



September 26, 2024

VIA LWDA WEBSITE

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

Re: *Jose Manuel Castro Marquez v. Clean Cut Landscape Incorporated, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Jose Manuel Castro Marquez (“Mr. Castro Marquez”) in claims for Labor Code violations arising from his employment with Clean Cut Landscape Incorporated (“CCL”); Clean Cut Landscape Management, Inc. (“CCLM”); and DOES 1 through 100 (collectively “Employers”). Mr. Castro Marquez 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. Castro Marquez 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. Castro Marquez worked for Employers from approximately 2006 to December 11, 2023. Employers are in the landscaping and construction industries. Upon information and belief, Employers were contractors with various California state government agencies such as the California Department of Transportation and were required to pay Mr. Castro Marquez and other aggrieved employees a prevailing wage. Mr. Castro Marquez worked for Employers as a laborer performing landscaping duties at numerous California-government-run locations such as pipefitting, cable installations, covering the ground with cement and also maintenance work such as cutting trees and bushes. Employers paid Mr. Castro Marquez and other aggrieved employees less per hour when they were assigned maintenance work. Sometimes, even though Employers classified the work as maintenance work, Mr. Castro Marquez and other aggrieved employees performed construction work. Mr. Castro Marquez and other aggrieved employees worked in various locations throughout the state of California, including, but not limited to Sacramento, Tracy, Merced, Brentwood, Porterville, Visalia and Hanford.

When Mr. Castro Marquez performed work classified as construction work in cities such as Sacramento and Tracy on projects lasting weeks or months, Mr. Castro Marquez's regularly scheduled hours were from Monday to Friday or Saturday for approximately 10 to 12 hours per day starting at 7:00 a.m. For at least approximately 1.5 years, Employers drove Mr. Castro Marquez and other aggrieved employees from Fresno to Sacramento at 3:00 a.m. each Monday for 4 hours, and drove Mr. Castro Marquez and other aggrieved employees back from Sacramento to Fresno at the end of each workweek for another 4 hours. Upon information and belief, Employers only compensated Mr. Castro Marquez and other aggrieved employees for approximately 2 out of these 8 weekly hours.

Additionally, generally, when Mr. Castro Marquez performed work classified as maintenance work on projects generally lasting a few days, Employers required Mr. Castro Marquez and other aggrieved employees to drive to the shop in Clovis to learn if they would get work for the day instead of notifying them by telephone that there was no work. When not performing work classified as construction work, Mr. Castro Marquez and other aggrieved employees generally worked 1 to 5 days a week and at least once a week, Employers required Mr. Castro Marquez and other aggrieved employees to wait at least an hour to learn if there would be work available for them that day and if there was work available, then Employers instructed Mr. Castro Marquez and other aggrieved employees not to clock in until they arrived at the jobsite which often took another hour to drive to. If there was no work, Employers would send Mr. Castro Marquez and other aggrieved employees home without pay.

Throughout the duration of Mr. Castro Marquez's employment with Employers, Mr. Castro Marquez 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. Castro Marquez and other aggrieved employees actually worked. Mr. Castro Marquez and other aggrieved employees clocked in to work on an app on their phones. Employers instructed Mr. Castro Marquez and other aggrieved employees that they could not clock in before their scheduled start time. If Mr. Castro Marquez and other aggrieved employees clocked in 5 or 10 minutes early, then Employers would penalize them by not paying them for 30 minutes of their work. As described above, Mr. Castro Marquez and other aggrieved employees were not compensated for all hours that they spent driving to and from Employers' shop in a week. Further, Mr. Castro Marquez and other aggrieved employees were shorted approximately 6 hours of drive time from their weeklong work trips. Moreover, Mr. Castro Marquez alleges on information and belief that Employers utilized an unlawful one-way rounding policy, which rounded employee time punches to the half-hour, which systematically caused employees to be paid for less time than they actually worked. Also, Employers did not always pay Mr. Castro Marquez and other aggrieved employees the appropriate prevailing wage rate. Overall, Mr. Castro Marquez estimates that he and other aggrieved employees spent at least approximately 6 to 8 hours each week working off the clock.

When Mr. Castro Marquez and other aggrieved employees worked overtime, they

were not always compensated at the correct regular rate. As described above, Mr. Castro Marquez 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. As an example, check 52275 shows that for a one-week pay period, Mr. Castro Marquez was paid a base rate of \$38.02 per hour of pipefitter work (60 hours), a base rate of \$15.00 per hour for drive time (3.5 hours) and an overtime rate of \$54.13. However, after taking into consideration the varying rates for pipefitter work and for drive time, Mr. Castro Marquez should have been paid an overtime rate of at least \$55.13. Upon information and belief, Employers systematically applied the incorrect overtime rate. Employers also failed to provide "Reporting Time Pay" to Mr. Castro Marquez and other aggrieved employees on those occasions where they were required to report to Employers' worksite but not able to perform work due to Employers' instructions. Despite maintaining a policy that required its employees to report to the worksite every day and wait while knowing that they were going to send employees back home, Employers failed to provide any sort of compensation to Mr. Castro Marquez and the other aggrieved employees on those occasions where they reported to the worksite, but were unable to perform any work in violation of the "Reporting Time Pay" requirements as set forth in Wage Order 16 § 5. As a result, Employers failed to ensure that Mr. Castro Marquez and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Castro Marquez 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. Castro Marquez 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. Further, upon information and belief, Employers did not keep track of the start and end times of the meal periods taken by Mr. Castro Marquez and other aggrieved employees as Mr. Castro Marquez and other aggrieved employees could not clock in and out for their meal periods on their apps. When Mr. Castro Marquez performed work classified as construction work in Sacramento for approximately 1.5 years, he did not receive a legally compliant meal period approximately 4 to 5 days per week. Mr. Castro Marquez's supervisor was responsible for instructing employees to take their meal periods in groups. Often times, Mr. Castro Marquez's supervisor would either not authorize Mr. Castro Marquez and other aggrieved employees to begin their 30-minute meal periods, or might start the meal periods beyond the fifth hour at 1:00 p.m. or 1:30 p.m. or might instruct Mr. Castro Marquez and other aggrieved employees to stop eating lunch and unload an arriving truck. Even though Mr. Castro Marquez and other aggrieved employees sometimes worked more than 10 hours in a work day, Mr. Castro Marquez does not recall receiving a second meal period. Despite Employers' failure to provide Mr. Castro Marquez and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers did not provide Mr. Castro Marquez 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. Castro Marquez and other aggrieved employees were not authorized to take lawful meal periods. Additionally, per the government contracts, Employers were required to provide Mr. Castro Marquez and other aggrieved employees with a paid lunch at least on the days when Mr. Castro Marquez and other aggrieved employees worked outside of Fresno. However, Employers almost never provided Mr. Castro Marquez and other aggrieved employees with a paid lunch when they worked in Sacramento.

Mr. Castro Marquez and other aggrieved employees were not authorized to take all legally required first, second and third rest periods. On a near-daily basis, Employers required Mr. Castro Marquez and other aggrieved employees to work through their rest periods. Regardless of the location at which Mr. Castro Marquez and other aggrieved employees worked, Employers had an unlawful policy of requiring Mr. Castro Marquez and other aggrieved employees to add 20 minutes to their 30-minute meal periods even though Mr. Castro Marquez and other aggrieved employees often did not receive a full 30-minute meal period. On the days that Mr. Castro Marquez and other aggrieved employees did not receive a meal period, they also did not receive rest periods. Despite Employers' failure to authorize and permit Mr. Castro Marquez and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Castro Marquez 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. Castro Marquez and other aggrieved employees were not authorized to take lawful rest periods.

Furthermore, Employers failed to adequately reimburse Mr. Castro Marquez and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Castro Marquez and other aggrieved employees to utilize their personal cell phones and purchase gloves, shoes, vests and helmets. Mr. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Castro Marquez and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employers were required to pay Mr. Castro Marquez 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. Castro Marquez and other aggrieved employees to work overtime hours but did not compensate Mr. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez and other aggrieved employees for all necessary business expenses incurred, in the performance of their work duties, including but not limited to the utilization of their personal cell phones and the purchase of gloves, shoes, vests and helmets. Mr. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez and other aggrieved employees was willful and, consequently, entitles Mr. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Castro Marquez and other aggrieved employees at their respective regular rates of compensation;
- e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Castro Marquez and other aggrieved employees for all work-related expenses incurred;
- f. Employers violated Labor Code § 226 by failing to furnish Mr. Castro Marquez 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. Castro Marquez and other aggrieved employees;
- h. Employers violated Labor Code § 204 by failing to pay Mr. Castro Marquez 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. Castro Marquez 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. Castro Marquez 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. Castro Marquez and other aggrieved employees; and
- l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Castro Marquez 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,

LWDA
September 26, 2024
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STANSBURY BROWN LAW, PC

A handwritten signature in dark ink, reading "jess flores" in a cursive, lowercase style.

Jessica Flores, Esq.

cc: Clean Cut Landscape Incorporated
Clean Cut Landscape Management, Inc.