STANSBURY BROWN
LAW PC

July 26, 2024

VIA LWDA WEBSITE

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

Re: *Graciano Macias Rios v. Tri Iest Dairy Management, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Graciano Macias Rios ("Mr. Macias Rios") in claims for Labor Code violations arising from his employment with Tri Iest Dairy Management; Tri Iest Dairy, LP; Richard Iest Dairy, Inc.; and DOES 1 through 100 (collectively "Employers"). Mr. Macias Rios 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. Macias Rios seeks to represent are the other non-exempt 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 dairy business. Mr. Macias Rios worked for Employers from approximately August 1999 to approximately August 1, 2023. Mr. Macias Rios worked as an agricultural worker and he was tasked with milking cattle. Mr. Macias Rios was generally scheduled to work from Sunday to Thursday from approximately 6:30 a.m. to 6:30 p.m. Approximately once per month, Mr. Macias Rios worked a sixth day per week.

Throughout the duration of Mr. Macias Rios' employment with Employers, Mr. Macias Rios 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. Macias Rios and other aggrieved employees actually worked. Mr. Macias Rios and other aggrieved employees clocked in on a tablet that identified them by scanning their faces. Employers instructed Mr. Macias Rios and other aggrieved employees to perform work such as writing down the milk count prior to clocking in. Even if Mr. Macias Rios or other employees clocked in early, upon information and belief, Employers adjusted the early clock-in time to the time that Mr. Macias Rios and other employees were scheduled to start their shifts. Mr. Macias Rios estimates that he spent approximately 15 minutes every day performing milk counts off-the-clock. Employers further instructed Mr. Macias Rios and other aggrieved employees to wash their aprons and boots after clocking out. Mr. Macias Rios estimates that he spent approximately 10 minutes every day after clocking out washing his apron and boots. Overall, Mr. Macias Rios and other aggrieved employees spent at least approximately more than two hours each week working off the clock performing work such as conducting the milk count prior to clocking in.

Furthermore, Mr. Macias Rios 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. Macias Rios and other aggrieved employees for the hours that they worked off the clock. As discussed above, Mr. Macias Rios and other aggrieved employees worked at least approximately two hours per week without any compensation at all. As a result, Employers failed to ensure that Mr. Macias Rios and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Macias Rios and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 14. Defendants further failed to pay overtime at one-half times Plaintiff's hourly rate for the time they did credit Plaintiff for working.

Mr. Macias Rios and other aggrieved employees were not authorized to take all legally required rest periods. Even though Mr. Macias Rios and other aggrieved employees often worked beyond 10 hours in a day, at least once a day or more, throughout their employment, they did not receive a compliant first, second or third rest period. Almost daily, Mr. Macias Rios and other aggrieved employees regularly did not receive a compliant first rest period as Employers instead required them to focus on hitting milk production quotas. At least twice per week, Mr. Macias Rios and other aggrieved employees did not receive a second rest period because Employers would instruct them to instead perform tasks such as going to the milk tank room and changing the milk filters. Also, at least twice per week, Mr. Macias Rios and other aggrieved employees did not receive a third rest period because Employers instead required them to focus on hitting milk production quotas. Despite Employers' failure to authorize and permit Mr. Macias Rios and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Macias Rios 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. Macias Rios and other aggrieved employees were not authorized to take lawful rest periods.

Employers also did not always provide Mr. Macias Rios 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. At least twice per week, Employers interrupted the first meal period of Mr. Macias Rios and other aggrieved employees with tasks such as checking the milk, changing a tank or otherwise responding to a work issue requiring immediate attention. At least once or twice per month, Mr. Macias Rios and other aggrieved employees began their first meal periods after the fifth hour of work due to Employers requiring them to meet milk production quotas. Even though Mr. Macias Rios and other aggrieved employees usually worked a shift in excess of 10 hours per day, almost twice per week, Employers interrupted their second meal periods for the same reasons that they interrupted their first meal periods. At least once per week, Mr. Macias Rios and other aggrieved employees began their second meal periods after the fifth hour due to Employers requiring them to meet milk production quotas. Overall, Mr. Macias Rios estimates that he experienced a meal period violation almost every day that he worked due to his meal period either being late or interrupted. Despite Employers' failure to provide Mr. Macias Rios and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers never provided Mr. Macias Rios 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. Macias Rios and other aggrieved employees were not authorized to take lawful meal periods.

Furthermore, Employers failed to adequately reimburse Mr. Macias Rios and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Macias Rios to purchase boots and an apron and utilize his personal cell phone for necessary business purposes. Mr. Macias Rios 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. Macias Rios 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. Macias Rios 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. Moreover, Defendants' itemized wage statements were facially unlawful because they failed to include the full legal name of the employing entity and instead listed the employer's name as "Tri lest Dairy" in violation of Labor Code Section 226(a)(8). This is a particular issue here because there are two related entities "Tri Iest Dairy Management, LLC" and "Tri Iest Dairy, LP," and therefore based on the wage statement alone, Plaintiff cannot tell which, if any, of these entities was his actual employer.

Employers had a policy of failing to permit and authorize Mr. Macias Rios and other aggrieved employees to use their accrued paid sick leave. Throughout his employment, Employers denied Mr. Macias Rios the right to use his accrued paid sick leave. On the days when Mr. Macias Rios was sick, Employers required Mr. Macias Rios to show up to work.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Macias Rios and other aggrieved employees were deprived of all required minimum wages.

<u>Overtime Wage Violations</u>

Employers were required to pay Mr. Macias Rios 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. Macias Rios and other aggrieved employees to work overtime hours but did not compensate Mr. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios and other aggrieved employees for all necessary business expenses incurred, in the performance of their work duties. Mr. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios and other aggrieved employees was willful and, consequently, entitles Mr. Macias Rios 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. Macias Rios will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Macias Rios' 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. Macias Rios 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. Macias Rios 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. Macias Rios 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. Macias Rios and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Macias Rios and other aggrieved employees at their respective regular rates of compensation;

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

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

h. Employers violated Labor Code § 204 by failing to pay Mr. Macias Rios 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. Macias Rios and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday;

j. Employers violated Labor Code § 233, 245.5 and 246.5 by failing to permit and authorize Mr. Macias Rios 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. Macias Rios 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. Macias Rios and other aggrieved employees; and

m. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Macias Rios 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: Tri Iest Dairy Management, LLC (via certified mail)
Tri Iest Dairy, LP (via certified mail)
Richard Iest Dairy, Inc. (via certified mail)