



August 6, 2024

VIA LWDA WEBSITE

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

Re: *Marciano Mejia-Sorto v. Gardeners' Guild, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Marciano Mejia-Sorto ("Mr. Mejia-Sorto") in claims for Labor Code violations arising from his employment with Gardeners' Guild, Inc.; and DOES 1 through 100 (collectively "Employers"). Mr. Mejia-Sorto 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. Mejia-Sorto 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.

Mr. Mejia-Sorto worked for Employers from approximately July 28, 2023 to October 6, 2023. Mr. Mejia-Sorto worked for Employers as a gardener performing landscaping maintenance duties such as cutting grass, cleaning, planting and using gardening machinery. Mr. Mejia-Sorto's regularly scheduled hours were five days per week from approximately 6:00 a.m. to approximately 2:30 p.m. However, Employers required Mr. Mejia-Sorto and other aggrieved employees to arrive to the Richmond yard approximately 15 minutes early on a near-daily basis without compensation to perform duties such as picking up tools from the employer workshop and checking the company car for any maintenance issues in anticipation of the day's work. Mr. Mejia-Sorto and other aggrieved employees typically drove to two or three different residential properties per day to perform their duties. Employers also required Mr. Mejia-Sorto and other aggrieved employees to work approximately 30 minutes off-the-clock after their scheduled end times on a near-daily basis without compensation to perform duties such as returning to the yard through traffic after performing work at different locations and also cleaning their tools such as a lawn mower. Less often, Employers required Mr. Mejia-Sorto and other aggrieved employees to work up to an hour off-the-clock beyond their scheduled end times off the clock and without compensation.

Throughout the duration of Mr. Mejia-Sorto's employment with Employers, Mr. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees actually worked. Employers instructed Mr. Mejia-Sorto and other aggrieved employees to write down their start and end times on a timesheet and turn it in to their supervisors each day. Employers further instructed Mr. Mejia-Sorto and other aggrieved employees that they would not receive pay for any time worked beyond their scheduled end time at approximately 2:30 p.m. Upon information and belief, Employers only paid Mr. Mejia-Sorto and other aggrieved employees for their pre-scheduled hours instead of their actual hours worked. Overall, Mr. Mejia-Sorto estimates that he and other aggrieved employees spent at least approximately 3.75 hours each week working off the clock.

Furthermore, as described above, Mr. Mejia-Sorto and other aggrieved employees worked overtime hours, 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. Mejia-Sorto and other aggrieved employees when they worked off-the-clock outside of their pre-scheduled hours. As discussed above, Mr. Mejia-Sorto and other aggrieved employees worked at least approximately 3.75 hours per week without any compensation at all. As a result, Employers failed to ensure that Mr. Mejia-Sorto and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Mejia-Sorto and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 16.

Employers also did not provide Mr. Mejia-Sorto and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours. Upon information and belief, Employers did not maintain records of employee meal period times. On a near-daily basis, Mr. Mejia-Sorto and other aggrieved employees either did not get a meal period at all or they would only get 10 or 15 minutes to eat. If Mr. Mejia-Sorto and other aggrieved employees ate a meal, they usually did not begin eating until at least 11:00 a.m. and after the fifth hour of the work day. Mr. Mejia-Sorto and other aggrieved employees were required to wait for their supervisors' instructions to begin a meal period and the supervisors often either denied Mr. Mejia-Sorto and other aggrieved employees a meal period or demanded that they finish a specific assignment prior to beginning the meal period, even if it meant delaying the meal period start time as the supervisors were generally in a rush to finish a job and move to the next location. Despite Employers' failure to provide Mr. Mejia-Sorto and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers did not provide Mr. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees were not authorized to take lawful meal periods.

Mr. Mejia-Sorto and other aggrieved employees were not authorized to take all legally required first and second rest periods. On a near-daily basis, Employers required Mr. Mejia-Sorto and other aggrieved employees to work through their rest periods due to being in a rush to finish a job and move on to the next location. Despite Employers' failure to authorize and permit Mr. Mejia-Sorto and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees were not authorized to take lawful rest periods.

Furthermore, Employers failed to adequately reimburse Mr. Mejia-Sorto and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Mejia-Sorto and other aggrieved employees to utilize their personal cell phones and maintain their uniforms. Mr. Mejia-Sorto was never 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto 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 Order 16:

Minimum Wage Violations

Employers were required to pay Mr. Mejia-Sorto 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 Order 16, § 4. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Mejia-Sorto and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Mejia-Sorto and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employers were required to pay Mr. Mejia-Sorto and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; and the Industrial Welfare Commission Wage Order 16, § 3. The Industrial Welfare Commission Wage Order 16, § 3 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 Order 16. At all times relevant herein, Employers caused Mr. Mejia-Sorto and other aggrieved employees to work overtime hours but did not compensate Mr. Mejia-Sorto 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. Mejia-Sorto 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 Order 16, § 10. As a result, Mr. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; the Industrial Welfare Commission Wage Orders 16, § 11. As a result, Mr. Mejia-Sorto 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. Mejia-Sorto 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 uniform maintenance. Mr. Mejia-Sorto 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. Mejia-Sorto 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 Order 16, § 6. 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees was willful and, consequently, entitles Mr. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Mejia-Sorto and other aggrieved employees at their respective regular rates of compensation;
- e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Mejia-Sorto and other aggrieved employees for all work-related expenses incurred;
- f. Employers violated Labor Code § 226 by failing to furnish Mr. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees;
- h. Employers violated Labor Code § 204 by failing to pay Mr. Mejia-Sorto and other aggrieved employees all wages earned at least twice during each calendar month;
- i. Employers violated Labor Code §§ 245.5, 246, & 248.5 et seq by failing to permit and authorize Mr. Mejia-Sorto and other aggrieved employees to exercise the use of their accrued paid sick leave days or pay sick leave pay at the proper regular rate of pay;
- j. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Mejia-Sorto 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. Mejia-Sorto and other aggrieved employees; and
- l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Mejia-Sorto 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



Jessica Flores, Esq.

cc: Gardeners' Guild, Inc. (via certified mail)