

KARASIK LAW FIRM

16021 Aiglon St.
Pacific Palisades, CA 90272
Tel. (310) 463-9761
greg@karasiklawfirm.com

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Labor and Workforce Development Agency
Department of Industrial Relations
Online Filing

Re: California Labor Code §2699 Letter

Aggrieved Employee: Alejo Dominguez
Employer: Foothill Packing, Inc.

This letter shall serve as notice under Labor Code Section 2699.3 that Alejo Dominguez alleges that his employer Foothill Packing, Inc. (“Foothill Packing”) has a practice of violating the Labor Code with respect to non-exempt hourly paid agricultural employees who operate harvest machinery or tractors in the field as part of a harvest crew (“Machine Operators”). Mr. Alejo has worked for Foothill Packing in Monterey County, California as a Machine Operator on a seasonal basis since 2019. Mr. Dominguez alleges, on behalf of himself and other Machine Operators, that Foothill Packing violates the Labor Code in the following ways:

1. For three reasons, Foothill Packing does not provide Machine Operators with meal periods in accordance with Labor Code Section 512.

a. First, Machine Operators are not provided with a timely first meal period. Machine Operators begin work before the members of the harvesting crew who perform harvesting work (“Harvest Workers). Prior to 2023, Machine Operators started work 2 hours before Harvest Workers. Since 2023 Machine Operators start work at least 1.75 hours before Harvest Workers. Because Foothill Packing provides meal periods to Machine Operators at the same time meal periods are provided to Harvest Workers, but Machine Operators start work 1.75 – 2 hours before Harvest Workers, Machine Operators are not provided a meal period before the start of the 6th hour of work on a workday.

b. Second, Foothill Packing does not provide Machine Operators with meal periods that are duty free for 30 minutes. During the 30 minute meal period provided to Machine Operators, it takes them several minutes at the start of the meal period to turn off their machines and wait for Harvest Workers to walk from the field to the meal area and doff their protective clothing and equipment before Machine Operators can start walking from the field to the meal area; and it takes Machine Operators several minutes at the end of the meal period to walk from the meal area to the field, wait for Harvest Workers to don their protective clothing equipment and walk from the meal area to the field, and turn on their machines.

c. Third, Foothill Packing does not provide Machine Operators with a second meal period when they work more than 10 hours in a workday.

2. For three reasons, Foothill Packing does not provide Machine Operators with rest periods in accordance with Wage Order 14, which constitutes a violation of Labor Code Section 1198.

a. First, the first rest period provided to Machine Operators is not timely because Machine Operators start work 1.75 – 2 hours before Harvest Workers but Machine Operators and Harvest Workers are provided a first rest period at the same time.

b. Second, Foothill Packing does not provide Machine Operators a second period when Harvest Workers work more than 6 hours but fewer than 7 hours in a workday. Thus, Machine Operators were not provided a second rest period when they worked more than 6 hours but fewer than 9 hours in a workday prior to 2023, and Machine Operators were not provided a second rest period when they worked more than 6 hours but fewer than 8.75 hours in a workday since 2023.

c. Third, Foothill Packing does not provide Machine Operators with a third rest period when they work more than 10 hours in a workday.

3. In violation of Labor Code Section 226.7, Foothill Packing does not pay Machine Operators premium wages owed to them for any of the meal period violations or rest period violations described above.

4. In violation of Labor Code Section 1197, Foothill Packing does not pay Machine Operators all the minimum wages owed to them for two reasons.

a. First, since 2023 Foothill Packing has only paid Machine Operators wages for 1.5 hours at the start of their shifts before Harvest Workers begin their work, even though it takes Machine Operators at least 1.75 hours to perform all the work they need to do before Harvest Workers begin.

b. Second, Foothill Packing does not pay Machine Operators minimum wages for their meal period time, the entirety of which constitutes compensable “hours worked” because, for the reasons explained above, meal periods are not duty free for 30 minutes.

5. In violation of Labor Code Section 860-862, and/or in violation of Labor Code Section 1198 for not complying with Wage Order 14, Foothill Packing does not pay Machine Operators who work overtime hours all the overtime wages owed to them for two reasons:

a. First, since 2023 Foothill Packing has only paid Machine Operators wages for 1.5 hours at the start of their shifts before Harvest Workers begin their work, even though it takes Machine Operators at least 1.75 hours to perform all the work they need to do before Harvest Workers begin.

b. Second, Foothill Packing does not pay Machine Operators minimum wages for their meal period time, the entirety of which constitutes compensable “hours worked” because, for the reasons explained above, meal periods are not duty free for 30 minutes.

6. In violation of Labor Code Section 226, Foothill Packing does not provide Machine Operators with accurate wage statements. The wage statements provided to Machine Operators do not state the total amount of gross wages earned during the pay period, the total amount of net wages earned during the pay period and/or the total number of hours worked during the pay period because, for the reasons explained above, Foothill Packing does not pay Machine Operators all the premium wages owed to them for meal period violations and rest period violations, and Foothill Packing does not pay Machine Operators all the minimum wages and/or overtime wages owed to them.

7. In violation of Labor Code Section 204, Foothill Packing does not pay Machine Operators all the wages owed to them every pay period because, for the reasons explained above, Foothill Packing does not pay Machine Operators all the premium wages owed to them for meal period violations and rest period violations, and Foothill Packing does not pay Machine Operators all the minimum wages and/or overtime wages owed to them.

8. In violation of Labor Code Sections 201 and/or 202, Foothill Packing does not pay Machine Operators whose employment ends (whether by discharge, resignation or seasonal layoff) all the wages owed to them upon termination of employment because, for the reasons explained above, Foothill Packing does not pay Machine Operators all the premium wages owed to them for meal period violations and rest period violations, and Foothill Packing does not pay Machine Operators all the minimum wages and/or overtime wages owed to them.

9. In violation of Labor Code Section 1198, Foothill Packing since 2023 has not kept records of when the work periods of Machine Operators begin. As explained above, since 2023 Machine Operators have been required to begin work at least 15 minutes earlier than their scheduled starting time.

Please advise whether the LWDA intends to investigate these allegations. If we do not receive a timely notice that the LWDA intends to do so, Mr. Dominguez will proceed to seek civil penalties against Foothill Packing under Labor Code Section 2699 in a civil lawsuit.

Very truly yours,

KARASIK LAW FIRM

s/ Gregory N. Karasik
Gregory N. Karasik

cc: Foothill Packing, Inc.
1582 Moffett Street, Suite G
Salinas, CA 93902

Via Certified Mail