STANSBURY BROWN
LAW PC

August 19, 2025

<u>VIA LWDA WEBSITE</u>

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

Re: *Rosario Damar Zepeda Gallardo v. Skittone Almond Sheller, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Rosario Damar Zepeda Gallardo ("Mr. Gallardo") in claims for Labor Code violations arising from his employment with Skittone Almond Sheller, Inc. and DOES 1 through 100 ("Employer"). Mr. Gallardo is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to Employer'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.

For purposes of this letter, the "aggrieved employees" whom Mr. Gallardo seeks to represent are the other non-exempt employees of Skittone Almond Sheller, Inc. who performed work at any time during the one year preceding the date of this letter through the present.

Mr. Gallardo began his employment with Employer as a field worker on approximately October 1, 2023. He separated from employment due to an injury on approximately October 9, 2024. Mr. Gallardo was generally scheduled to work for 6-7 days per week from approximately 6:30 a.m. to 4:00 pm or 8:30 am to 10:00 pm. He often worked longer hours.

Throughout the duration of Mr. Gallardo's employment with Employer, Mr. Gallardo and other aggrieved employees were not paid for all hours worked as Employer would not accurately keep track of their actual hours worked. Upon information and belief, the time records maintained by Employer were not reflective of the actual number of hours that Mr. Gallardo and other aggrieved employees actually worked, in part due to time rounding.

Furthermore, Mr. Gallardo and other aggrieved employees worked weekly overtime hours, based on the requirements of the Wage Orders, but did not receive full overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked, in part due to improper timekeeping and time rounding. As a result, Employer failed to ensure that Mr. Gallardo and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Gallardo and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with the Wage Orders.

Employer also did not always provide Mr. Gallardo and other aggrieved employees with a legally compliant, uninterrupted 30-minute first meal period when they worked shifts in excess of 5.0 hours or a legally compliant second meal period when they worked shifts longer than 10 hours. Further, upon information and belief, Employer did not accurately keep track of the start and end times of the meal periods taken by Mr. Gallardo and other aggrieved employees as Mr. Gallardo and other aggrieved employees often received a late first meal period. Mr. Gallardo estimates that most days he was given a late first meal period, as it was usually provided at noon and he commenced work at 6:30 a.m. He and other aggrieved employees were also not always afforded compliant second meal periods, and sometimes deprived of them altogether. Despite Employer's failure to provide Mr. Gallardo and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employer did not provide Mr. Gallardo 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. Upon information and belief, during at least a portion of the class period, Employer maintained no payroll code or another mechanism for the payment of meal period premiums in the event Mr. Gallardo and other aggrieved employees were not authorized to take lawful meal periods.

Similar to the meal period violations noted above, Employer also did not authorize Mr. Gallardo and other aggrieved employees to take all legally required rest periods. Specifically, Mr. Gallardo and other non-exempt employees were often unable to take all timely, complete and compliant rest periods. Despite Employer's failure to authorize and permit Mr. Gallardo and other non-exempt employees to take all lawful, complete paid rest periods, due to their uniform and unlawful practices, Employer never provided Mr. Gallardo and other non-exempt employees with an additional 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, Employer maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Gallardo and other non-exempt employees were not authorized to take lawful rest periods.

Furthermore, Employer failed to adequately reimburse Mr. Gallardo and other non-exempt employees for all reasonable and necessary work expenditures, including but not limited to requiring Mr. Gallardo and other non-exempt employees to use their personal cell phones for work. Mr. Gallardo was never provided any reimbursement for these necessary uses.

Employer failed to meet its obligations to provide proper paid sick leave to Mr. Gallardo and other aggrieved employees under Labor Code § 245.5(b) which requires that Employer 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. Gallardo and other aggrieved employees were not provided paid sick leave on all of those occasions where they needed to take a "sick day" in violation of Labor Code § 245.5(b).

Employer has maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay in full separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employer's failure to accurately compensate Mr. Gallardo and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal and rest periods.

Employer failed to issue to Mr. Gallardo and other aggrieved employees accurate itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

In addition, Employer willfully failed to timely pay Mr. Gallardo and other aggrieved employees their full and final paycheck upon separation of employment. Indeed, Mr. Gallardo did not receive his final paycheck until a full week after his last day of work.

Finally, Employer failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Gallardo 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. Gallardo and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

As described above, Employer committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Orders:

Minimum Wage Violations

Employer was required to pay Mr. Gallardo 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; and the Wage Orders. As alleged above, Employer maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Gallardo and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Gallardo and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employer was required to pay Mr. Gallardo and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; the Wage Orders. The Wage Orders generally require 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, Employer caused Mr. Gallardo and other aggrieved employees to work overtime hours but did not compensate Mr. Gallardo and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Employer failed to provide Mr. Gallardo and other aggrieved employees with all required and compliant meal periods due to Employer's meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. *See* Labor Code §§ 226.7 and 512; the Wage Orders. As a result, Mr. Gallardo 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, Employer also failed to authorize and permit Mr. Gallardo and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; and relevant IWC Wage Orders. As a result, Mr. Gallardo 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

Employer 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 her obedience to the directions of the employer." Employer were 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 Employer's unlawful reimbursement practices, Employer failed to indemnify Mr. Gallardo and other aggrieved employees for all necessary business expenses incurred, in the performance of their work duties, including but not limited to the necessary use of gloves and cell phones. Mr. Gallardo and other aggrieved employees were not ever provided any reimbursement for this necessary use.

Wage Statement Violations

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

As an "aggrieved employee," Mr. Gallardo 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. Gallardo's own investigation, and on information and belief, Employer committed and continue to commit the following Labor Code violations:

a. Employer violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Gallardo and other aggrieved employees the statutory minimum wage for all hours worked;

b. Employer violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Gallardo and other aggrieved employees all overtime compensation earned;

c. Employer 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. Gallardo and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Employer violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Gallardo and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Gallardo and other aggrieved employees at their respective regular rates of compensation;

e. Employer violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Gallardo and other aggrieved employees for all work-related expenses incurred;

f. Employer violated Labor Code § 245.5 by failing to permit and authorize Mr. Gallardo and other aggrieved employees to exercise the use of their accrued paid sick leave days;

g. Employer violated Labor Code § 226 by failing to furnish Mr. Gallardo and other aggrieved employees with accurate and compliant itemized wage statements;

h. Employer violated Labor Code §§ 201, 202 by failing to timely pay all final wages due upon separation of employment to Mr. Gallardo and other aggrieved employees; this violation was willful, triggering Labor Code § 203 penalties;

i. Employer violated Labor Code § 204 by failing to pay Mr. Gallardo and other aggrieved employees all wages earned at least twice during each calendar month;

j. Employer violated Labor Code § 205 by failing to pay Mr. Gallardo and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday;

k. Employer violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Gallardo and other aggrieved employees;

l. Employer violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Gallardo and other aggrieved employees; and

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

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Kathleen J. Becket