



January 31, 2024

VIA LWDA WEBSITE

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

Re: *Domingo Munoz v A&B Labor, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Domingo Munoz in claims arising from his employment with A&B Labor, Inc. (“A&B”); 559 AG. Corp. (“559”); Campos Crop Labor (“CCL”); Excelsior Farming, LLC. (“EF”); New Excelsior Farming, LLC. (“NEF”); Warmerdam Holdings, LLC. (“WH”); Warmerdam Packing, Inc. (“WP”) and DOES 1 through 100 (collectively “ABL”). Mr. Munoz is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to ABL’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.

ABL is in the agricultural business and employs seasonal farm labor employees to harvest agricultural goods, including providing farm labor for other ABL entities. Mr. Munoz worked for ABL seasonally, most recently until approximately July 6, 2023 when he suffered a work-related injury and ceased his employment. Mr. Munoz was tasked with picking cherries and other agricultural goods at the various farms that ABL contracted Mr. Munoz and other aggrieved employees to perform work at. Mr. Munoz generally worked Tuesday through Friday from around 5:30 a.m. until around 2:00 p.m. However, as discussed below, Mr. Munoz worked considerably more hours than he was credited for by ABL, who did not properly track the hours worked by Mr. Munoz and other aggrieved employees whatsoever in favor of paying them strictly based on their piece rate production.

Mr. Munoz performed work for and otherwise was employed by A&B, 559, CCL, EF, NEF, WH, and/or WP. As such, all ABL entities are jointly liable 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 and other common law theories of joint employer liability.¹ No ABL entity boarded or lodged Mr. Munoz during his employment.

¹ Accordingly, based in part on Labor Code § 2810.3 and common law theories of joint employer liability, all allegations in this letter alleged against any ABL entity is alleged against all ABL entities.

For purposes of this letter, the “aggrieved employees” whom Mr. Munoz seeks to represent are the other non-exempt employees of ABL, who performed work for ABL in California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Mr. Munoz’s employment with ABL, Mr. Munoz and other aggrieved employees were not paid for all hours worked, including overtime hours worked, as their supervisors would not accurately keep track of their actual hours worked. Rather, Mr. Munoz and other aggrieved employees were paid on a piece-rate basis of \$3.50 per bucket of fruit. Mr. Munoz and other aggrieved employees were not paid an hourly minimum wage if their earned piece-rate compensation did not exceed their minimum wages earned in a pay period. On information and belief, Mr. Munoz alleges that ABL did not employ accurate timekeeping practices when he performed piece work and at no point was Mr. Munoz made to confirm or sign off on his hours worked. Instead, the foreman exclusively recorded the buckets of fruit that Mr. Munoz filled up.

Mr. Munoz 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. While Mr. Munoz and other aggrieved employees were required to exercise 15 minute breaks at 7:30am and 11:30am, Mr. Munoz and other aggrieved employees were not compensated for rest and recovery periods despite their entitlement to such pay as piece rate workers. On the wage statements issued to Mr. Munoz and other non-exempt employees there is no line item or pay code for rest and recovery periods. Furthermore, Mr. Munoz and other aggrieved employees were not authorized to take legally compliant rest periods free of employer control and in the shade of the sun regardless of whether they were working on a piece-rate or hourly basis. Despite ABL’s failure to authorize and permit Mr. Munoz and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, ABL never provided Mr. Munoz 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 time period in question, ABL maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Munoz and other aggrieved employees were not authorized to take lawful rest periods.

ABL has failed to accurately record and compensate Mr. Munoz 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. Munoz and other aggrieved employees were required to perform work duties and activities that were not directly compensated on a piece-rate. For example, Mr. Munoz and other aggrieved employees would be made to travel between fields on a daily basis, which would take around 10 minutes per occurrence, and were in no manner compensated for this time. Furthermore, Mr. Munoz and other aggrieved employees would have to wait in lines for 15 minutes per

shift hauling buckets of fruits to tractors without compensation. Additionally, Mr. Munoz and other aggrieved employees would be made to spend around 8 minutes per shift to retrieve and return work supplies such as ladders and buckets from their storage areas. Despite this non-productive time being worked on a daily basis, Mr. Munoz and other aggrieved employees were not compensated for non-productive time. ABL's wage statements issued to Mr. Munoz 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 and/or other mandatory duties that were not directly compensated on a piece-rate basis. Mr. Munoz alleges that all this time constitutes unproductive worktime which must be compensated under California law. Accordingly, Mr. Munoz estimates that he and other aggrieved employees worked at least an additional 33 minutes per workday of non-productive time that was uncompensated. As such, Mr. Munoz alleges that ABL have not accurately tracked and compensated employees' non-productive time in compliance with Labor Code § 226.2.

ABL also did not provide Mr. Munoz and other aggrieved employees with a legally complaint first meal period when they worked shifts in excess of 6.0 hours. Specifically, Mr. Munoz and other aggrieved employees were not permitted to leave the premises of the farm during their meal period. Mr. Munoz and the other aggrieved employees were not informed by ABL 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. ABL were not only aware of, but actively encouraged this practice. Upon information and belief, ABL did not accurately record meal periods in any manner. Despite ABL's failure to provide Mr. Munoz and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, ABL never provided Mr. Munoz 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.

ABL failed to adequately reimburse Mr. Munoz and other aggrieved employees for all reasonable and necessary work expenditures, including utilizing their personal cellular phones for business purposes on a daily basis in order to receive messages indicating the address they would be reporting to. Mr. Munoz and other aggrieved employees were not ever provided any reimbursement for their necessary use.

ABL failed to meet its obligations to provide paid sick leave to Mr. Munoz 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. Munoz 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 ABL's failure to accurately compensate Mr. Munoz 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, ABL 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, ABL maintained facially inaccurate wage statements by failing to include the total hours worked by the employee in violation of Labor Code § 226(a)(2); the number of piece rate units earned and any applicable piece rate in violation of Labor Code § 226(a)(3); and the name and address of the legal entity that secure the services of the employer in violation of Labor Code § 226(a)(8).

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

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

Minimum Wage Violations

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

Meal Period Violations

As alleged above, ABL failed to provide Mr. Munoz and other aggrieved employees with all required and compliant meal periods due to ABL's meal period policies/practices that often fail to provide 30 minute duty-free 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. Munoz 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, ABL also failed to authorize and permit Mr. Munoz 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. Munoz 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

ABL 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." ABL 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 ABL's unlawful reimbursement practices, ABL failed to indemnify Mr. Munoz and other aggrieved employees for all necessary business expenses incurred, including use of personal cellular devices in the performance of their work duties.

Wage Statement Violations

ABL was required to furnish Mr. Munoz 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 ABL's failure to pay all minimum wages, and failure to pay all required meal and rest period premium wages, ABL maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Munoz and other aggrieved employees in violation of Labor Code § 226. Further, ABL issued facially inaccurate wage statements that fail to identify the total hours worked by the employee in violation of Labor Code § 226(a)(2); the number of piece rate units earned and any applicable piece rate in violation of Labor Code § 226(a)(3); and the name and address of the client-employer farms in violation of Labor Code § 226(a)(8).

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. ABL failed to timely pay Mr. Munoz 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, ABL's failure to pay all final wages due to Mr. Munoz and other aggrieved employees was willful and, consequently, entitles Mr. Munoz and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day ABL failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

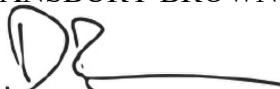
As an "aggrieved employee," Mr. Munoz will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Munoz's own investigation, and on information and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

- a. ABL violated Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Munoz and other aggrieved employees the statutory minimum wage for all hours worked;
- b. ABL violated Labor Code §§ 226.2 by failing to accurately track and compensate Mr. Munoz and other aggrieved employees non productive time;
- c. ABL violated Labor Code §§ 1194, and 1198 by failing to pay Mr. Munoz and other aggrieved employees all overtime compensation earned;
- d. ABL 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. Munoz and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

- e. ABL violated Labor Code §§ 226.7, and 516 by failing to authorize and permit Mr. Munoz and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Munoz and other aggrieved employees at their respective regular rates of compensation;
- f. ABL violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Munoz and other aggrieved employees for all work-related expenses incurred;
- g. ABL violated Labor Code § 226 by failing to furnish Mr. Munoz and other aggrieved employees with accurate and compliant itemized wage statements;
- h. ABL violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Munoz and other aggrieved employees;
- i. ABL violated Labor Code § 245.5 by failing to permit and authorize Mr. Munoz and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- j. ABL violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Munoz and other aggrieved employees; and
- k. ABL violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Munoz and other aggrieved employees.

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


Daniel J. Brown

cc: A&B Labor, Inc. (via certified mail)
cc: 559 AG. Corp. (via certified mail)
cc: Campos Crop Labor. (via certified mail)
cc: Excelsior Farming, LLC. (via certified mail)
cc: New Excelsior Farming, LLC. (via certified mail)
cc: Warmerdam Holdings, LLC. (via certified mail)
cc: Warmerdam Packing, Inc. (via certified mail)