



STANSBURY BROWN

LAW PC

January 18, 2023

VIA LWDA WEBSITE

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

Re: *Adalberto Diaz v. Double J Farm Labor, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Adalberto Diaz in claims arising from his employment with Double J Farm Labor, Inc.; Clarence H. Hill dba Hillview Groves; and DOES 1 through 100 (collectively "DJF"). Mr. Diaz is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq.*, due to DJF'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.

DJF is in the agricultural business and employ seasonal farm labor employees to harvest agricultural goods. Mr. Diaz worked for DJF seasonally, most recently until approximately February 15, 2022 when he suffered a work-related injury and ceased his employment. Mr. Diaz was tasked with pruning and cutting trees at the various farms that DJF contracted Mr. Diaz and other aggrieved employees to perform work at. Mr. Diaz generally worked Monday through Saturday from around 6:30 a.m. until around 1:00-2:00 p.m. However, as discussed below, Mr. Diaz worked considerably more hours than he was credited for by DJF, who did not properly track the hours worked by Mr. Diaz and other aggrieved employees whatsoever in favor of paying them strictly based on their piece rate production.

During Mr. Diaz's employment with DJF he performed work for Clarence H. Hill dba Hillview Groves ("HG"). As such, HG is jointly liable with DJF 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 DJF nor HG boarded or lodged Mr. Diaz during his employment.

For purposes of this letter, the "aggrieved employees" whom Mr. Diaz seeks to represent are the other non-exempt employees of DJF who performed work for HG in

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 DJF are also alleged against HG.

California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Mr. Diaz's employment with DJF, Mr. Diaz and other aggrieved employees were not paid for all hours worked as their supervisors would not accurately keep track of their actual hours worked. Rather, Mr. Diaz and other aggrieved employees were paid on a piece-rate basis of \$8.00 per tree they were tasked with cutting and/or pruning. Mr. Diaz and other aggrieved employees were allegedly paid an hourly minimum wage if their earned piece-rate compensation did not exceed their minimum wages earned in a pay period. However, on information and belief, Mr. Diaz alleges that DJF did not employ accurate timekeeping practices when he performed piece work and at no point was Mr. Diaz made to confirm or sign off on his hours worked. Instead, DJF would for the most part simply write in that he worked the same exact number of hours each day on his wage statements (6.0 hours per shift) despite the fact that Mr. Diaz generally worked more hours than scheduled.

Furthermore Mr. Diaz and other aggrieved employees worked overtime hours, based on the requirements of Wage Order 14, per workweek but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. On those occasions where Mr. Diaz worked overtime hours during the week, Mr. Diaz was rarely, if ever, compensated at the requisite overtime rate of pay in favor of paying him only for piece rate work. For example, Mr. Diaz frequently worked on Saturdays which would have entitled him to statutory overtime compensation as he would exceed the hourly overtime thresholds as set forth in Wage Order 14. However, Mr. Diaz did not receive overtime pay despite this reality. Upon information and belief, DJF systemically failed to pay overtime compensation due to Mr. Diaz and other aggrieved employees regardless of whether they were performing work on a piece rate or hourly basis. DJF also failed to provide "Reporting Time Pay" to Mr. Diaz and other aggrieved employees on those occasions where they were required to report to DJF's worksite but not able to perform work due to weather conditions or otherwise. Despite maintaining a policy that required its employees to report to the worksite every day regardless of weather conditions, DJF failed to provide any sort of compensation to Mr. Diaz and the other aggrieved employees on those occasions where they reported to the worksite but was unable to perform any work in violation of the "Reporting Time Pay" requirements as set forth in Wage Order 14 § 5. Mr. Diaz never formally clocked in or clocked out during his shifts and was never provided any sort of timecard reflecting the hours he worked. As a result, DJF failed to ensure that Mr. Diaz and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Diaz and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Mr. Diaz 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. Mr. Diaz does not recall ever receiving a rest period throughout his employment with DJF. Instead, he would be made to work generally throughout the entirety of his

shifts without interruption. Further, on those occasions where Mr. Diaz and other aggrieved employees performed piece work for DJF, DJF routinely failed to pay the correct regular rate for rest and recovery periods. For example, despite working approximately 6.5-8 hours per shift, Mr. Diaz would only be compensated for 1 hour of rest and recovery time each week that he worked. For example, on Mr. Diaz's wage statement numbered 18258 for the pay period between 2/06/2022 and 2/12/2022, Mr. Diaz's records (which as explained above are under representative of his actual hours worked) indicate that he worked over six hours on six shifts (after factoring in non-productive time), but was only compensated for one hour of paid rest and recovery time for the entire pay period. Accordingly, even if Mr. Diaz's records were accurate, DJF still failed to provide compensation for all rest and recovery periods as Mr. Diaz should have been entitled to at least two paid rest and recovery periods per shift for at least ten minutes per rest and recovery period (i.e. 20 minutes per shift) meaning that at a minimum Mr. Diaz should have been compensated for 2.0 hours per week for paid rest and recovery time (20 mins/day*6 shifts per week). Despite this reality, Mr. Diaz and other aggrieved employees were only compensated 1.0 hours of rest and recovery time per week, and often even less than that. Additionally, the rate at which these rest and recovery periods was paid at was often incorrect in a manner that served to undercompensate Mr. Diaz and other aggrieved piece rate employees for statutory rest and recovery time. As such, DJF neglected to pay Mr. Diaz and other aggrieved employees for rest and recovery periods despite their entitlement to such pay. Accordingly, Mr. Diaz and other aggrieved employees were systematically denied paid rest period compensation every shift worked that they were duly and legally entitled to. Despite DJF's failure to authorize and permit Mr. Diaz and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, DJF never provided Mr. Diaz 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, DJF maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Diaz and other aggrieved employees were not authorized to take lawful rest periods.

DJF has failed to accurately record and compensate Mr. Diaz 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. Diaz and other aggrieved employees were required to perform work duties and activities that were not directly compensated on a piece-rate basis such as retrieving ladders at the beginning of their shifts from DJF trucks and returning them to DJF trucks at the end of their shifts. Mr. Diaz estimates that each trip to and from DJF trucks to retrieve and return the ladders would take anywhere between 5-10 minutes, all time that was wholly uncompensated by DJF. Additionally, Mr. Diaz was required to utilize his personal vehicle to travel between different fields to perform work throughout his shift, all time that DJF failed to compensate he and other aggrieved employees for. Despite this non-productive time being worked on a daily basis, Mr. Diaz and other aggrieved employees were vastly

undercompensated for non-productive time, if they were compensated at all. DJF's wage statements issued to Mr. Diaz do not contain any item or code indicating that they pay any non-productive time. Additionally, employees were not compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that were not directly compensated on a piece-rate basis. Mr. Diaz alleges that all this time constitutes unproductive worktime which must be compensated under California law. Accordingly, Mr. Diaz estimates that he and other aggrieved employees worked at least an additional 1-3 hours per week of non-productive time that was uncompensated. As such, Mr. Diaz alleges that DJF have not accurately tracked and compensated employees' non-productive time in compliance with Labor Code § 226.2.

DJF also did not provide Mr. Diaz and other aggrieved employees with a legally complaint first meal period when they worked shifts in excess of 6.0 hours. Mr. Diaz and other aggrieved employees rarely, if ever, were entitled to exercise the use of a thirty-minute uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather, Mr. Diaz and other aggrieved employees would generally work through their shifts outside of the occasional 15 minute break that Mr. Diaz and other aggrieved employees would be permitted to exercise for the purpose of eating lunch before immediately returning back to work. Mr. Diaz does not recall ever permitted more than 15-minutes to exercise the use of a meal period. Mr. Diaz and other aggrieved employees were not only unable to exercise the use of compliant meal periods, they were unaware of their right to do so. Mr. Diaz and the other aggrieved employees were not informed by DJF of their legal right to take duty-free uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to Labor Code Section 512. DJF were not only aware of, but actively encouraged this practice. Upon information and belief, DJF did not accurately record meal periods in any manner. Despite DJF's failure to provide Mr. Diaz and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, DJF never provided Mr. Diaz 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.

DJF failed to adequately reimburse Mr. Diaz and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Diaz to purchase his own gasoline powered saw, gasoline, oil, pruning shears, gloves, and safety glasses. Furthermore, Mr. Diaz was required to utilize his personal vehicle to travel between fields in the performance of his work duties and was not ever provided any reimbursement for its necessary use.

DJF failed to meet its obligations to provide paid sick leave to Mr. Diaz and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Mr. Diaz and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a "sick day" in violation of

Labor Code § 245.5(b).

As a result of DJF's failure to accurately compensate Mr. Diaz 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, DJF have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, failing to timely pay wages to seasonal employees at the end of the season and timely pay separating employees at the time of their separation, and issued inaccurate wage statements.

Furthermore, DJF violated Labor Code § 204 by failing to pay Mr. Diaz and other aggrieved employees all wages earned at least twice during each calendar month.

Additionally, DJF is a farm labor contractor subject to the requirements of Labor Code § 205, which requires that employees be paid weekly, on a business day designated in advance, for all wages earned up to and including the fourth day before the scheduled payday. However, DJF pay their employees on a delay of five days or more, in violation of the "fourth day" requirement found in Labor Code § 205.

Further, at the end of each season, employees were laid off (i.e., terminated), but were not provided their paycheck until the next regular scheduled pay day, in violation of Labor Code § 201 ("(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.").

Finally, DJF failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Diaz and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Diaz and other aggrieved employees, DJF failed to do so, in violation of Labor Code § 2810.5.

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

Minimum Wage Violations

DJF was required to pay Mr. Diaz and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 14 § 4. As alleged above, DJF maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Diaz and other aggrieved employee whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Diaz and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

DJF was required to pay Mr. Diaz 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, DJF caused Mr. Diaz and other aggrieved employees to work overtime hours but did not compensate Mr. Diaz and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, DJF failed to provide Mr. Diaz and other aggrieved employees with all required and compliant meal periods due to DJF'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. Diaz 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, DJF also failed to authorize and permit Mr. Diaz 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. Diaz 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

DJF 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.” DJF 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 DJF's unlawful reimbursement practices, DJF failed to indemnify Mr. Diaz and other aggrieved employees for all necessary business expenses incurred, including, among other things, gasoline powered saws, gasoline, oil, pruning shears, gloves, and safety glasses. Furthermore, Mr. Diaz and other aggrieved employees were required to utilize their personal vehicles in the performance of their work duties and were not ever provided any reimbursement for their necessary use.

Wage Statement Violations

DJF was required to furnish Mr. Diaz 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 DJF'S failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, DJF maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Diaz 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. DJF failed to timely pay Mr. Diaz 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, DJF's failure to pay all final wages due to Mr. Diaz and other aggrieved employees was willful and, consequently, entitles Mr. Diaz and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day DJF failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

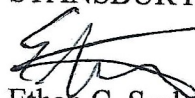
As an “aggrieved employee,” Mr. Diaz will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Diaz’s own investigation, and on information and belief, DJF and HG committed and continue to commit the following Labor Code violations:

- a. DJF and HG violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Diaz and other aggrieved employees the statutory minimum wage for all hours worked;
- b. DJF and HG violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Diaz and other aggrieved employees all overtime compensation earned;
- c. DJF and HG 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. Diaz and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. DJF and HG violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Diaz and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Diaz and other aggrieved employees at their respective regular rates of compensation;
- e. DJF and HG violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Diaz and other aggrieved employees for all work-related expenses incurred;
- f. DJF violated Labor Code § 226 by failing to furnish Mr. Diaz and other aggrieved employees with accurate and compliant itemized wage statements;
- g. DJF and HG violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Diaz and other aggrieved employees;
- h. DJF violated Labor Code § 204 by failing to pay Mr. Diaz and other aggrieved employees all wages earned at least twice during each calendar month;
- i. DJF and HG violated Labor Code § 205 by failing to pay Mr. Diaz and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- j. DJF violated Labor Code § 245.5 by failing to permit and authorize Mr. Diaz and other aggrieved employees to exercise the use of their accrued paid sick leave days;

- k. DJF violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Diaz and other aggrieved employees; and
- l. DJF violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Diaz and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us, DJF and HG 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, PC



Ethan C. Surls

cc: Double J Farm Labor, Inc. (via certified mail)
cc: Clarence H. Hill dba Hillview Groves (via certified mail)