



16133 Ventura Boulevard, Suite 1200, 
Encino, California 91436
www.kingsleylawyers.com 
(818) 990-8300 

October 18, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

DL Farm Management Inc.
1414 N. Lincoln St.
Santa Maria, CA 93458
Via Certified Mailing # 9589 0710 5270 1151 8459 05

DL Farm Management Inc.
1945 Roemer Pl.
Santa Maria, CA 93454
Via Certified Mailing # 9589 0710 5270 1151 8459 12

Re: Geronimo Martinez Vasquez; Juana Martinez Vasquez; Prisciliano Martinez
Lopez v. DL Farm Management Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Geronimo Martinez Vasquez; Juana Martinez Vasquez; Prisciliano Martinez Lopez (“Plaintiffs”) and a proposed group of current and former employees working for DL Farm Management Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by DL Farm Management Inc., in the State of California since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Plaintiffs and the aggrieved employees worked for Defendant in or near Santa Barbara County, California as seasonal agricultural workers. Plaintiffs and the aggrieved employees worked in the cultivation and harvesting of strawberries and other berries, and doing other agricultural work on

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land owned, leased, managed, and/or operated, harvested, or otherwise made productive by Defendant. Plaintiffs and the aggrieved employees were paid on an hourly basis and also earned a piece rate for work picking crops.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purposes of determining correct overtime rates.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and all aggrieved employees. Plaintiffs and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. Plaintiffs and the aggrieved employees were not properly compensated for all hours worked, because Defendant failed to pay Plaintiffs and the aggrieved employees for each and every hour worked. Plaintiffs and the aggrieved employees routinely worked “off the clock” and performed compensable activities before, during, and after each working shift for which no pay was provided as detailed below.

With regard to pre-shift work, Plaintiffs and the Proposed Class are required to report to work prior to their scheduled shift and perform work but are routinely told by Defendant to wait anywhere from approximately five (5) to twenty-five (25) minutes before Plaintiffs and the Proposed Class can begin their scheduled shifts. In addition, Plaintiffs and the Proposed Class are required to walk five (5) to ten (10) minutes every day from their cars to the field and spend time prepping materials and boxes for the day of work, all of which is performed while “off the clock” and no pay is provided. This required “off the clock” pre-shift work is performed daily and Plaintiffs and the Proposed Class are not compensated for this wait time or worked performed. During winter, Plaintiffs and the Proposed Class are required to wait around thirty (30) minutes at least once during the season before they begin their scheduled shifts. This required waiting time is not compensated by Defendant. These activities and time are compensable, but Defendant fails to pay Plaintiffs and the Proposed Class for this time worked.

In the middle of shifts, Defendant required Plaintiffs and the Proposed Class to travel between fields once Plaintiffs and the Proposed Class are done picking at one field. Plaintiffs and the Proposed Class can sometimes walk to the other field, but Plaintiffs and the Proposed Class are sometimes required to use their own vehicle(s) to travel between fields per shift at least once a week, and potentially more during peak season. The time spent by Plaintiffs and the Proposed Class to travel between fields is approximately five (5) to ten (10) minutes. Plaintiffs and the Proposed Class are not compensated for this travel time, nor are Plaintiffs and the Proposed Class reimbursed for their use of their personal vehicle to perform required work.

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With regard to post-shift work, at the end of each working shift, Plaintiffs and the Proposed Class are instructed by the foreman to continue working to finish their boxes and finish their “corte” (section) before leaving. Plaintiffs and the Proposed Class worked from approximately five (5) minutes to twenty (20) minutes at least once a week after the end of their shift in order to finish their boxes and/or finish their section as required. This time spent finishing their boxes and/or their section was performed after being “clocked out” and as such, Plaintiffs and the Proposed Class are not compensated for this time even though this time is compensable.

Additionally, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and the Proposed Class at the appropriate rate of pay. Plaintiffs and other Proposed Class members were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. Plaintiffs and the Proposed Class were not properly compensated for overtime worked because Defendant failed to pay Plaintiffs and the Proposed Class for all hours worked over 8 hours per day or 40 hours per week. Defendant failed to pay travel time, include work performed off-the-clock, and failed to compensate Plaintiffs and the aggrieved employees for all hours worked.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (14-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiffs and the aggrieved employees compliant meal periods; and (2) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift or that a second meal period was not provided. Plaintiffs and the aggrieved employees would be interrupted during their lunch breaks at least three to four times a year by the foreman asking about strawberry sizes for the day.

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On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of failing to pay meal period premiums in compliance with California law.

Pursuant to Labor Code § 226.7 and Wage Order 14-2001, Defendant failed to provide Plaintiffs and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to appraise Plaintiffs and the aggrieved employees of their rights associated with rest periods and failed to provide all required ten (10) minute rest periods. Plaintiffs and the aggrieved employees also did not receive a second rest period despite Defendant regularly requiring Plaintiffs and the aggrieved employees to work over six (6) hours. In addition, Plaintiffs and the aggrieved employees were not compensated with one (1) hour of wages for each compliant rest period not provided as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendants have had a consistent policy of failing to pay rest premiums in violation of Labor Code § 226.7.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal tools for business related purposes. Defendant requires Plaintiffs and the aggrieved employees to purchase a variety of tools in order to perform their work adequately. These tools/equipment include: (1) a harvest cart - \$60.00 per season; (2) a cannery cart – \$35.00 per season; (3) tires for the harvest cart, \$30.00 with two sets necessary per season; (4) rubber boots - \$40.00 per season; (5) a box of blue gloves, \$5.00 with three boxes necessary per season; (6) a “chamarra” or specialized jacket - \$35.00 per season; (7) a protective hat - \$15.00 per season; (8) glasses; and (10) a specialized knife ring for harvesting berries - \$10.00 with three rings per season. None of these tools are provided by Defendant, and if Plaintiffs or the aggrieved employees do not have a harvest cart, they cannot show up to work. Additionally, if Plaintiffs or the aggrieved employees do not have the tools necessary, Defendant instructs Plaintiffs and the aggrieved employees to continue working with whatever tools are available or to use their hands to harvest the berries. Defendants fail to reimburse Plaintiffs and the aggrieved employees for the costs associated with purchasing and using these tools/equipment.

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Defendant also required Plaintiffs and all aggrieved employees to travel between fields to perform work tasks. Because Defendant did not provide buses or other transportation to workers so that they could travel from field to field in the middle of their shifts, Plaintiffs and the aggrieved employees used their own vehicles to travel from field to field. Defendant did not reimburse Plaintiffs and the aggrieved employees for their vehicle use for travel between Defendant's job sites during the course of a work shift, in violation of California law.

As a result of the claims alleged above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiffs and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiffs are aggrieved employees within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiffs and all aggrieved employees.

Also, Defendant issued to Plaintiffs and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiffs and the aggrieved employees did not include the hours worked at each hourly rate.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiffs and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ or upon each seasonal lay off. As such, Plaintiffs are aggrieved employees and Defendant failed to pay Plaintiffs and all aggrieved employees all wages due at the time of termination, seasonal lay off, or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203. As such, Defendant failed to pay Plaintiffs and all aggrieved employees all wages due at the time of termination, seasonal lay off, or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh'g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiffs to pursue PAGA penalties for violations not personally suffered.). In cases involving seasonal layoffs due to the end of harvest seasons, courts have routinely found

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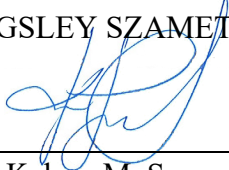
employees discharged from seasonal agricultural work are entitled to waiting time penalties for each seasonal layoff. See *Doe v. D.M. Camp & Sons*, No. CIV-F051417AWISMS, 2009 WL 921442, at *12 (E.D. Cal. Mar. 31, 2009) (citing *Smith v. Sup. Ct.*, 39 Cal.4th 77, 86 (2006)); *Valenzuela v. Giumarra Vineyards Corp.*, 614 F. Supp. 2d 1089, 1103 (E.D. Cal. 2009). This comports with the public policy that favors the full and prompt payment of earned wages. See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika*, *supra*, 68 Cal.App.4th at 492.

Further, under Labor Code § 2699.3, Defendant, if it employed fewer than 100 employees in total during the relevant time period, may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, may submit to the LWDA a confidential proposal to cure one or more of the alleged violations, specifying which of the alleged violations it proposes to cure.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: 
Kelsey M. Szamet

[KMS/tg]

Cc: 1. Martinez Aguilasoch Law, Inc., P.O. Box 1998, , Bakersfield, CA93303