



January 11, 2024

VIA LWDA WEBSITE

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

Re: *Everardo Garcia v. Foster Farms LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Everardo Garcia (“Mr. Garcia”) in claims arising from his employment with Foster Farms LLC; and DOES 1 through 100 (collectively “Foster Farms”). Mr. Garcia is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Foster Farms’ 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.

Foster Farms is in business in the poultry industry. Mr. Garcia worked for Foster Farms from approximately July 22, 2019 to approximately February 3, 2023. During his employment, Mr. Garcia worked in Foster Farms’ hatchery as a machine attendant monitoring the temperature and humidity in incubators and maintaining the incubators and related machines. Mr. Garcia was generally scheduled to work for five (5) days per week. Every three months, Mr. Garcia rotated through one of four work schedules. For one set of three months, Mr. Garcia was scheduled to work from approximately 3:00 a.m. to approximately 11:30 a.m. For a second set of three months, Mr. Garcia was scheduled to work from approximately 7:00 a.m. to approximately 3:30 p.m. For a third set of three months, Mr. Garcia was scheduled to work from approximately 11:00 a.m. to approximately 7:30 p.m. For a fourth set of three months, Mr. Garcia was scheduled to work from approximately 7:00 p.m. to approximately 3:30 a.m.

Throughout the duration of Mr. Garcia’s employment with Foster Farms, Mr. Garcia and other aggrieved employees were not paid for all hours worked as Foster Farms required Mr. Garcia and other employees to work off-the-clock. Foster Farms instructed Mr. Garcia and other non-exempt employees not to clock in before putting on their work uniform consisting in part of coveralls, a helmet, a mask, gloves and boots. Mr. Garcia and other non-exempt employees spent at least approximately 10 minutes putting on and removing their uniforms before clocking in and after clocking out.

Furthermore, Mr. Garcia 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. Foster Farms failed to pay overtime compensation due to Mr. Garcia and other aggrieved employees when they worked off the clock. As a result, Foster Farms failed to ensure that Mr. Garcia and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Garcia and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Mr. Garcia and other aggrieved employees were not authorized to take all legally required rest periods. By way of example, Foster Farms instructed Mr. Garcia that he could not leave the premises during his rest period because he had to attend to the incubators and related machines. As another example, at least once per week, Mr. Garcia's rest period was interrupted because Foster Farms required Mr. Garcia to address an alarm or other work matter. Despite Foster Farms' failure to authorize and permit Mr. Garcia and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Foster Farms did not provide Mr. Garcia 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.

Foster Farms did not provide Mr. Garcia and other non-exempt employees with legally compliant meal periods when they worked shifts in excess of 5.0 hours. By way of example, consistent with their rest period policies, Foster Farms instructed Mr. Garcia that he could not leave the premises during his meal period because he had to attend to the incubators and related machines. As another example, at least once per week, Mr. Garcia's meal period was interrupted because Foster Farms required Mr. Garcia to address an alarm or other work matter. Further, Foster Farms also denied Mr. Garcia and other aggrieved employees a legally compliant second meal period when they worked a shift in excess of ten (10) hours. Despite Foster Farms' failure to provide Mr. Garcia and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Foster Farms did not provide Mr. Garcia and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7

Furthermore, Foster Farms failed to adequately reimburse Mr. Garcia and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Garcia to purchase his own tools to fix broken incubator/machine parts. Mr. Garcia was not ever provided any reimbursement for these necessary uses.

Additionally, Foster Farms forced Mr. Garcia to wait approximately two months for his final paycheck, in violation of Labor Code 201.

Foster Farms failed to issue to Mr. Garcia 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.

Foster Farms 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 Foster Farms' failure to accurately compensate Mr. Garcia 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.

Foster Farms failed to meet its obligations to provide paid sick leave to Mr. Garcia 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. Garcia 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, Foster Farms failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Garcia 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. Garcia and other aggrieved employees, Foster Farms failed to do so, in violation of Labor Code § 2810.5.

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

Minimum Wage Violations

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

Overtime Wage Violations

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

Meal Period Violations

As alleged above, Foster Farms failed to provide Mr. Garcia and other aggrieved employees with all required and compliant meal periods due to Foster Farms 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. Garcia 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, Foster Farms also failed to authorize and permit Mr. Garcia 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. Garcia 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

Foster Farms 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." Foster Farms 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 Foster Farms' unlawful reimbursement practices, Foster Farms failed to indemnify Mr. Garcia and other aggrieved employees for all necessary business expenses incurred, including, among other things, tools to fix broken incubator/machine parts in the performance of their work duties. Mr. Garcia and other aggrieved employees were not ever provided any reimbursement for these necessary uses.

Wage Statement Violations

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

As an "aggrieved employee," Mr. Garcia 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. Garcia's

own investigation, and on information and belief, Foster Farms committed and continues to commit the following Labor Code violations:

- a. Foster Farms violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Garcia and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Foster Farms violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Garcia and other aggrieved employees all overtime compensation earned;
- c. Foster Farms 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. Garcia and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Foster Farms violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Garcia and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Garcia and other aggrieved employees at their respective regular rates of compensation;
- e. Foster Farms violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Garcia and other aggrieved employees for all work-related expenses incurred;
- f. Foster Farms violated Labor Code § 226 by failing to furnish Mr. Garcia and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Foster Farms violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Garcia and other aggrieved employees;
- h. Foster Farms violated Labor Code § 204 by failing to pay Mr. Garcia and other aggrieved employees all wages earned at least twice during each calendar month;
- i. Foster Farms violated Labor Code § 205 by failing to pay Mr. Garcia and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- j. Foster Farms violated Labor Code § 245.5 by failing to permit and authorize Mr. Garcia and other aggrieved employees to exercise the use of their accrued paid sick leave days;

- k. Foster Farms violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Garcia and other aggrieved employees; and
- l. Foster Farms violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Garcia and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Foster Farms 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: Foster Farms, LLC (via certified mail)