to the "La Estrella Mercado" after work on paydays to receive their checks, a market owned by one of PFM's agents, and were at no point ever compensated for this off-the-clock time. As a result, PFM failed to ensure that Mr. Rosas and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Rosas and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

PFM also failed to provide Mr. Rosas and other aggrieved employees with a duty-free first meal period when they worked shifts in excess of 6.0 hours. Instead, Mr. Rosas and other aggrieved employees would be required to eat while continuing to work, usually while traveling between fields and blocks, so as to commence work at a new site at the conclusion of the meal period. Furthermore, upon information and belief, PFM's forepersons did not accurately record the beginning and ending of each meal period on the timecards. Despite PFM's failure to provide Mr. Rosas and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, PFM never provided Mr. Rosas and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

PFM failed to adequately reimburse Mr. Rosas and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Rosas incur expenses related to gas and mileage when driving his own personal vehicle on the fields without reimbursement. Additionally, as a necessary precondition of his job, Mr. Rosas was required to purchase his own pruning shears, pruning shear sharpeners, and gloves all without reimbursement.

As a result of PFM's failure to accurately compensate Mr. Rosas and other aggrieved employees for non-productive time, failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, PFM has maintained inaccurate payroll records, failed to timely pay all wages owed to separating employees at the time of their separation, and issued inaccurate wage statements. Furthermore, for at least a portion of the time period in question, PFM issued facially inaccurate wage statements by failing to include the legal address of the employer entity in violation of Labor Code 226(a)(8). For example, Mr. Rosas's check numbered 438143 lists the address of PFM as both "1200 Maple St., #108, Madera, CA 93637" & "1625 Howard Road, Ste. 113, Madera, CA 93637", while their legal address registered with the California Secretary of State (absent from the wage statement) is "13 Pointe West, Madera, CA 93637."

As described above, PFM committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"):

Minimum Wage Violations

Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. As alleged above, PFM failed to conform its pay practices to the requirements of the law by failing to pay Mr. Rosas and other aggrieved employees for all hours worked, including, but not limited to, all hours they were subject to the control of PFM and/or suffered or permitted to work under the California Labor Code and Wage Order 14. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Rosas and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

PFM was required to pay Mr. Rosas and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 14, § 3. Wage Order 14, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, PFM caused Mr. Rosas and other aggrieved employees to work overtime hours but did not compensate Mr. Rosas, aggrieved employees, or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, PFM failed to provide Mr. Rosas and other aggrieved employees with all required and compliant meal periods due to PFM's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. *See* Labor Code §§ 226.7 and 512; Wage Order 14, § 11. As a result, Mr. Rosas and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] 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 workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, PFM also failed to authorize and permit Mr. Rosas and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 14, § 12. As a result, Mr. Rosas and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("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 workday that the meal or rest period is not provided.")

Failure to Reimburse Necessary Business Expense

PFM was subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees 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 obedience to the directions of the employer." PFM was subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." As alleged herein, due to PFM's unlawful reimbursement practices, PFM failed to indemnify Mr. Rosas and other aggrieved employees for all necessary business expenses incurred, including, among other things, for the purchase and maintenance of scissors and gloves necessary for the harvesting of citrus fruit.

Wage Statement Violations

PFM was required to furnish Mr. Rosas and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages

earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 14, § 7. As a result of PFM's failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, PFM maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Rosas and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. PFM failed to timely pay Mr. Rosas and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, PFM's failure to pay all final wages due to Mr. Rosas and other aggrieved employees was willful and, consequently, entitles Mr. Rosas and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day PFM failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

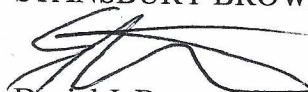
As an "aggrieved employee," Mr. Rosas will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Rosas' own investigation, and on information and belief, PFM and THE FARMS committed and continue to commit the following Labor Code violations:

- a. PFM and THE FARMS violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Rosas and other aggrieved employees the statutory minimum wage for all hours worked;
- b. PFM and THE FARMS violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Rosas and other aggrieved employees all overtime compensation earned;
- c. PFM and THE FARMS violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Rosas and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. PFM and THE FARMS violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Rosas and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Rosas and other aggrieved employees at their respective regular rates of compensation;

- e. PFM and THE FARMS violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Rosas and other aggrieved employees for all work-related expenses incurred;
- f. PFM violated Labor Code § 226 by failing to furnish Mr. Rosas and other aggrieved employees with accurate and compliant itemized wage statements;
- g. PFM and THE FARMS violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Rosas and other aggrieved employees;
- h. PFM violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Rosas and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us, PFM and THE FARMS if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW



Daniel J. Brown

cc: Pacific Farm Management, Inc. (via certified mail)
DCB Farming, LLC (via certified mail)
Lasgoity IC-Disc, Inc. (via certified mail)
Rosemary Lasgoity dba J.M. Lasgoity Ranches (via certified mail)
Brandi Honey & Farming, LLC (via certified mail)
Harris Farms, L.P. (via certified mail)