



October 25, 2023

VIA LWDA WEBSITE

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

Re: *Jose Refugio Martinez v. Rolland Pacheco dba Pacheco & Fagundes Dairy, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Jose Refugio Martinez (“Mr. Martinez”) in claims arising from his employment with Rolland Pacheco dba Pacheco & Fagundes Dairy and Alice M. Fagundes dba Pacheco & Fagundes Dairy; and DOES 1 through 100 (collectively “PFD”). Mr. Martinez is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to PFD’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.

PFD is in business in the dairy industry. Mr. Martinez worked for PFD from approximately mid-October 2021 to approximately November 2022 when his work-related injury prevented him from continuing to perform his work. Mr. Martinez was tasked with milking cows, cleaning the floors and cleaning machines. Mr. Martinez was generally scheduled to work for four (4) days straight in six-day periods instead of seven-day workweeks from around 5:00 a.m. until 3:00 p.m. or later or from around 4:00 a.m. until 2:00 p.m. or later. After two months on this schedule, PFD switched the scheduled start time for Mr. Martinez and other aggrieved employees who milked cows to approximately 4:00 p.m. with a scheduled end time at approximately 2:00 a.m. Approximately every couple of months, Mr. Martinez and other aggrieved employees who milked cows switched between the two schedules.

During Mr. Martinez’s employment with PFD, he performed work for other presently unknown entities. As such, PFD is 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.

Mr. Martinez worked for PFD from approximately mid-October 2021 to approximately November 2022 when his work-related injury prevented him from continuing to perform his work. Mr. Martinez was tasked with milking cows, cleaning the floors and cleaning machines. Mr. Martinez was generally scheduled to work for four (4) days straight in six-day periods instead of seven-day workweeks from around 5:00 a.m. until 3:00 p.m. or later or from around 4:00 a.m. until 2:00 p.m. or later. After two months on this schedule, PFD switched the scheduled start time for Mr. Martinez and other aggrieved employees who milked cows to approximately 4:00 p.m. with a scheduled end time at approximately 2:00 a.m. Approximately every couple of months, Mr. Martinez and other aggrieved employees who milked cows switched between the two schedules.

Throughout the duration of Mr. Martinez's employment with PFD, Mr. Martinez and other aggrieved employees were not paid for all hours worked as PFD would not accurately keep track of their actual hours worked. Upon information and belief, the time records maintained by PFD were not reflective of the actual number of hours that Mr. Martinez and other aggrieved employees actually worked. Mr. Martinez and other aggrieved employees clocked in to work on a machine located at PFD's premises. The time on the machine was usually off and approximately 15 minutes ahead. Mr. Martinez had no way to confirm that the machine for clocking in could differentiate between different employees because after he pressed his fingerprint on the machine, the screen on the machine merely displayed "thank you" and displayed no identifying information for Mr. Martinez. Sometimes the clock-in machine did not work at all. After observing that several of his paychecks were missing hours worked, Mr. Martinez began to keep track of his clocked hours by writing his clocked hours down. Pursuant to their supervisor's instructions, Mr. Martinez and other aggrieved employees spent at least approximately seven (7) minutes each day putting on their work boots, aprons and sleeves before clocking in. After clocking out at the end of each day, Mr. Martinez and other aggrieved employees spent approximately 15 to 20 minutes removing their work boots, aprons and sleeves and also cleaning them and leaving them to dry for the following work day. Overall, Mr. Martinez and other aggrieved employees spent at least approximately 22 minutes each day working off the clock by putting on or taking off their work boots, aprons and sleeves and cleaning the same.

Furthermore, Mr. Martinez and other aggrieved employees worked overtime hours, based on the requirements of Wage Order 14, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Upon information and belief, PFD systematically failed to pay overtime compensation due to Mr. Martinez and other aggrieved employees when they worked the requisite number of hours to be entitled to such pay. Instead, Mr. Martinez and other aggrieved employees would either be paid their normal hourly rate for overtime hours worked, or simply not paid for these hours worked at all. As an example, check 9506 for the pay period between June 1, 2022 and June 15, 2022 shows that Mr. Martinez worked 123.5 hours during the pay period at the rate of \$15.00 per hour without any additional compensation for overtime worked even though Mr. Martinez usually worked at least 9.5 hours per day. Further, as discussed above, Mr. Martinez and other aggrieved employees worked at least

approximately twenty (22) minutes per day beyond 9.5 hours in a workday without any compensation at all. As a result, PFD failed to ensure that Mr. Martinez and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Martinez and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Mr. Martinez and other aggrieved employees were not authorized to take all legally required rest periods. This practice was pervasive throughout Mr. Martinez's employment. Mr. Martinez and other aggrieved employees were not only unable to exercise the right to a rest period, but they were never told of their right to do so. Mr. Martinez and other aggrieved employees almost never received a rest period because they were required to work continuously throughout the day except for a break for a meal period. Even though Mr. Martinez often worked more than ten (10) hours at least two (2) days out of every six-day period worked, Mr. Martinez almost never received a first, second or third rest period throughout his employment with PFD. Despite PFD's failure to authorize and permit Mr. Martinez and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, PFD never provided Mr. Martinez 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, PFD maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Martinez and other aggrieved employees were not authorized to take lawful rest periods.

Even though Mr. Martinez and other aggrieved employees worked a shift in excess of ten (10) hours at least two (2) days out of every six-day period worked, Mr. Martinez and other aggrieved employees were almost never permitted to exercise their right to a second meal period. Mr. Martinez 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, at least three (3) times in a 6-day period, Mr. Martinez and other aggrieved employees began their first meal period after the fifth hour when they worked shifts over 5.0 hours. For example, Mr. Martinez and other aggrieved employees often clocked in at 5:00 a.m. despite beginning their work at least seven (7) minutes prior to clocking in, but did not start their meal period until 10:00 a.m. or later, thus causing them to begin their meal period beyond the fifth hour of the work day. Mr. Martinez and the other aggrieved employees were not informed by PFD 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. Despite PFD's failure to provide Mr. Martinez and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, PFD never provided Mr. Martinez 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.

Furthermore, PFD failed to adequately reimburse Mr. Martinez and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Martinez to purchase his own work boots, apron and sleeves. Mr. Martinez was not ever provided any reimbursement for these necessary uses.

Additionally, PFD forced Mr. Martinez to wait more than one week until the next regular scheduled pay day for his final paycheck, in violation of Labor Code 201.

PFD maintains a policy of requiring unlawful forfeitures by Mr. Martinez and other aggrieved employees of vested vacation benefits. Mr. Martinez and other aggrieved employees' earned wages. Specifically, PFD paid Mr. Martinez \$10.50 per hour for 60 hours of accrued vacation time instead of paying Mr. Martinez at his final rate of \$15.40 per hour in violation of California law which holds accrued and unused vacation time is earned wages not subject to forfeiture.

PFD failed to issue to Mr. Martinez 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.

PFD has 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 PFD's failure to accurately compensate Mr. Martinez 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.

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

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

Minimum Wage Violations

PFD was required to pay Mr. Martinez 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, PFD maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Martinez and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Martinez and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

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

Meal Period Violations

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

PFD 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." PFD 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 PFD's unlawful reimbursement practices, PFD failed to indemnify Mr. Martinez and other aggrieved employees for all necessary business expenses incurred, including, among other things, work boots, aprons and sleeves in the performance of their work duties. Mr. Martinez and other aggrieved employees were not ever provided any reimbursement for these necessary uses.

Wage Statement Violations

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

Unlawful Deductions from Earned Wages

Labor Code §§ 221 and 227.3 make it unlawful for an employer to make deductions from an employee's earned wages. PFD failed to pay Mr. Martinez and other aggrieved employees all of their accrued vacation time at the final rate of pay in accordance with the employment policy at the time of separation. PFD's policy and/or practice of paying Mr. Martinez and other aggrieved employees less than their final rate of pay for earned unused vacation time is unlawful and creates an entitlement to recovery by Mr. Martinez and other aggrieved employees.

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

- a. PFD violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Martinez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. PFD violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Martinez and other aggrieved employees all overtime compensation earned;
- c. PFD 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. Martinez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. PFD violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Martinez and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Martinez and other aggrieved employees at their respective regular rates of compensation;
- e. PFD violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Martinez and other aggrieved employees for all work-related expenses incurred;
- f. PFD violated Labor Code §§ 221 and 227.3 by maintaining a policy of requiring unlawful forfeitures by Mr. Martinez and other aggrieved employees of vested vacation benefits;
- g. PFD violated Labor Code § 226 by failing to furnish Mr. Martinez and other aggrieved employees with accurate and compliant itemized wage statements;

- h. PFD violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Martinez and other aggrieved employees;
- i. PFD violated Labor Code § 204 by failing to pay Mr. Martinez and other aggrieved employees all wages earned at least twice during each calendar month;
- j. PFD violated Labor Code § 205 by failing to pay Mr. Martinez and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- k. PFD violated Labor Code § 245.5 by failing to permit and authorize Mr. Martinez and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- l. PFD violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Martinez and other aggrieved employees; and
- m. PFD violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Martinez and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and PFD 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: Rolland Pacheco dba Pacheco & Fagundes Dairy (via certified mail)
Alice M. Fagundes dba Pacheco & Fagundes Dairy (via certified mail)