STANSBURY BROWN
LAW PC

April 2, 2024

VIA LWDA WEBSITE

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

Re: *Rafael Berber Ayala v. El Dorado Land, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Rafael Berber Ayala ("Mr. Berber Ayala") in claims for Labor Code violations arising from his employment with El Dorado Land, Inc.; Cottonwood Farms, Inc.; Mouren Feeding Company; Wheat Land, Inc.; Coalinga Feed Yard, Inc.; Bear Canyon Farms, Inc.; Spanish Lake Farms, Inc.; Lost Hills Ranch, Inc.; and DOES 1 through 100 (collectively "Employers"). Mr. Berber Ayala is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to Employers' 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.

During Mr. Berber Ayala's employment with Employers, he performed work for other presently unknown entities. As such, Employers 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. Berber Ayala seeks to represent are the other aggrieved employees of Employers who performed work for Employers in California at any time during the one year preceding the date of this letter through the present.

Employers are in the business of farming operations. Mr. Berber Ayala began working for Employers in approximately February 1994 and continued working through approximately October 2023. Mr. Berber Ayala was a supervisor's assistant tasked with mechanic duties such as repairing a tractor, a plow, a booster or other agricultural machine or machine part. He was also responsible for clearing weeds, driving between work locations and placing tickets on almond trailers prior to almond trailers being sent to packaging. During the almond season between approximately August and October or November, Mr. Berber Ayala generally worked Monday through Saturday from approximately 6:30 a.m. through approximately 8:30 p.m. or up to 10:00 p.m. on multiple fields. During the rest of the year, Mr. Berber Ayala generally worked Monday through Saturday from approximately 7:00 a.m. until 3:30 p.m. or until 5:00 p.m.

Throughout the duration of Mr. Berber Ayala's employment with Employers, Mr. Berber Ayala and other aggrieved employees were not paid all wages earned and for all hours worked as Employers would not accurately keep track of their actual hours worked. Upon information and belief, the time records maintained by Employers were not reflective of the actual number of hours that Mr. Berber Ayala and other aggrieved employees actually worked. Generally, for most of the year other than the almond season, Mr. Berber Ayala's supervisor wrote down Mr. Berber Ayala's hours and the hours worked by other aggrieved employees. During the almond season, Mr. Berber Ayala wrote down his hours per his supervisor's instruction. Mr. Berber Ayala's supervisor instructed Mr. Berber Ayala that Mr. Berber Ayala could not write down his hours worked before 6:30 a.m. or receive compensation for that time even though at least twice per week, during the almond season, Mr. Berber Ayala worked at least 1.5 hours prior to 6:30 a.m. placing tickets on almond trailers. Further, Employers did not consistently compensate Mr. Berber Ayala and other aggrieved employees for their duties during the almond season after 8:30 p.m. During the almond season, approximately three days per week, after 8:30 p.m., Mr. Berber Ayala spent a couple of hours driving to Fresno and back. During the rest of the year, even though Mr. Berber Ayala and other aggrieved employees informed their supervisor that they worked beyond 3:30 p.m. and until 5:00 p.m. at least twice per week, the supervisor often chose to ignore their extra hours worked and only wrote down their pre-scheduled work hours.

Under Employers' stated policies and Mr. Berber Ayala's agreement with Employers, Mr. Berber Ayala earned bonus wages and was entitled to bonuses at least at the end of each almond season. Mr. Berber Ayala was not paid all bonuses owed upon separation of employment and still has not received them.

Mr. Berber Ayala and other aggrieved employees worked overtime hours, based on the requirements of Wage Order 14, but generally did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Further, as described above, Employers regularly excluded hours worked before the scheduled start time and after the scheduled end time. The overtime pay amount to Mr. Berber Ayala and other aggrieved employees did not factor in the bonus that Mr. Berber Ayala and other aggrieved employees received at the end of each season into the regular rate of pay. As a result, Employers failed to ensure that Mr. Berber Ayala and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Employers did not provide Mr. Berber Ayala and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally compliant second meal period when they worked shifts longer than 10 hours. For example, Mr. Berber Ayala and other aggrieved employees did not receive a duty-free 30 minutes. Instead, Employers requested that Mr. Berber Ayala and other aggrieved employees perform work tasks during their 30-minute meal periods such as repairing a machine or going to the store to get machine parts. As another example, Mr. Berber Ayala and other aggrieved employees generally began their meal periods at 12:00 p.m., more than 5 hours after their 6:30 a.m. start time during the almond season. Also, Mr. Berber Ayala and other aggrieved employees experienced frequent interruptions to their meal periods preventing them from taking a duty-free 30-minute meal period. Even though Mr. Berber Ayala and other aggrieved employees often worked shifts in excess of 10 hours, Mr. Berber Ayala and other aggrieved employees were almost never permitted to exercise their right to a second meal period, and were never informed of their right to do so. Despite Employers' failure to provide Mr. Berber Ayala and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers never provided Mr. Berber Ayala 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. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of meal period premiums in the event Mr. Berber Ayala and other aggrieved employees were not authorized to take lawful meal periods.

Even though Mr. Berber Ayala and other aggrieved employees regularly worked beyond 12 hours in a work day, they were not authorized to take their second or third 10-minute rest period. Employers did not provide Mr. Berber Ayala 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, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Berber Ayala and other aggrieved employees were not authorized to take lawful rest periods.

Employers failed to issue to Mr. Berber Ayala 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 (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.

Furthermore, Employers failed to adequately reimburse Mr. Berber Ayala and other aggrieved employees for all reasonable and necessary work expenditures. Mr. Berber Ayala was not ever provided any reimbursement for these necessary uses.

Employers 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 Employers' failure to accurately compensate Mr. Berber Ayala 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 required rest periods.

Employers failed to meet their obligations to provide paid sick leave to Mr. Berber Ayala 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. Berber Ayala 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, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Berber Ayala 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. Berber Ayala and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

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

Minimum Wage Violations

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

Overtime Wage Violations

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

Meal Period Violations

As alleged above, Employers failed to provide Mr. Berber Ayala and other aggrieved employees with all required and compliant meal periods due to Employers' 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. Berber Ayala 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, Employers also failed to authorize and permit Mr. Berber Ayala 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. Berber Ayala 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 Pay All Agreed-Upon Wages Including Bonus Wages Accrued

As alleged above, Employers also willfully failed to pay Mr. Berber Ayala and other aggrieved employees all agreed-upon wages owed, including bonus wages accrued. *See* Labor Code §§ 204 and 221-223. As a result, Mr. Berber Ayala and other aggrieved employees are entitled to the unpaid amount of the agreed-upon wages owing.

Failure to Reimburse Necessary Business Expense

Employers 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." Employers 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 Employers' unlawful reimbursement practices, Employers failed to indemnify Mr. Berber Ayala and other aggrieved employees for all necessary business expenses incurred, in the performance of their work duties. Mr. Berber Ayala and other aggrieved employees were not ever provided any reimbursement for its necessary use.

Wage Statement Violations

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

As an "aggrieved employee," Mr. Berber Ayala 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. Berber Ayala's own investigation, and on information and belief, Employers committed and continue to commit the following Labor Code violations:

a. Employers violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Berber Ayala and other aggrieved employees the statutory minimum wage for all hours worked;

b. Employers violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Berber Ayala and other aggrieved employees all overtime compensation earned;

c. Employers 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. Berber Ayala and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Employers violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Berber Ayala and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Berber Ayala and other aggrieved employees at their respective regular rates of compensation;

e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Berber Ayala and other aggrieved employees for all work-related expenses incurred;

f. Employers violated Labor Code § 226 by failing to furnish Mr. Berber Ayala and other aggrieved employees with accurate and compliant itemized wage statements;

g. Employers violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Berber Ayala and other aggrieved employees;

h. Employers violated Labor Code § 204 by failing to pay Mr. Berber Ayala and other aggrieved employees all wages earned at least twice during each calendar month;

i. Employers violated Labor Code § 205 by failing to pay Mr. Berber Ayala and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday;

j. Employers violated Labor Code § 245.5 by failing to permit and authorize Mr. Berber Ayala and other aggrieved employees to exercise the use of their accrued paid sick leave days;

k. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Berber Ayala and other aggrieved employees;

l. Employers violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Berber Ayala and other aggrieved employees; and

m. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Berber Ayala and other aggrieved employees all agreed-upon wages including bonus wages accrued.

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

Jess Flores

Jessica Flores

cc: El Dorado Land, Inc. (via certified mail)
Cottonwood Farms, Inc. (via certified mail)
Mouren Feeding Company (via certified mail)
Wheat Land, Inc. (via certified mail)
Coalinga Feed Yard, Inc. (via certified mail)
Bear Canyon Farms, Inc. (via certified mail)
Spanish Lake Farms, Inc. (via certified mail)
Lost Hills Ranch, Inc. (via certified mail)