



January 30, 2024

VIA LWDA WEBSITE

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

Re: *Maximino Munoz Morales v Mendoza Ag Services, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Maximino Munoz Morales in claims arising from his employment with Mendoza Ag Services, Inc.; R&R Farm Management, LLC.; Morada Produce Company L.P.; Panacea Farms, LLC; A&I Pirrone Vineyards, Inc.; Terra Bella CA, LLC; Nisra Farms, LLC; and DOES 1 through 100 (collectively "MAG"). Mr. Morales is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq.*, due to MAG'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.

MAG is in the agricultural business and employs seasonal farm labor employees to harvest agricultural goods. Mr. Morales worked for MAG seasonally, most recently until approximately June 11, 2023 when he suffered a work-related injury and ceased his employment. Mr. Morales was tasked with picking cherries and other agricultural goods at the various farms that MAG contracted Mr. Morales and other aggrieved employees to perform work at. Mr. Morales generally worked Monday through Sunday from around 6:00 a.m. until around 1:00-2:00 p.m. However, as discussed below, Mr. Morales worked considerably more hours than he was credited for by MAG, who did not properly track the hours worked by Mr. Morales and other aggrieved employees whatsoever in favor of paying them strictly based on their piece rate production.

During Mr. Morales's employment with Mendoza Ag Services, Inc., he performed work for and was otherwise employed by R&R Farm Management, LLC. ("R&R"), Morada Produce Company ("MP"), Panacea Farms ("PF"), A&I Pirrone Vineyards, Inc. ("A&I"), Terra Bella CA, LLC ("TERRA"), Nisra Farms ("NF"). As such, R&R; MP; PF; A&I; TERRA; and NF are jointly liable with Mendoza Ag Services, Inc. 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 common law theories.¹ MAG did not board or lodge Mr. Morales during his employment.

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

Throughout the duration of Mr. Morales’s employment with MAG, Mr. Morales and other aggrieved employees were not paid for all hours worked as their supervisors would not accurately keep track of their actual hours worked. Rather, Mr. Morales and other aggrieved employees were paid on a piece-rate basis of \$7.00 and \$7.50 per bucket of cherries. Mr. Morales 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. Morales alleges that MAG did not employ accurate timekeeping practices when he performed piece work and at no point was Mr. Morales made to confirm or sign off on his hours worked. Instead, MAG gave Mr. Morales a card that would get punched every time that he completed a bucket of cherries.

Furthermore, Mr. Morales and other aggrieved employees worked overtime hours, based on the requirements of Wage Order 14 per workweek, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. On those occasions where Mr. Morales worked overtime hours during the week, Mr. Morales was rarely, if ever, compensated at the requisite overtime rate of pay in favor of paying him only for piece rate work. For example, Mr. Morales frequently worked on Sundays which would have entitled him to statutory overtime compensation as he would exceed the overtime thresholds as set forth in Wage Order 14. However, Mr. Morales did not ever receive overtime pay despite this reality. Upon information and belief, MAG systemically failed to pay overtime compensation due to Mr. Morales and other aggrieved employees regardless of whether they were performing work on a piece rate or hourly basis. Mr. Morales never formally clocked in or clocked out during his shifts and was never provided any sort of timecard reflecting the hours he worked. As a result, MAG failed to ensure that Mr. Morales and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Morales and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Mr. Morales 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. Mr. Morales does not recall ever receiving a rest period throughout his employment with MAG. Instead, he would be made to work generally throughout the entirety of his shifts without interruption. Further, on those occasions where Mr. Morales and other

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 Mendoza Ag Services, Inc. are also alleged against R&R; MF; PF; A&I; TERRA; and NF.

aggrieved employees performed piece work for MAG, MAG routinely failed to pay the correct regular rate for rest and recovery periods. Mr. Morales was rarely, if ever compensated for rest and recovery time, as MAG failed to pay Mr. Morales and other aggrieved employees for rest and recovery periods despite their entitlement to such pay. Accordingly, Mr. Morales and other aggrieved employees were systematically denied paid rest period compensation for every shift worked that they were duly and legally entitled to. Despite MAG's failure to authorize and permit Mr. Morales and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, MAG never provided Mr. Morales 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, MAG maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Morales and other aggrieved employees were not authorized to take lawful rest periods.

MAG has failed to accurately record and compensate Mr. Morales 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. Morales and other aggrieved employees were required to perform work duties and activities that were not directly compensated on a piece-rate. For example, Mr. Morales and other aggrieved employees would be made to travel between fields on a daily basis, which would take anywhere from 15-20 minutes per occurrence, and were in no manner compensated for this time. Furthermore, Mr. Morales and other aggrieved employees would have to wait in lines for anywhere from 15-20 minutes per shift hauling buckets of cherries to tractors without compensation. Additionally, Mr. Morales and other aggrieved employees would be made to spend around 20 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. Morales and other aggrieved employees were not compensated for non-productive time. MAG's wage statements issued to Mr. Morales 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. Morales alleges that all this time constitutes unproductive worktime which must be compensated under California law. Accordingly, Mr. Morales estimates that he and other aggrieved employees worked at least an additional 45- 55minutes per workday of non-productive time that was uncompensated. As such, Mr. Morales alleges that MAG have not accurately tracked and compensated employees' non-productive time in compliance with Labor Code § 226.2.

MAG also did not provide Mr. Morales and other aggrieved employees with a legally complaint first meal period when they worked shifts in excess of 6.0 hours. Specifically, Mr. Morales and other aggrieved employees were not permitted to leave the premises of the farm during their meal period. Mr. Morales and the other aggrieved

employees were not informed by MAG 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. MAG were not only aware of, but actively encouraged this practice. Upon information and belief, MAG did not accurately record meal periods in any manner. Despite MAG's failure to provide Mr. Morales and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, MAG never provided Mr. Morales 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.

MAG failed to adequately reimburse Mr. Morales 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 location/field they would be working at. Furthermore, Mr. Morales and other aggrieved employees were required to utilize their personal vehicles to travel between fields in the performance of their work duties and was not ever provided any reimbursement for their necessary use.

MAG failed to meet its obligations to provide paid sick leave to Mr. Morales 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. Morales 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 MAG's failure to accurately compensate Mr. Morales 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, MAG 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, MAG maintained facially inaccurate wage statements by failing to include the name and address of the legal entity that secured the services of the employer in violation of Labor Code §226(a)(8).

Moreover, MAG violated Labor Code § 204 by failing to pay Mr. Morales and other aggrieved employees all wages earned at least twice during each calendar month.

Additionally, at least some MAG is a farm labor contractor subject to the requirements of Labor Code § 205, which requires that employees be paid weekly, on a business day designated in advance, for all wages earned up to and including the fourth day before the scheduled payday. However, MAG pay their employees on a delay of five days or more, in violation of the "fourth day" requirement found in Labor Code § 205.

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

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

Minimum Wage Violations

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

Overtime Wage Violations

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

Meal Period Violations

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

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

Wage Statement Violations

MAG was required to furnish Mr. Morales 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 MAG'S failure to pay all overtime wages, minimum wages, and

failure to pay all required meal and rest period premium wages, MAG maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Morales and other aggrieved employees in violation of Labor Code § 226. Further, MAG issued facially inaccurate wage statements that fail to identify the 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. MAG failed to timely pay Mr. Morales 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, MAG's failure to pay all final wages due to Mr. Morales and other aggrieved employees was willful and, consequently, entitles Mr. Morales and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day MAG failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

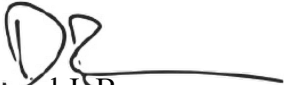
As an "aggrieved employee," Mr. Morales will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Morales's own investigation, and on information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

- a. MAG violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Morales and other aggrieved employees the statutory minimum wage for all hours worked;
- b. MAG violated Labor Code §§ 226.2 by failing to accurately track and compensate Mr. Morales and other aggrieved employees non productive time;
- c. MAG violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Morales and other aggrieved employees all overtime compensation earned;
- d. MAG 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. Morales and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- e. MAG violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Morales and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Morales and other aggrieved employees at their respective regular rates of compensation;

- f. MAG violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Morales and other aggrieved employees for all work-related expenses incurred;
- g. MAG violated Labor Code § 226 by failing to furnish Mr. Morales and other aggrieved employees with accurate and compliant itemized wage statements;
- h. MAG violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Morales and other aggrieved employees;
- i. MAG violated Labor Code § 204 by failing to pay Mr. Morales and other aggrieved employees all wages earned at least twice during each calendar month;
- j. MAG violated Labor Code § 205 by failing to pay Mr. Morales and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- k. MAG violated Labor Code § 245.5 by failing to permit and authorize Mr. Morales and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- l. MAG violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Morales and other aggrieved employees; and
- m. MAG violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Morales and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us, and MAG entities 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: Mendoza Ag Services, Inc. (via certified mail)
cc: R&R Farm Management, LLC (via certified mail)
cc: Morada Produce Company L.P. (via certified mail)
cc: Panacea Farms, LLC (via certified mail)

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cc: A&I Pirrone Vineyards, Inc. (via certified mail)

cc: Terra Bella CA, LLC (via certified mail)

cc: Nisra Farms, LLC (via certified mail)