



April 6, 2023

VIA LWDA WEBSITE

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

Re: *Manuel Hernandez Diego v. James Marshall Farm Service, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Manuel Hernandez Diego in claims arising from his employment with James Marshall Farm Service, LLC; Orange Cove-Sanger Citrus Association; James J. Marshall dba Marshall Vineyards; and DOES 1 through 100 (collectively “JMFS”). Mr. Diego is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to JMFS’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.

JMFS is in the agricultural business and employ seasonal farm labor employees to harvest agricultural goods. Mr. Diego worked for JMFS as a non-exempt farm labor employee from approximately 2013 until approximately May 2, 2022, when he suffered a work-related injury. Mr. Diego’s primary job duties revolved performing general farm labor work such as pruning, picking, and harvesting oranges for the benefit of JMFS. Mr. Diego was generally tasked with working Monday-Friday, with varied shifts depending on the seasons. In the Spring/Summer, Mr. Diego generally worked from approximately 5:00 a.m. until around 11:00 a.m. During the Winter, Mr. Diego generally worked from approximately 10:00 a.m. until approximately 3-4:00 p.m. However, as discussed below, Mr. Diego usually worked more hours per shift than he was credited as having worked.

During Mr. Diego’s employment with JMFS he performed work for Orange Cove-Sanger Citrus Association (“OCSA”), James J. Marshall dba Marshall Vineyards (“MV”), and other presently unknown entities that Mr. Diego performed work for. As such, OCSA and MV are jointly liable with JMFS 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 JMFS, OSCA, nor MV boarded or lodged Mr. Diego during his employment.

For purposes of this letter, the “aggrieved employees” whom Mr. Diego seeks to represent are the other aggrieved employees of JMFS who performed work for i)OSCA and/or ii) MV in California at any time during the one year preceding the date of this letter through the present.

Mr. Diego and other aggrieved employees were paid on both an hourly and a piece-rate basis, depending on the nature of work being performed and the seasons during which they were performing work. During picking/harvesting season Mr. Diego was paid piece rate, receiving anywhere from \$23.00 to \$30 per bin of oranges he was able to fill, with the variations in compensation being largely dependent on the size and variety of oranges picked. Conversely, during pruning season, Mr. Diego would be tasked with pruning vines at the farms he was contracted to work at and would be paid hourly at the minimum wage. Indeed, the payment structure was exceedingly and intentionally confusing in large part due to JMFS’ efforts to ensure that Mr. Diego and other aggrieved employees would not be paid for all hours worked. Mr. Diego and other aggrieved 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. Diego alleges that JMFS did not employ any actual timekeeping practices when he performed piece work and at no point was Mr. Diego made to confirm or sign off on his hours worked. Rather, JMFS employed a systemic policy/practice of only crediting Mr. Diego and other aggrieved employees for work performed during their pre-scheduled hours regardless of how many hours they actually worked. JMFS have not boarded or lodged Mr. Diego during his employment.

On those occasions where Mr. Diego worked overtime hours during the week, Mr. Diego was rarely, if ever, compensated at the requisite overtime rate of pay. Upon information and belief, JMFS systemically failed to pay overtime compensation due to Mr. Diego and other aggrieved employees regardless of whether they were performing work on a piece rate or hourly basis. Throughout Mr. Diego’s employment, JMFS failed to record the hours Mr. Diego worked. Mr. Diego was not paid an hourly minimum wage if his earned piece-rate compensation did not exceed his minimum wages earned in a pay period pursuant to Wage Order 14. SBI also failed to record employees’ total hours worked each workday accurately. Specifically, did not accurately record the hours worked in any fashion apparent to Mr. Diego and the other aggrieved employees regardless of if they were performing piece rate work or hourly work. Mr. Diego never formally clocked in or clocked out during his shifts and was never provided any sort of timecard reflecting the hours he worked. Rather, JMFS’ forepersons would informally handwrite employees’ time in a notepad that employees were not permitted to inspect. Furthermore, when he worked as an hourly employee, Mr. Diego was required to perform many of the same non-

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 JMFS are also alleged against OSCA & MV.

productive tasks as when he worked as a piece-rate employee, but was not compensated for this time whatsoever. Indeed, Mr. Diego and other aggrieved employees would be made to travel between fields and retrieve ladders when they worked on an hourly basis without pay. Rather, JMFS would only credit Mr. Diego and other aggrieved employees for the time spent performing work in the fields, and not time spent traveling between them or retrieving ladders, resulting in a further systemic underpayment of wages. As a result, JMFS failed to ensure that Mr. Diego and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Diego and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Mr. Diego 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. Further, on those occasions where Mr. Diego and other aggrieved employees performed piece work for JMFS, JMFS routinely failed to pay the correct regular rate for rest and recovery periods. Defendant also failed to compensate Mr. Diego and other aggrieved employees for the proper amount of rest and recovery time. For example, for the pay period of February 1, 2021 to February 7, 2021, on February 3, 2021 Mr. Diego was credited with working 6.66 hours, entitling him to at least two separate 10 minute compensated rest periods. However, Mr. Diego was only compensated for one 10-minute rest period. As a consequence, Mr. Diego and other aggrieved employees were systematically denied paid rest period compensation that they were duly and legally entitled to. Despite JMFS' failure to authorize and permit Mr. Diego and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, JMFS never provided Mr. Diego 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, JMFS maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Diego and other aggrieved employees were not authorized to take lawful rest periods.

JMFS has failed to accurately record and compensate Mr. Diego 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. Diego and other aggrieved employees were required to perform work duties and activities that were not directly compensated on a piece-rate basis. For example, Mr. Diego and other aggrieved employees were required to travel to retrieve ladders necessary for the performance of their work picking and pruning oranges before and after each shift from the foreman's truck, a task that he estimates took him at least 10-minutes per trip, but was not properly compensated for this time. Additionally, Mr. Diego was required to travel to different fields throughout the workday, again an activity that would last at least 10-minutes each occasion, without proper compensation. Indeed, as Mr. Diego was required to retrieve ladders and move between fields on nearly each and every shift that he worked, he should have been entitled to a minimum of 20-minutes per shift of non-productive time.

However, despite this reality, JMFS only paid Mr. Diego for 10-minutes of non-productive time for most shifts that he was credited with non-productive time on his wage statements, resulting in a systemic underpayment of wages. Furthermore, on those occasions where the weather conditions did not immediately permit Mr. Diego and other aggrieved employees to commence work, they would have to wait for the conditions to improve before they were permitted to begin their shifts. This time spent waiting for weather to improve would cause Mr. Diego and other aggrieved employee to have to wait anywhere from thirty minutes to several hours and at no point did JMFS ever provide any sort of compensation for Mr. Diego and other aggrieved employees for this time. As a consequence, Mr. Diego and other aggrieved employees were routinely denied "Reporting Time Pay" to which they were entitled as set forth in Wage Order 14 § 5 (A). 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. Diego alleges that all this wait time constitutes unproductive worktime which must be compensated under California law. Accordingly, Mr. Diego estimates that he and other aggrieved employees worked at least an additional hour per week of non-productive time than what they were actually compensated for. As such, Mr. Diego alleges that JMFS has not accurately tracked and compensated employees' non-productive time in compliance with Labor Code § 226.2.

JMFS also never provided Mr. Diego and other aggrieved employees with a compliant first meal period when they worked shifts in excess of 6.0 hours. Mr. Diego 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. Diego and other aggrieved employees would generally work through their shifts without taking any time for a compliant meal period when working piece-rate, and would be permitted to exercise no more than 20 minutes for meal periods when working on an hourly basis, if at all. JMFS were not only aware of, but actively encouraged this practice. Upon information and belief, JMFS did not accurately record meal periods in any manner. Despite JMFS' failure to provide Mr. Diego and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, JMFS never provided Mr. Diego 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.

JMFS failed to adequately reimburse Mr. Diego and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring them to purchase heavy duty safety boots, canvas sacks for oranges, gloves, pruning shears, and file sharpeners all without reimbursement.

As a result of JMFS's failure to accurately compensate Mr. Diego 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, JMFS 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, JMFS violated Labor Code § 204 by failing to pay Mr. Diego and other aggrieved employees all wages earned at least twice during each calendar month.

Finally, JMFS failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Diego 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; vi) the address of the legal entity that is the employer; vii) the telephone number of the employer; viii) identifying information for the employer's workers' compensation insurance carrier; and ix) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Diego and other aggrieved employees, JMFS failed to do so in violation of Labor Code § 2810.5.

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

Minimum Wage Violations

JMFS was required to pay Mr. Diego 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, JMFS maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Diego and other aggrieved employees whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Diego and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

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

Meal Period Violations

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

JMFS 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.” JMFS 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 JMFS’s unlawful reimbursement practices, JMFS failed to indemnify Mr. Diego and other aggrieved employees for all necessary business expenses incurred.

Wage Statement Violations

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

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

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

- e. JMFS, OSCA, and MV violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Diego and other aggrieved employees for all work-related expenses incurred;
- f. JMFS, OSCA, and MV violated Labor Code § 226 by failing to furnish Mr. Diego and other aggrieved employees with accurate and compliant itemized wage statements;
- g. JMFS, OSCA, and MV violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Diego and other aggrieved employees;
- h. JMFS violated Labor Code § 204 by failing to pay Mr. Diego and other aggrieved employees all wages earned at least twice during each calendar month;
- i. JMFS violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Diego and other aggrieved employees; and
- j. JMFS violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Diego and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us, JMFS, OSCA, and MV 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: James Marshall Farm Service, LLC (via certified mail)
cc: Orange Cove-Sanger Citrus Association (via certified mail)
cc: James J. Marshall dba Marshall Vineyards (via certified mail)