STANSBURY BROWN
LAW PC

May 23, 2024

VIA LWDA WEBSITE

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

Re: *Ramon Mendoza Arroyo v. Contract Labor Management, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Ramon Mendoza Arroyo ("Mr. Mendoza Arroyo") in claims for Labor Code violations arising from his employment with Contract Labor Management, Inc. ("CLM"); Fruition Sales ("FS"); Rising C Ranches, Inc. ("RCR) (FS and RCR are referred to collectively as "Client-Employers"); and DOES 1 through 100 (CLM and Client Employers are collectively referred to herein as "Employers"). Mr. Mendoza Arroyo 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.

Employers are in the business of farming and packaging citrus fruit and other agricultural produce. Mr. Mendoza Arroyo worked for Employers from approximately 2012 to approximately June 25, 2023. Mr. Mendoza Arroyo was a forklift driver tasked with loading, unloading and transporting bins of oranges, mandarins, lemons, and citrus fruit from the farm to the packaging house. Mr. Mendoza Arroyo generally worked during the citrus season from approximately November to approximately May or June each year from Monday through Saturday and sometimes on Sundays from approximately 7:00 a.m. to approximately 7:00 p.m. and up to 10:00 p.m.

During Mr. Mendoza Arroyo's employment with CLM, FS, RCR, he performed work for other presently unknown entities. As such, Client-Employers are jointly liable with CLM and 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. Mendoza Arroyo seeks to represent are the other aggrieved employees of Employers who performed work for Fruition Sales and Rising C Ranches, Inc. in California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Mr. Mendoza Arroyo's employment with Employers, Mr. Mendoza Arroyo 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 in any manner apparent to Mr. Mendoza Arroyo. Rather, Mr. Mendoza Arroyo and other aggrieved employees were paid on a piece-rate basis that depended on, for example, the numbers of boxes transported from the farm to the packaging house. Mr. Mendoza Arroyo and other aggrieved employees were generally not paid an hourly minimum wage on the days where their piece-rate compensation did not exceed their minimum wages earned. For example, check number 26732, which is under representative of Mr. Mendoza Arroyo's actual hours worked, shows that on March 18, 2022, Mr. Mendoza Arroyo earned only $99 for his work that day even though he generally worked more than 10 hours per day. At minimum wage, Mr. Mendoza Arroyo should have earned at least $15.00 per hour. On information and belief, Mr. Mendoza Arroyo alleges that Employers did not employ any timekeeping practices when he performed piece work and at no point while Mr. Mendoza Arroyo was performing piece work was Mr. Mendoza Arroyo made to confirm or sign off on his hours worked.

Mr. Mendoza Arroyo 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. On those occasions where Mr. Mendoza Arroyo worked overtime hours during the week, Mr. Mendoza Arroyo 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. Mendoza Arroyo frequently worked more than twelve (12) hours in one day which would have entitled him to statutory overtime compensation as he would exceed the hourly overtime thresholds as set forth in Wage Order 14. However, Mr. Mendoza Arroyo did not receive overtime pay despite this reality. For example, check 32451 dated June 23, 2023, which is under representative of Mr. Mendoza Arroyo's actual hours worked, shows that Mr. Mendoza Arroyo was paid for 51 hours of work over a six-day period and does not reflect that he was paid any overtime even though he would have been entitled to at least 11 hours of overtime pay. Upon information and belief, Employers systemically failed to pay overtime compensation due to Mr. Mendoza Arroyo and other aggrieved employees regardless of whether they were performing work on a piece rate or hourly basis. As a result, Employers failed to ensure that Mr. Mendoza Arroyo and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Employers did not provide Mr. Mendoza Arroyo 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, at least three times per week, Mr. Mendoza Arroyo and other aggrieved employees did not receive a duty-free 30 minutes. Instead, Employers often required Mr.

Mendoza Arroyo and other aggrieved employees to limit their meal periods to 15 minutes, pressured them to rush to meet delivery deadlines or required them to eat while working. Even though Mr. Mendoza Arroyo and other aggrieved employees often worked shifts in excess of 10 hours, Mr. Mendoza Arroyo and other aggrieved employees were almost never permitted to exercise their right to a second meal period, and were not informed of their right to do so. Upon information and belief, Employers did not accurately record meal periods in any manner. Despite Employers' failure to provide Mr. Mendoza Arroyo and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers never provided Mr. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees were not authorized to take lawful meal periods.

Even though Mr. Mendoza Arroyo and other aggrieved employees regularly worked beyond 12 hours in a work day, they were often not authorized to take a first, second or third 10-minute rest period as they were often pressured to rush fruit deliveries. Mr. Mendoza Arroyo and other aggrieved employees were often not authorized to take their rest periods regardless of whether they were working on a piece-rate or hourly basis. Further, on those occasions where Mr. Mendoza Arroyo and other aggrieved employees performed piece work for Employers, Employers routinely failed to pay the correct regular rate for rest and recovery periods or any rest and recovery pay at least through February 2023. For example, check 26732 dated March 25, 2022, which as explained above, is under representative of Mr. Mendoza Arroyo's actual hours worked, shows that Mr. Mendoza Arroyo was paid for 6 hours of work on March 19, 2022 and does not show any rest and recovery pay for that week. Employers did not provide Mr. Mendoza Arroyos 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. Mendoza Arroyo and other aggrieved employees were not authorized to take lawful rest periods.

Employers have failed to accurately record and compensate Mr. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees were required to perform work duties and activities that were not directly compensated on a piece-rate basis such as waiting for 45 minutes to one hour for farm laborers to collect fruit for Mr. Mendoza Arroyo to load onto a truck for delivery. Despite this significant amount of non-productive time being worked on a daily basis, Mr. Mendoza Arroyo and other aggrieved employees were vastly undercompensated for non-productive time. For example, while on an average shift, Mr. Mendoza Arroyo estimates that he and other aggrieved employees would incur several hours of non-productive time performing the duties as explained above, and would generally receive no compensation for non-productive time on their wage statements. Additionally, Mr. Mendoza Arroyo and other aggrieved employees were not compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that were not directly compensated on a piece-rate basis. Mr. Mendoza Arroyo alleges that all this time constitutes unproductive worktime which must be compensated under California law. Accordingly, Mr. Mendoza Arroyo estimates that she and other aggrieved employees worked at least an additional 4.5 to 6 hours per week of non-productive time that was uncompensated. As such, Mr. Mendoza Arroyo alleges that Employers have not accurately tracked and compensated employees' non-productive time in compliance with Labor Code § 226.2.

Furthermore, Employers failed to adequately reimburse Mr. Mendoza Arroyo for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Mendoza Arroyo to utilize his personal cellular phone in the performance of his work duties and was not ever provided any reimbursement for its necessary use.

Employers failed to issue to Mr. Mendoza Arroyo 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.

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. Mendoza Arroyo 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. Furthermore, Employers violated Labor Code § 205 by failing to pay Mr. Mendoza Arroyo and other aggrieved employees within four days of the last day of the pay period. Instead, Employers usually paid Mr. Mendoza Arroyo and other aggrieved employees approximately six days after the last day of the pay period.

Employers failed to meet their obligations to provide paid sick leave to Mr. Mendoza Arroyo and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit their 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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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"):

<u>Minimum Wage Violations</u>

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

<u>Overtime Wage Violations</u>

Employers were required to pay Mr. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees to work overtime hours but did not compensate Mr. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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

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. Mendoza Arroyo and other aggrieved employees for all necessary business expenses incurred, including, utilization of personal cell phones for the performance of their work duties. Mr. Mendoza Arroyo and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, Employers were required to furnish Mr. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees was willful and, consequently, entitles Mr. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo'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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Mendoza Arroyo and other aggrieved employees at their respective regular rates of compensation;

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

f. Employers violated Labor Code § 226 by failing to furnish Mr. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees;

h. Employers violated Labor Code § 204 by failing to pay Mr. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo 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. Mendoza Arroyo and other aggrieved employees; and

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. Mendoza Arroyo and other aggrieved employees.

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

Daniel J. Brown

cc: Contract Labor Management, Inc. (via certified mail)
Fruition Sales (via certified mail)
Rising C Ranches, Inc. (via certified mail)