



September 26, 2023

VIA LWDA WEBSITE

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

Re: *Fidelmar Diaz Jr. v. Nale Farms, an unknown entity; John Nale Farms, an unknown entity; Roland Nale Farms, an unknown entity; R & D Nale Farms, an unknown entity; John Nale, an individual; Roland Nale an individual and Dobra Vina, Inc., a California corporation*

To Whom It May Concern:

Please be advised that this law firm represents Fidelmar Diaz Jr. ("Mr. Diaz") in claims for Labor Code violations arising from his employment with Nale Farms; John Nale Farms; Roland Nale Farms; R&D Nale Farms; John Nale; Roland Nale, Dobra Vina, Inc.; and DOES 1 through 100 (collectively "Nale"). Mr. Diaz is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq.*, due to Nale'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.

Nale are in the business of harvesting almonds, grapes and other crop farming. Mr. Diaz worked for Nale from approximately 2008 or 2009 and continued working through approximately October 2022 when he had to stop working due to a severe pain in his injured leg and foot. Mr. Diaz returned to work in August 2023 and is presently employed by Nale. Mr. Diaz was tasked with picking almonds, grapes, spraying pesticides and driving a shockwave machine. Mr. Diaz generally worked Monday through Saturday from sunrise at approximately 6:30 a.m. or 7:00 a.m. through approximately 3:00 p.m. to 5:00 p.m. or later during the almond season from September to November each year. During other times of the year, Mr. Diaz worked from approximately 6:30 a.m. or 7:00 a.m. to approximately 3:00 p.m. to 4:00 p.m.

During Mr. Diaz's employment with Nale, he performed work for other presently unknown entities. As such, Nale are jointly liable with the other unknown entities 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.

For purposes of this letter, the “aggrieved employees” whom Mr. Diaz seeks to represent are the other aggrieved employees of Nale who performed work for Nale in 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 Nale, Mr. Diaz and other aggrieved employees were not paid for all hours worked, including overtime hours worked. For example, sometimes Nale paid Mr. Diaz at the wrong hourly rate. After Mr. Diaz complained, Nale sometimes responded by giving some extra money to Mr. Diaz on his next paycheck, but not enough to cover the full unpaid amount. As a further example, for the pay period between November 1 and 15, 2021, Nale issued paystub no. 1163 to Mr. Diaz at a rate of \$16.00 per hour. However, for the pay period between November 16 to 30, 2021, Nale issued paystub no. 1222 to Mr. Diaz at a lesser rate of \$13.00 per hour.

Mr. Diaz and other aggrieved employees worked overtime hours, based on the requirements of Wage Order 14, and usually reported their hours worked in writing, but generally did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. For example, for the pay period between August 16, 2021 and August 31, 2021, paystub no. 1080 reflects 140 hours worked by Mr. Diaz at the straight rate of \$15.00 per hour even though there generally exists an average of only 80 regular hours in a 2-week pay period. As a result, Nale 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.

Even though Mr. Diaz and other aggrieved employees sometimes worked a shift in excess of 10 hours, Mr. Diaz and other aggrieved employees were almost never permitted to exercise their right to a second meal period. Mr. Diaz and other aggrieved employees were not only unable to exercise the right to a second meal period, but they were never told of their right to do so. Also, Mr. Diaz and other aggrieved employees usually started their meal periods at noon, including on days when the work day began before 7:00 a.m., causing them to begin their meal period beyond the fifth hour of the work day. Mr. Diaz and the other aggrieved employees were not informed by Nale 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. Upon information and belief, Nale did not keep records regarding the times at which Mr. Diaz and other aggrieved employees began and ended their meal periods. Despite Nale’s failure to provide Mr. Diaz and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Nale 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.

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

periods and authorize all rest periods.

Nale failed to issue to Mr. Diaz 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, if the employer is a farm labor contractor, the name and address of the legal entity that secured the services of 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.

Nale 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), did not accrue sick leave as required, and were not notified of properly notified of their ability to take sick leave.

Finally, Nale 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, Nale failed to do so, in violation of Labor Code § 2810.5.

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

Minimum Wage Violations

Nale were 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, Nale maintained and

maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Diaz and other aggrieved employees. 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

Nale were 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, Nale 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, Nale failed to provide Mr. Diaz and other aggrieved employees with all required and compliant meal periods due to Nale'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; 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, Nale 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

Nale were 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.” Nale 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 Nale’s unlawful reimbursement practices, Nale failed to indemnify Mr. Diaz and other aggrieved employees for all necessary business expenses incurred, including, among other things, heavy duty boots, gloves and safety glasses. Mr. Diaz and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, Nale were 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 Nale’s failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, Nale 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. Nale 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, Nale’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 Nale 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, Nale committed and continue to commit the following Labor Code violations:

- a. Nale 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. Nale violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Diaz and other aggrieved employees all overtime compensation earned;
- c. Nale 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. Nale 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. Nale violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Diaz and other aggrieved employees for all work-related expenses incurred;
- f. Nale violated Labor Code § 226 by failing to furnish Mr. Diaz and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Nale 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. Nale 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. Nale 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. Nale 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. Nale violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Diaz and other aggrieved employees; and
- l. Nale 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.

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


Jessica Flores

cc: Nale Farms (via certified mail)
John Nale Farms (via certified mail)
Roland Nale Farms (via certified mail)
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