STANSBURY BROWN

LAW PC

June 13, 2024

VIA LWDA WEBSITE

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

Re: *Gabriel Garcia Mancilla v. Sierra View Dairy, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Gabriel Garcia Mancilla ("Mr. Garcia Mancilla") in claims for Labor Code violations arising from his employment with Sierra View Dairy ("Sierra"); and DOES 1 through 100 (collectively "Employers"). Mr. Garcia Mancilla 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.

For purposes of this letter, the "aggrieved employees" whom Mr. Garcia Mancilla 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 engage in business in the dairy industry. They paid Mr. Garcia Mancilla an hourly rate. Mr. Garcia Mancilla worked for Employers from approximately May 15, 2016 to approximately November 15, 2023 when Employers refused to permit Mr. Garcia Mancilla to return to work after a couple of months of approved disability leave. Mr. Garcia Mancilla worked as an agricultural worker and he was tasked with watering crops, maintaining proper water levels and occasionally driving tractors. Mr. Garcia Mancilla was generally scheduled to work from Monday to Saturday and also on Sundays from around 5:00 a.m. until 5:00 p.m. or up to 7:30 p.m. or later.

Throughout the duration of Mr. Garcia Mancilla's employment with Employers, Mr. Garcia Mancilla and other aggrieved employees were not paid 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. Garcia Mancilla and other aggrieved employees actually worked. Mr. Garcia Mancilla and other aggrieved employees clocked in to work on a computer located at Employers' premises. Employers also asked Mr. Garcia Mancilla and other aggrieved employees to write down their start and end times, but not their meal period times. Pursuant to their supervisor's instructions, Mr. Garcia Mancilla and other aggrieved employees performed tasks approximately 15-20 minutes in duration for 1-2 times per week prior to clocking in, such as checking water levels or other tasks that could prevent emergency situations from arising later in the day. Sometimes, Mr. Garcia Mancilla had to perform work after clocking out for the day such as cleaning cow manure and pumping out water after it rained. Mr. Garcia Mancilla estimates that he spent 15-20 minutes working after clocking out approximately 1-4 times per week. Also, approximately 2-3 times per week, Mr. Garcia Mancilla spent at least 35 or 40 minutes working during his lunch hour and they did not get paid for this time because it was Employers' policy to automatically deduct one hour for a first meal period. Overall, Mr. Garcia Mancilla and other aggrieved employees spent at least approximately more than 4 hours each week working off the clock by checking water levels, trying to prevent larger issues from arising, attending to issues requiring immediate attention and cleaning the premises. This estimate does not include the second one-hour deduction that Mr. Garcia Mancilla and other aggrieved employees experienced when they worked beyond twelve (12 hours) in one day approximately 1-4 times per week.

Furthermore, Mr. Garcia Mancilla 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. Upon information and belief, Employers systematically failed to pay overtime compensation due to Mr. Garcia Mancilla and other aggrieved employees when they worked the requisite number of hours to be entitled to such pay. Instead, Mr. Garcia Mancilla and other aggrieved employees would either be paid their normal hourly rate for overtime hours worked, paid an overtime rate for double overtime worked, or simply not paid for these hours worked at all. As an example, checks 12020, 11872, 11801, 11714, 11642, 11575 and more, each issued to Mr. Garcia Mancilla for a 2-week pay period in 2023, each show that Mr. Garcia Mancilla was compensated the minimum wage for exactly 100 hours per pay period even though as employers of more than 26 employees, Employers should have compensated at least 20 of those hours at the overtime rate. Mr. Garcia Mancilla and other aggrieved employees should have been compensated at the minimum wage rate for a maximum of 40 hours per week. Further, Mr. Garcia Mancilla and other aggrieved employees were not compensated at the proper regular rate for overtime worked because the regular rate did not factor in the $100 of bonuses received per month. Further, as discussed above, Mr. Garcia Mancilla and other aggrieved employees worked at least approximately four hours in a week beyond 40 hours in a workday without any compensation at all. Furthermore, Mr. Garcia Mancilla and other aggrieved employees were required to work seven consecutive days in a workweek but were not paid an overtime rate of pay for the first eight hours worked on the seventh consecutive day worked during a workweek or double their regular rate of pay for work in excess of eight hours on the seventh day of the workweek worked. As a result, Employers failed to ensure that Mr. Garcia Mancilla and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Garcia Mancilla and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14.

Mr. Garcia Mancilla and other aggrieved employees were not authorized to take all legally required rest periods. This practice was pervasive throughout Mr. Garcia Mancilla's employment. Mr. Garcia Mancilla and other aggrieved employees almost never received an uninterrupted rest period every four hours because Employers enforced an unlawful policy of combining two rest periods to be taken at the same time as the meal period at approximately the seventh hour of the workday. Even though Mr. Garcia Mancilla often worked more than twelve (12) hours, Mr. Garcia Mancilla almost never received a first, second or third rest period throughout his employment with Employers. Despite Employers' failure to authorize and permit Mr. Garcia Mancilla and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Garcia Mancilla 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. Garcia Mancilla and other aggrieved employees were not authorized to take lawful rest periods.

Employers also did not provide Mr. Garcia Mancilla 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, even though Mr. Garcia Mancilla and other aggrieved employees began their day at approximately 5:00 a.m., they were not scheduled to begin their first meal periods until the 7th hour of the work day at 12:00 p.m. Additionally, Employers required Mr. Garcia Mancilla and other aggrieved employees to cut their first meal periods to less than 30 minutes at least 2-3 times per week in order to perform tasks such as checking water levels. Regardless of whether Mr. Garcia Mancilla and other aggrieved employees received an uninterrupted 30 minutes, Employers automatically deducted 1 hour of meal period time from Mr. Garcia Mancilla and other aggrieved employees and instructed Mr. Garcia Mancilla and other aggrieved employees not to clock in and out for their meal periods or write their meal period hours down. Even though Mr. Garcia Mancilla and other aggrieved employees usually worked a shift in excess of twelve (12) hours per day, Mr. Garcia Mancilla and other aggrieved employees were almost never permitted to exercise their right to a second meal period. Mr. Garcia Mancilla and other aggrieved employees were not only unable to exercise the right to a second meal period, but they were informed that if they worked a minute beyond twelve (12) hours in one day, then they would automatically receive a second one-hour deduction from their pay even though they did not receive a second meal period. Despite Employers' failure to provide Mr. Garcia Mancilla and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers never provided Mr. Garcia Mancilla 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. Garcia Mancilla and other aggrieved employees were not authorized to take lawful meal periods.

Furthermore, Employers failed to adequately reimburse Mr. Garcia Mancilla and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Garcia Mancilla and other aggrieved employees to utilize their personal cell phone for necessary business purposes. Mr. Garcia Mancilla was not ever provided any reimbursement for this necessary use.

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. Garcia Mancilla 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.

Employers failed to issue to Mr. Garcia Mancilla 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.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Garcia Mancilla 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 Mancilla 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 the Industrial Welfare Commission Wage Orders:

<u>Minimum Wage Violations</u>

Employers were required to pay Mr. Garcia Mancilla 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; and the Industrial Welfare Commission Wage Orders. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Garcia Mancilla and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Garcia Mancilla and other aggrieved employees were deprived of all required minimum wages.

<u>Overtime Wage Violations</u>

Employers were required to pay Mr. Garcia Mancilla and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; and the Industrial Welfare Commission Wage Orders. The Industrial Welfare Commission Wage Orders require an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Industrial Welfare Commission Wage Orders. At all times relevant herein, Employers caused Mr. Garcia Mancilla and other aggrieved employees to work overtime hours but did not compensate Mr. Garcia Mancilla and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

<u>Meal Period Violations</u>

As alleged above, Employers failed to provide Mr. Garcia Mancilla 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; the Industrial Welfare Commission Wage Orders. As a result, Mr. Garcia Mancilla 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.").

<u>Rest Period Violations</u>

As alleged above, Employers also failed to authorize and permit Mr. Garcia Mancilla and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; the Industrial Welfare Commission Wage Orders. As a result, Mr. Garcia Mancilla 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. Garcia Mancilla and other aggrieved employees for all necessary business expenses incurred, in the performance of their work duties, including but not limited to utilization of their personal cell phones and of their personal vehicles. Mr. Garcia Mancilla and other aggrieved employees were not ever provided any reimbursement for this necessary use.

Wage Statement Violations

As described above, Employers were required to furnish Mr. Garcia Mancilla 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); the Industrial Welfare Commission Wage Orders. 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. Garcia Mancilla 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. Garcia Mancilla 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. Garcia Mancilla and other aggrieved employees was willful and, consequently, entitles Mr. Garcia Mancilla 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. Garcia Mancilla 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 the investigations of Mr. Garcia Mancilla 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. Garcia Mancilla 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. Garcia Mancilla 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. Garcia Mancilla 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. Garcia Mancilla and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Garcia Mancilla and other aggrieved employees at their respective regular rates of compensation;

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

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

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

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

j. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Garcia Mancilla and other aggrieved employees;

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

l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Garcia Mancilla 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

Daniel J. Brown

cc: Sierra View Dairy (via certified mail)