

Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

September 3, 2024

VIA CERTIFIED MAIL

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

ESPARZA ENTERPRISES, INC.

Luis Miguel Esparza
3851 FRUITVALE AVE.
BAKERSFIELD, CA 93308

SOUTHERN CALIF EGG COOPERATIVE, INC.

DAVID CROCKETT
720 S. STOCKON AVE.
RIPON, CA 95366

FARM FRESH PACKAGING, LLC

DAVID DEMLER
14460 PALM AVE
WASCO, CA 93280

In Re PAGA NOTICE LORENA YANIERED PELAYO MORFIN V. ESPARZA ENTERPRISES, INC., SOUTHERN CALIF EGG COOPERATIVE, INC.

Dear PAGA Administrator:

Our firm represents the interests of **LORENA YANIERED PELAYO MORFIN** (Plaintiff), former employee of **ESPARZA ENTERPRISES, INC., SOUTHERN CALIF EGG COOPERATIVE, INC.** (referred to as the “Defendants”). Plaintiff was employed by the Defendant as of the year 2015, as a packer/machine operator.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699,

et seq. We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendants' aggrieved employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Violation of Labor Code § 226.7, 516 and 1198 (Missed Rest Breaks);
 2. Violation of Labor Code §§ 226.7, recovery period per CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 3395;
 3. Violation of Labor Code §§ 226.7, 512, 516 and 1198 (Missed/Interrupted Meal Breaks);
 4. Violation of Labor Code §§ 1182.12, 1194, 1194.2 and 1197-98 (Failure to Pay Minimum Wages);
 5. Violation of Labor Code §§ 510 and 1194, 1198 (Failure to Pay All Overtime Worked);
 6. Violation of Labor Code § 204, 210 (Failure to Pay All Wages Earned);
 7. Violation of Labor Code §§233, 245, 246(a), 246.5, 248.1, 248.2, 248.5, 248.6 (Failure to Pay for Sick Days and supplemental COVID payment);
 8. Violation of Labor Code §227.3 (Failure to pay vacation time);

 9. Violation of Labor Code §§ 226, 1174, 1198.5 and 2810.5, (Failure to Keep Records, Improper Wage Statements);
 10. Violation of Labor Code §§ 201-203, 256 (Failure to Pay Wages Upon Separation);
 11. Violation of Labor Code §2802 (Failure To Reimburse Required Business Expenses);
 12. Violation of Labor Code §§1102-1102.5 (Retaliating Against "whistleblowing" Employees);
 13. Violation of Work Order 13-2001, 14-2001, Paragraph 14 (Seats);
 14. Violation of Work Order 13-2001, 14-2001, Paragraph 5 (REPORTING TIME PAY);
 15. Violation of Wage Order 13-2201, 14-2001; or any other applicable wage order
-

During the relevant timeframe, Defendants employed Plaintiff as non-exempt hourly employees.

Upon information and belief, Plaintiff and the other aggrieved employees were not reimbursed for necessary business expenses incurred. Plaintiff was not reimbursed for her expenses out of pocket to do her job.

She was required to use her own phone for communication.

Upon information and belief, other aggrieved employees were not timely paid their final wages.

Plaintiff's meal periods were less than 30 minutes and occasionally, Plaintiff had to work during the meal periods, so she could not take a 30 minute uninterrupted meal break.

Plaintiff and the other aggrieved employees were not paid for several of their sick days. They were also required to provide a doctor's note in order to be paid for any sick days. Defendants underpaid sick pay earnings whenever non-discretionary incentive wages were paid within the same work week. Under Cal. Lab. Code § 245, *et seq.* sick pay must be "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Cal. Lab. Code § 226(l)(1) (emphasis added).

If Plaintiff or any employee were paid for sick days, it did not include all the enumeration and the compensation was inaccurate. Plaintiff alleges that Defendants, as a matter of policy and practice, consistently paid sick pay wages at an employee's base hourly rate, and not the regular rate.

When Employees were sick they had to take PTO and not sick days.

Defendants failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e., their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in violation of California Labor Code § 248.1(b)(3)(A) and §248.6. Defendants also failed to provide COVID-19 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in violation of California Labor Code § 248.1(b)(2)(D). Defendants also failed to accurately reflect any offset and/or the current amount of COVID-19 Supplemental Sick Leave available to aggrieved employees on their wage statements, in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided herein.

Applicable Wage Order states:

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be

paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

Plaintiff claims that there were times that employees showed up to work but were not paid half the usual or scheduled day's work or at least two (2) hours of the employee's regular rate of pay, which shall not be less than the minimum wage.

Section 13 or 14 of Applicable Wage Order states:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Plaintiff claims that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

During the relevant timeframe, Plaintiff and the other aggrieved employees worked shifts of over five hours, and at times, were not given a thirty-minute, uninterrupted meal break for each such shift. For example, when Plaintiff worked more than 10 hours a day, they were not allowed to take a second meal break. Plaintiff worked during the meal periods

either under the direction and supervision of Defendants, or with Defendant's knowledge and consent.

Defendants failed to compensate Plaintiff and the other aggrieved employees at the required rate for each occasion in which Defendants failed to provide rest breaks and meal breaks. As such, Defendants failed to pay for all the hours worked and all wages earned by Plaintiff and the other aggrieved employees.

Defendants failed to maintain accurate payroll records, such that Plaintiff and the other aggrieved employees were given wage statements which were inaccurate.

Defendants did not issue an accurate final paycheck to Plaintiff and the other aggrieved employees in accordance with the timeframes prescribed by law. For example, Plaintiff's accurate vacation pay did not include final wage rate, with shift differentials.

Plaintiff claims on her own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week and did not receive compensation for all the hours worked and were not paid accurate overtime.

Plaintiff and the other aggrieved employees were hired to work shifts of over four hours, and were not allowed to take a ten-minute, uninterrupted rest break for each such shift. Plaintiff and the other aggrieved employees worked during the rest periods either under the direction and supervision of Defendant, or with Defendants; knowledge and consent.

Furthermore, Defendants created schedules that made it difficult or impossible for Plaintiff and other employees to take their rest breaks.

Plaintiff and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed rest and meal breaks, nor accounted for overtime pay for hours employees worked in excess of 8 hours per work shift and beyond 40 hours per week. Therefore, Defendants failed to maintain accurate payroll records, such that employees were given wage statements that did not accurately reflect their accurate hours worked and did not reflect the required and due compensation for all the hours worked and breaks missed and/or interrupted.

Defendants failed to compensate Plaintiff and the other aggrieved employees at the required rate for each occasion in which Defendants failed to provide rest breaks. Also, at times Plaintiff and the other aggrieved employees had to work more than 10 hours a day but did not get a second meal break. As such, Defendants failed to pay for all the hours worked and all wages earned by Plaintiff.

Therefore, Plaintiff claims that Defendants did not provide them and all other past and present employees with uninterrupted rest breaks and/or meal breaks. Defendants are understaffed and cannot possibly provide their employees including Plaintiff with their

statutory breaks. Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest break and/or meal break. As a result, Defendants failed to pay their employees for all wages earned.

Plaintiff had to walk several minutes on the work property before clocking in and after clocking out and were not paid her wages for such a time.

Plaintiff claims that because Defendants did not properly compensate their employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break or meal break, and failed to pay them overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendants provided all their past and present employees with improper wage statements.

Moreover, Defendants failed to compensate Plaintiff and all past and present employees, at the required rate for each occasion in which Defendants failed to provide rest breaks and meal periods.

As such, Defendants failed to pay for all the hours worked and all wages earned by Plaintiff. During Plaintiff's employment, Defendants failed to pay Plaintiff and the other aggrieved employees all overtime wages at the legal rates of pay for all overtime hours worked and also given the number of the hours Plaintiff was working, the pay rate fell below minimum wage.

Moreover, Defendants terminated Plaintiff but did not give each an accurate final paycheck. Defendants failed to timely pay accurate paychecks upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiff claims that Defendants' conduct, as stated herein, including not paying their employees all wages owed, including wages for all hours worked, overtime, missed meal and rest breaks, and not providing their employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all their past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.

Law Offices of Farrah Mirabel

Los Angeles, California 90077

Plaintiff and the other aggrieved employees are also be entitled to penalties pursuant to Labor Code section 2698, et seq.

Therefore, on behalf of all past and present aggrieved employees, Plaintiff seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the LWDA, for violation of the following Labor Code sections: **98.6, 201-205, 206.5, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 226.8, 227.3, 233, 234, 245, 246, 246.5, 248.1, 248.2, 248.5, 248.6, 351, 510-512, 551-552, 558, 558.1, 1102, 1102.5, 1174, 1174.5, 1182.12, 1193.6, 1194-1197.1, 1194.2 1198-1199.5 and 2698-2699, 2699.5, and 2802. (2810.5 too).**

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendants are interested in attempting to resolve this matter, please contact us by **October 20, 2024.**

Very truly yours,
LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel

Farrah Mirabel, Esq.