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MIGUEL GARIBAY



SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF BUTTE
NORTH BUTTE COUNTY COURTHOUSE

MIGUEL GARIBAY, an individual,

Plaintiff,

vs.

BIANCHI PARTNERSHIP, a California
general partnership; JIM BIANCHI, an
individual; STACEY BIANCHI, an individual;
and DOES 1 through 50, inclusive,

Defendants.

Case No. **21CV01421**

PLAINTIFF'S COMPLAINT FOR:

1. Discrimination by Association (Gov't Code §§ 12926(o); 12940(a));
2. Failure to Prevent Discrimination (Gov't Code § 12940(k));
3. Wrongful Termination in Violation of Public Policy (Common Law);
4. Retaliation (Gov't. Code § 12940(h); Lab. Code §§ 98.6, 232.5, 1102.5, 6310, and 6399.7; Common Law);
5. Disability discrimination (Gov't Code § 12940(a));
6. Failure to accommodate a known disability (Gov't Code § 12940(m));
7. Failure to engage in the interactive process (Gov't Code § 12940(n));
8. Misclassification (Lab. Code § 515);
9. Failure to provide rest periods (Lab. Code § 226.7);
10. Failure to provide meal periods (Lab. Code §§ 226.7 and 512);
11. Failure to provide accurate, itemized wage statements (Lab. Code § 226);
12. Failure to pay all wages owed upon termination (Lab. Code § 201)
13. Unlawful business practices (Bus. & Prof. Code § 17200 et seq.);
14. Civil penalties pursuant to the Private Attorneys General Act (Lab. Code §§ 2698 – 2699.6)

1 Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

2
3 1. The matters stated in this Complaint are true to the Plaintiff's knowledge, except
4 the matters that are therein stated on information and belief, and as to those matters Plaintiff
5 believes them to be true.

6 2. Plaintiff MIGUEL GARIBAY, an individual, hereby alleges against Defendants
7 BIANCHI PARTNERSHIP, a California general partnership; JIM BIANCHI, an individual;
8 STACEY BIANCHI, an individual; and DOES 1 through 50, inclusive (hereafter collectively,
9 "Defendants"), as follows:

10
11 **JURISDICTION AND VENUE**

12 3. Jurisdiction is conferred on this Court over Defendants named herein as residents
13 of the State of California and/or conductors of business in the state of California. Jurisdiction is
14 conferred on this Court as to all causes of action as they arise under state statute or common law.

15 4. Venue is proper in this Court because Defendants reside and/or conduct business
16 in this County and a substantial part of the events and omissions giving rise to Plaintiff's causes
17 of action occurred in this County.

18
19 **THE PARTIES**

20 5. Plaintiff MIGUEL GARIBAY (hereafter "Plaintiff") is an individual residing in
21 Chico, California, in the County of Butte.

22 6. Defendant BIANCHI PARTNERSHIP (hereafter "Bianchi Partnership") is a
23 California general partnership with its main place of business in the County of Butte.

24 7. Defendants JIM BIANCHI (hereafter "Jim") and STACEY BIANCHI (hereafter
25 "Stacey") are individuals individual who, on information and belief, at all relevant times alleged
26 herein were employed by Bianchi Partnership. Their liability in this case arises under Labor Code
27 § 558.1, which states, in pertinent part, that:

1 (a) Any employer or other person acting on behalf of an employer, who violates, or
2 causes to be violated, any provision regulating minimum wages or hours and days
3 of work in any order of the Industrial Welfare Commission, or violates, or causes
4 to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
5 as the employer for such violation.

6 (b) For purposes of this section, the term other person acting on behalf of an
7 employer is limited to a natural person who is an owner, director, officer, or
8 managing agent of the employer, and the term managing agent has the same
9 meaning as in subdivision (b) of Section 3294 of the Civil Code.

10 8. The true names, identities, or capacities, whether individual, corporate, associate,
11 or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiff. When the true names,
12 identities, or capacities of such fictitiously-designated Defendants are ascertained, Plaintiff will
13 ask leave of this Court to amend this Complaint to insert their true names, identities, and
14 capacities, together with the proper charging allegations. Plaintiff is informed and believes and
15 thereon alleges that some or all of the fictitiously-named Defendants are responsible in some
16 manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were
17 proximately caused by those defendants.

18 9. Plaintiff believes and therefore alleges that at all times herein mentioned, each of
19 the Defendants was the agent and employee of each of the other Defendants, and in doing the
20 acts alleged herein, was acting within the scope of such agency and employment. Plaintiff further
21 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
22 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
23 other said Defendants.

24 **FACTUAL ALLEGATIONS**

25 10. Beginning on or around September 24, 2007, Plaintiff started his twelve-year
26 employment with Defendants on their ranch, which grew rice and walnuts. Plaintiff started off
27 earning \$11 an hour. During the first few years of Plaintiff's employment with Defendants, he
28 built strong rapport with the owners and was eventually invited to move into the ranch around
2010. Plaintiff accepted this offer, as he envisioned himself living a humble life on the ranch

1 with his family, working at a job that he enjoyed. Bianchi Partnership's ownership was
2 eventually transferred to Jim, as the original owners were aging and wanted to retire.

3 11. Plaintiff and Jim got along well at first. Jim even promised Plaintiff that if he
4 reached certain goals every year, he would be rewarded with a sizeable bonus, depending on the
5 size of that year's crop yield. Plaintiff's hunger for excellence propelled him to achieve his goal
6 every year, and he was rewarded accordingly. The two had a great relationship, and Plaintiff
7 continued to earn promotions throughout his tenure. Eventually in 2017, he was promoted to rice
8 irrigation supervisor and was switched from an hourly employee to a salaried employee. Plaintiff
9 was excited for this well-deserved opportunity, although Jim made it clear to Plaintiff that it was
10 presented to him only because he was one of few employees who could speak English fluently.

11 12. Plaintiff performed his new role well, as he did not see much difference between
12 his new duties and his old ones. He still worked alongside the individuals he was told to
13 supervise, with the addition of having to complete additional paperwork.

14 13. Throughout Plaintiff's tenure with Defendants, he was subjected to extreme
15 weather conditions and long working hours. He often worked 12 to 14 hours a day and was only
16 allowed one meal period. Furthermore, while Plaintiff was taking his meal period, he was still
17 expected to work, such as filling out documents while he was eating. Jim routinely pressured
18 Plaintiff to continue to working while taking meal periods. Plaintiff also rarely took true rest
19 periods, as he would also do paperwork while taking his rest periods. While on paper he was
20 given the title "supervisor" and paid a salary, he continued to do mostly the same work that
21 hourly employees did, including pruning, hulling, running irrigation systems, operating the
22 walnut dryer machine, cutting trees, and checking the sprinklers.

23 14. Plaintiff sustained injuries while working, including a broken toe, and even
24 needed to visit a doctor, who ordered him to suspend any laborious tasks while he rested. Jim
25 told Plaintiff that he could rest if he wanted, but that there was no one else who could do his job
26 and the ranch would be delayed if he were to not work. Plaintiff felt that Jim required him to
27 work despite his condition, and thus continued working with the injury.

28 15. Around 2018, Plaintiff helped his wife, Guadalupe Campos ("Guadalupe"),

1 obtain employment at the ranch. Around May 2019, Guadalupe began experiencing dizzy spells
2 as a symptom of dehydration. This was no surprise as the summer temperatures would reach up
3 to 110 degrees Fahrenheit. By September 2019, the dehydration had begun to affect Guadalupe's
4 arms and feet. She decided to file for worker's compensation, which precipitated an investigation
5 against the ranch. Plaintiff also suffered the scorching temperatures in the ranch, but he endured
6 it better than did Guadalupe, whose worker's compensation claim led to a breakdown in her
7 relationship with Bianchi Partnership. After a heated exchange between Guadalupe and Jim, she
8 began to search for a new job with Plaintiff's help.

9 16. When the holidays approached, Plaintiff asked Jim about his yearly bonus, which
10 Jim had promised to him in the amount of \$10,000. Jim told Plaintiff that he would not be
11 receiving a bonus that year, because the annual harvest had been low. Plaintiff knew that this
12 explanation was not plausible, as that year's crop was double what it had been the previous year.
13 On or around January 6, 2020 (shortly after Guadalupe filed for worker's compensation), when
14 Plaintiff confronted Jim about this, instead of listening to Plaintiff's concern and addressing it,
15 Jim simply terminated Plaintiff's employment.

16 17. On information and belief, Defendants' reason for terminating Plaintiff is clearly
17 pretextual, and the real reason why Defendants terminated Plaintiff was because Guadalupe filed
18 for unemployment, and because Plaintiff complained about his not receiving a bonus. In fact,
19 when Plaintiff asked his brother (who also worked for Defendants) why Defendants had fired
20 him, his brother said that he had been told that it was because of a "legal matter."

21
22 **FIRST CAUSE OF ACTION FOR DISCRIMINATION BY ASSOCIATION IN**
23 **VIOLATION OF GOVERNMENT CODE §§ 12926(o) AND 12940(a) AGAINST**
24 **DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

25 18. Plaintiff restates and incorporates by reference each and every allegation of the
26 foregoing paragraphs as though fully set forth herein.

27 19. As used in this Cause of Action, "Defendants" means Bianchi Partnership and
28 DOES 1 through 50, inclusive.

20. Defendants regularly employ five (5) or more persons. Thus, Defendants are an “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

21. Plaintiff was an “employee” of Defendants as that term is defined in Code Regs. tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

22. At all times relevant to this Complaint, Government Code § 12940(a) was in effect and applied to Defendants. This code makes it unlawful for an employer to discriminate against an employee in compensation or in terms, conditions, or privileges of employment, based on that person’s disability.

23. Government Code § 12926(o) expands the coverage under FEHA to include persons “associated with a person who has, or is perceived to have, any of” the enumerated characteristics protected by the FEHA, including physical disability.

24. As described herein, Defendants subjected Plaintiff to an adverse employment action because of his association with Guadalupe, a person who filed a worker’s compensation claim against Bianchi. These adverse employment actions include, but are not limited to, denying Plaintiff his yearly bonus and terminating Plaintiff.

25. Plaintiff’s association with Guadalupe, his spouse, was a substantial motivating reason for Defendant’s decision to subject Plaintiff to the above adverse employment actions.

26. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims such amount as general damages for mental and emotional distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

SECOND CAUSE OF ACTION FOR FAILURE TO PREVENT DISCRIMINATION
IN VIOLATION OF GOVERNMENT CODE § 12940(k) AGAINST DEFENDANTS

BIANCHI PARTNERSHIP AND DOES 1 – 50

27. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

1 28. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
2 DOES 1 through 50, inclusive.

3 29. As illustrated herein, Plaintiff was subjected to discriminatory practices in the
4 course of his employment, and Defendants failed to take all reasonable steps to prevent
5 discrimination.

6 30. As a direct and proximate result of Defendants’ failure to take all reasonable steps
7 to prevent the discrimination, Plaintiff has suffered and will continued to suffer pain and
8 suffering, mental anguish, and emotional distress. Plaintiff has also suffered and continues to
9 suffer a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general
10 and compensatory damages in amounts to be proven at trial. Furthermore, Plaintiff has incurred
11 and continues to incur costs and attorneys’ fees and is entitled to an award of his reasonable
12 attorneys’ fees and costs pursuant to Government Code § 12965(b).

13 31. Defendant’s conduct as described herein was malicious, fraudulent, oppressive,
14 and/or done with a reckless indifference to and/or willful and conscious disregard for Plaintiff
15 and of the deleterious consequences of Defendants’ actions.

16
17 **THIRD CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION**
18 **OF PUBLIC POLICY AGAINST DEFENDANTS BIANCHI PARTNERSHIP AND**
19 **DOES 1 – 50**

20 32. Plaintiff restates and incorporates by reference each and every allegation of the
21 foregoing paragraphs as though fully set forth herein.

22 33. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
23 DOES 1 through 50, inclusive.

24 34. In Tameny v. Atlantic Richfield Co., (1980) 27 Cal.3d 167, the Court laid out the
25 general principle that while employers may end an employee’s at-will employment for no reason,
26 they may not do so when motivated by reasons that run counter to public policy.

27 35. Government Code § 12940(h), which is part of the Fair Employment and Housing
28 Act referred to in the above citation, makes it unlawful, “[f]or any employer, labor organization,

1 employment agency, or person to discharge, expel, or otherwise discriminate against any person
2 because the person has opposed any practices forbidden under this part or because the person
3 has filed a complaint, testified, or assisted in any proceeding under this part.”

4 36. At all times relevant to this complaint, Government Code § 12940(h) was in effect
5 and applicable to Defendants. The public policy is designed to protect all employees and to
6 promote the welfare and well-being of the community at large. Accordingly, Defendants’ actions
7 in terminating Plaintiff because of his association with Guadalupe was wrongful and in violation
8 of both the statutes and public policy of California.

9 37. As a proximate result of Defendants’ acts and omissions, Plaintiff was terminated
10 from his employment and sustained losses in earnings and other employment benefits in an
11 amount to be proven at trial.

12 38. Defendant’s conduct as described herein was malicious, fraudulent, oppressive,
13 and/or done with a reckless indifference to and/or willful and conscious disregard for Plaintiff
14 and of the deleterious consequences of Defendant’s actions.

15 39. As a direct and foreseeable result of the aforesaid acts of said Defendants,
16 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial.
17 Plaintiff claims such amount as general damages for mental and emotional distress and
18 aggravation in an amount to be proven at trial, together with pre-judgment interest pursuant to
19 Civil Code § 3287 and/or any other provision of law providing for pre-judgment interest.

20
21 **FOURTH CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF GOV’T**
22 **CODE § 12940(h); LABOR CODE §§ 98.6, 232.5, 1102.5, 6310, 6399.7, COMMON**
23 **LAW AGAINST DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

24 40. Plaintiff restates and incorporates each and every allegation of the foregoing
25 paragraphs as though fully set forth herein.

26 41. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
27 DOES 1 through 50, inclusive.

1 42. Government Code § 12940(h), which is part of the FEHA, makes it unlawful,
2 “[f]or any employer, labor organization, employment agency, or person to discharge, expel, or
3 otherwise discriminate against any person because the person has opposed any practices
4 forbidden under this part or because the person has filed a complaint, testified, or assisted in any
5 proceeding under this part.”

6 43. Furthermore, multiple sections of the Labor Code prohibit employers from
7 retaliating against employees who report unlawful employer activity.

8 44. Labor Code § 98.6(a) requires, in part, that:

9
10 A person shall not discharge an employee or in any manner discriminate, retaliate,
11 or take any adverse action against any employee or applicant for employment
12 because the employee or applicant engaged in any conduct delineated in this
13 chapter, including the conduct described in subdivision (k) of Section 96, and
14 Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the
employee or applicant for employment has filed a bona fide complaint or claim or
instituted or caused to be instituted any proceeding under or relating to his or her
rights that are under the jurisdiction of the Labor Commissioner...

15 45. Labor Code § 232.5(c) states that no employer may, “[d]ischarge, formally
16 discipline, or otherwise discriminate against an employee who discloses information about the
17 employer's working conditions.”

18 46. Labor Code § 1102.5(b) states:

19
20 An employer, or any person acting on behalf of the employer, shall not retaliate
21 against an employee for disclosing information, or because the employer believes
22 that the employee disclosed or may disclose information, to a government or law
23 enforcement agency, to a person with authority over the employee or another
24 employee who has the authority to investigate, discover, or correct the violation or
25 noncompliance, or for providing information to, or testifying before, any public
26 body conducting an investigation, hearing, or inquiry, if the employee has
reasonable cause to believe that the information discloses a violation of state or
federal statute, or a violation of or noncompliance with a local, state, or federal rule
or regulation, regardless of whether disclosing the information is part of the
employee's job duties.

27
28 47. Labor Code § 6310 prohibits employers from discharging or discriminating

1 against employees for making, “any oral or written complaint to ... his or her employer...”
2 Further, Labor Code § 6399.7 prohibits employers from discharging or discriminating against
3 employees who make complaints regarding the health and safety of employees.

4 48. At all times relevant to this complaint, Government Code § 12940(h) and Labor
5 Code §§ 98.6, 232.5, 6310, 6399.7, and 1102.5 were in effect and applicable to Defendants.

6 49. Defendants retaliated against Plaintiff when they reduced Plaintiff’s bonuses,
7 refused to promote him, and terminated him after he complained about not receiving the bonus
8 that had been promised to him, and his wife filed for worker’s compensation.

9 50. During the course of Plaintiff’s employment, there were no complaints about his
10 work performance prior to Guadalupe’s worker’s compensation claim or to his complaint about
11 not being paid the bonus he was promised. If Guadalupe had not filed her claim and Plaintiff had
12 not complained about his bonus, Plaintiff would not have been terminated.

13 51. Plaintiff is informed and believes and thereon alleges that Guadalupe’s worker’s
14 compensation claim and his complaint about his bonus motivated the termination he suffered.

15 52. As a direct and foreseeable result of the aforesaid acts of said Defendants,
16 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial.
17 Plaintiff claims such amount as general damages for mental and emotional distress and
18 aggravation in an amount to be proven at trial, together with pre-judgment interest pursuant to
19 Civil Code § 3287 and/or any other provision of law providing for pre-judgment interest.

20 53. Furthermore, Plaintiff has incurred and continues to incur costs and attorneys’
21 fees and is entitled to an award of reasonable attorneys’ fees and costs pursuant to Government
22 Code § 12965(b).

23
24 **FIFTH CAUSE OF ACTION FOR DISABILITY DISCRIMINATION IN**
25 **VIOLATION OF GOVERNMENT CODE § 12940(a) AGAINST DEFENDANTS**
26 **BIANCHI PARTNERSHIP AND DOES 1 – 50**

27 54. Plaintiff restates and incorporates by reference each and every allegation of the
28 foregoing paragraphs as though fully set forth herein.

1 55. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
2 DOES 1 through 50, inclusive.

3 56. At all times relevant to this Complaint, Government Code § 12940(a) was in
4 effect and applied to Defendants. This code makes it unlawful for an employer to discriminate
5 against an employee in compensation or in terms, conditions, or privileges of employment, on
6 the basis of that person’s disability.

7 57. Defendants discriminated against Plaintiff after he informed them that he was
8 injured and was not able to do any laborious tasks, but was pressured by Defendants to work. In
9 support of his request, Plaintiff provided a doctor’s note that restricted his mobility. In response,
10 Defendants informed Plaintiff that they would not be able to replace him and that they would
11 fall behind in schedule for the harvest.

12 58. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
13 entitled to an award of reasonable attorneys’ fees and costs under Government Code § 12965(b).

14 59. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
15 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
16 claims such amount as general damages for mental and emotional distress, aggravation, and
17 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
18 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

19
20 **SIXTH CAUSE OF ACTION FOR FAILURE TO ACCOMMODATE A KNOWN**
21 **DISABILITY IN VIOLATION OF GOVERNMENT CODE § 12940(m) AGAINST**
22 **DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

23 60. Plaintiff restates and incorporates by reference each and every allegation of the
24 foregoing paragraphs as though fully set forth herein.

25 61. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
26 DOES 1 through 50, inclusive.

27 62. At all times relevant to this Complaint, Government Code § 12940(m) was in
28 effect and applied to Defendants. This code makes it unlawful for an employer to fail to

1 accommodate a known disability.

2 63. After Plaintiff informed Defendants of his injury, he was still pressured into
3 working. Defendants would remind Plaintiff that no one could do his job and that farm would be
4 behind for harvest if he did not work.

5 64. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
6 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
7 12965(b).

8 65. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
9 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
10 claims such amount as general damages for mental and emotional distress, aggravation, and
11 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
12 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

13
14 **SEVENTH CAUSE OF ACTION FOR FAILURE TO ENGAGE IN THE**
15 **INTERACTIVE PROCESS IN VIOLATION OF GOVERNMENT CODE § 12940(n)**
16 **AGAINST DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

17 66. Plaintiff restates and incorporates by reference each and every allegation of the
18 foregoing paragraphs as though fully set forth herein.

19 67. As used in this Cause of Action, "Defendants" means Bianchi Partnership and
20 DOES 1 through 50, inclusive.

21 68. At all times relevant to this Complaint, Gov't Code § 12940(n) was in effect and
22 applicable to Defendants. This section prohibits employers from failing to engage in the
23 interactive process with employees, in a good faith attempt to come up with reasonable
24 accommodations for a known disability.

25 69. Plaintiff suffered a toe injury and asked Defendants for rest as instructed by his
26 doctor. In support of his request, Plaintiff provided a doctor's note that restricted his movement.
27 This request was an opportunity for Defendants to engage in the interactive process to come up
28 with a reasonable accommodation for Plaintiff's disability. Defendants took no such action. On

1 the contrary, Defendants continuously pressured Plaintiff to work.

2 70. Because of Defendants' actions as described herein, Plaintiff was subjected to
3 discrimination on account of his disability.

4 71. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
5 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and
6 a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
7 compensatory damages in amounts to be proven at trial. Furthermore, Plaintiff has incurred and
8 continues to incur costs and attorneys' fees and is entitled to an award of his reasonable
9 attorneys' fees and costs pursuant to Gov't Code § 12965(b).

10
11 **EIGHTH CAUSE OF ACTION FOR MISCLASSIFICATION OF NON-EXEMPT**
12 **CLASSIFIED AS EXEMPT IN VIOLATION OF LABOR CODE § 515 AGAINST**
13 **DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

14 72. Plaintiff restates and incorporates by reference each and every allegation of the
15 foregoing paragraphs as though fully set forth herein.

16 73. As used in this Cause of Action, "Defendants" means Bianchi Partnership and
17 DOES 1 through 50, inclusive.

18 74. Labor Code § 515(a) lays out the criteria for classifying an employee as exempt.

19 75. Although Plaintiff was promoted to a supervisory role and received a salary up to
20 \$80,000, there was not much difference between his new duties and his old ones. He still worked
21 alongside the individuals he was told to supervise, with the addition of voluminous paperwork.
22 He also continued to do the same work that the hourly, non-exempt employees did, including
23 pruning, hulling, running irrigation systems, operating the walnut dryer machine, cutting trees,
24 and checking the sprinklers.

25 76. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
26 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and
27 a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
28 compensatory damages in amounts to be proven at trial. Furthermore, Plaintiff has incurred and

continues to incur costs and attorneys' fees and is entitled to an award of his reasonable attorneys' fees and costs pursuant to Gov't Code § 12965(b).

**NINTH CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS, IN
VIOLATION OF LABOR CODE § 226.7 AND WAGE ORDER NO. 4-2001,
AGAINST ALL DEFENDANTS**

77. Plaintiff restates and incorporates each and every allegation of the foregoing paragraphs as though fully set forth herein.

78. At all times relevant to this Complaint, the Industrial Wage Commission's Wage Order No. 4-2001 (hereafter "Wage Order") and Labor Code §§ 226.7 and 512(a) were in effect and applicable to Defendants.

79. Wage Order § 12 states that an employer shall authorize and permit all employees to take rest periods, which, insofar as is practicable, shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major fraction thereof.

80. Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable Wage Order. The Court has explained this to mean that "[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." Augustus v. ABM Security Services, Inc., (2016) 2 Cal.5th 257, 260.

81. Defendants required Plaintiff to work through his rest period, not providing the opportunity for a rest period of at least ten minutes.

82. Pursuant to Wage Order § 12 and Labor Code § 226.7, Plaintiff is entitled to recover from Defendants one additional hour of pay at his regular hourly rate of compensation for each workday that the rest period was not provided, in an amount to be proven at trial.

83. Additionally, Wage Order § 20 provides for civil penalties.

In addition to any other civil penalties provided by law, any employer . . . who violates, or causes to be violated, the provisions of this order, shall be subject to the

1 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
2 pay period during which the employee was underpaid in addition to the amount
3 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
4 for each underpaid employee for each pay period during which the employee was
5 underpaid in addition to an amount which is sufficient to recover unpaid wages.

6 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

7 84. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
8 lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
9 claims such amount as general damages for mental and emotional distress, aggravation, and
10 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
11 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

12 **TENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS, IN**
13 **VIOLATION OF LABOR CODE §§ 226.7 AND 512, AND WAGE ORDER NO. 4-**
14 **2001, AGAINST ALL DEFENDANTS**

15 85. Plaintiff restates and incorporates by reference each and every allegation of the
16 foregoing paragraphs as though fully set forth herein.

17 86. At all times relevant to this Complaint, the Wage Order and Labor Code §§ 226.7
18 and 512(a) were in effect and applicable to Defendants.

19 87. Wage Order § 11 and Labor Code § 512(a) state that an employer shall not employ
20 an employee for a work period of more than five hours without a meal period of no less than
21 thirty minutes, except that if a work period of not more than six hours will complete the day's
22 work, the meal period may be waived by mutual consent of the employer and employee.

23 88. Labor Code § 226.7 provides that no employer shall require an employee to work
24 during any meal period mandated by an applicable IWC Wage Order.

25 89. Plaintiff was denied proper meal breaks by Defendant, due to Defendant's
26 understaffing. Plaintiff was overburdened, making it impossible for him to take proper meal
27 periods, for fear of being reprimanded if his work was incomplete. Plaintiff was required to
28 complete paperwork for Defendants during his meal periods.

1 90. Pursuant to Wage Order § 11 and Labor Code § 226.7(c), Plaintiff is entitled to
2 recover from Defendants one additional hour of pay at Plaintiff's regular rate of compensation
3 for each workday that a meal period was not provided.

4 91. Additionally, Wage Order § 20 provides for civil penalties:

5
6 In addition to any other civil penalties provided by law, any employer . . . who
7 violates, or causes to be violated, the provisions of this order, shall be subject to the
8 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
9 pay period during which the employee was underpaid in addition to the amount
10 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
11 for each underpaid employee for each pay period during which the employee was
12 underpaid in addition to an amount which is sufficient to recover unpaid wages.

13 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

14 92. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
15 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
16 claims such amount as general damages for mental and emotional distress, aggravation, and
17 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
18 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

19 **ELEVENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE,**
20 **ITEMIZED WAGE STATEMENTS, IN VIOLATION OF LABOR CODE § 226**
21 **AGAINST ALL DEFENDANTS**

22 93. Plaintiff restates and incorporates by reference each and every allegation of the
23 foregoing paragraphs as though fully set forth herein.

24 94. Labor Code § 226(a) requires an employer to furnish its employees with an
25 accurate itemized statement in writing showing, among other things, gross wages earned, net
26 wages earned, all applicable hourly rates in effect during the pay period, and the corresponding
27 number of hours worked at each hourly rate by the employee.

28 95. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater

1 of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for
2 each violation in a subsequent pay period, up to a maximum amount of \$4,000.

3 96. The itemized statements Plaintiff received were inaccurate. They did not include
4 the hours Plaintiff was under Defendants' control during his unlawful meal and rest periods.
5 Neither did they include all his overtime pay. Furthermore, Labor Code § 226(c) requires
6 employers who receive a written or oral request to inspect or receive a copy of records pursuant
7 to subdivision (b) pertaining to a current or former employee to comply with the request as soon
8 as practicable, but no later than 21 calendar days from the date of the request. On July 21, 2020,
9 Plaintiff's counsel sent an employee and personnel records request to Defendant. Defendant's
10 document production failed to include an employee handbook and an arbitration agreement if
11 such existed. In good faith, Plaintiff's counsel sent a follow-up letter to mitigate the incomplete
12 document production but this correspondence was ignored.

13 97. As a direct and proximate result of Defendants' conduct, Plaintiff has been
14 injured by, among other things, not being paid all wages due, not knowing how many hours she
15 worked and at what rates, and being required to file this action to recover his wages and
16 determine the number of hours worked and wages due.

17 98. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for
18 damages. Plaintiff is entitled to recover the damages or penalties provided by Labor Code §
19 226(e), including interest thereon, and reasonable attorneys' fees and costs.

20 99. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
21 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
22 claims such amount as general damages for mental and emotional distress, aggravation, and
23 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
24 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

25
26 **TWELFTH CAUSE OF ACTION FOR FAILURE TO PAY ALL WAGES OWED**
27 **UPON TERMINATION IN VIOLATION OF LABOR CODE § 201 AGAINST**
28 **DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

1 100. Plaintiff restates and incorporates by reference each and every allegation of the
2 foregoing paragraphs as though fully set forth herein.

3 101. At all times relevant to this Complaint, Labor Code § 201 and 203 were in effect
4 and applicable to Defendants.

5 102. Labor Code § 201 states that if an employer discharges an employee, the wages
6 earned and unpaid at the time of discharge are due and payable immediately.

7 103. Labor Code § 203 requires that if an employer willfully fails to pay any wages of
8 any employee who is discharged or who quits, the wages of the employee shall continue as a
9 penalty from the due date thereof at the same rate until paid or until an action therefor is
10 commenced; but the wages shall not continue for more than 30 days.

11 104. Defendants terminated Plaintiff's employment on or around January 6, 2020, and
12 so were required to pay Plaintiff all wages earned and unpaid on that date. The final paycheck
13 Defendants provided to Plaintiff failed to account for the time he spent under Defendants' control
14 during his invalid meal and rest periods, as well as much of the overtime pay he had earned. It
15 thus failed to comply with the requirement of Labor Code § 201 that all outstanding wages be
16 paid on the day of termination. As of the filing of this Complaint, Defendants still have not paid
17 Plaintiff these wages.

18 105. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties
19 in the amount of up to thirty days' wages under Labor Code § 203, with interest thereon and
20 reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194.

21 106. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
22 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
23 claims such amount as general damages for mental and emotional distress, aggravation, and
24 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
25 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

26
27 **THIRTEENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN**
28 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ. AGAINST**

1 **DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

2 107. Plaintiff restates and incorporates by reference each and every allegation of the
3 foregoing paragraphs as though fully set forth herein.

4 108. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
5 DOES 1 through 50, inclusive.

6 109. Defendants’ actions and conduct alleged herein constitute unlawful, unfair,
7 deceptive, and misleading business practices, prohibited by Business and Professions Code §
8 17200 *et seq.*

9 110. Plaintiff is informed and believes and thereon alleges that Defendants utilized
10 improper, unlawful, and tortious means to unjustly enrich themselves, and to cause deliberate
11 injury to Plaintiff.

12 111. Plaintiff seeks restitution and a return of all moneys obtained by Defendants
13 through their wrongful conduct.

14
15 **FOURTEENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO**
16 **THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 – 2699.6)**
17 **AGAINST DEFENDANTS BIANCHI PARTNERSHIP AND DOES 1 – 50**

18 112. Plaintiff restates and incorporates by reference each and every allegation of the
19 foregoing paragraphs as though fully set forth herein.

20 113. As used in this Cause of Action, “Defendants” means Bianchi Partnership and
21 DOES 1 through 50, inclusive.

22 114. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and
23 Workforce Development Agency (“LWDA”) and written notice by U.S. certified mail to
24 Defendants of the specific provisions of the Labor Code alleged to have been violated and the
25 facts and theories to support the alleged violations. These notices were sent on September 24,
26 2020. The LWDA did not respond to the notice within sixty-five calendar days. Thus, under
27 Labor Code § 2699.3(a)(2)(A), Plaintiff is permitted to commence an action for civil penalties.

28 115. Defendants’ conduct as set forth herein has caused injury to Plaintiff and all those

1 employees similarly aggrieved and has violated various provisions of the Labor Code. As such,
2 Plaintiff brings this claim as a representative action on behalf of himself and those similarly
3 aggrieved.

4 116. Under Labor Code § 2699(f), “[f]or all provisions of this code except those for
5 which a civil penalty is specifically provided, there is established a civil penalty for a violation
6 of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs
7 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
8 employee per pay period for the initial violation and two hundred dollars (\$200) for each
9 aggrieved employee per pay period for each subsequent violation.”

10 117. As alleged herein, Plaintiff and all those similarly situated seek, and Defendants
11 are liable for, penalties for the violations of Labor Code, including the following:

- 12 a) Violation of Labor Code § 515 for misclassifying Plaintiff and all
13 similarly aggrieved non-exempt employees as exempt;
- 14 b) Violation of Labor Code §§ 226.7 and 512 for failure to provide Plaintiff
15 and all similarly aggrieved employees with meal periods;
- 16 c) Violation of Labor Code § 226.7 for failure to provide Plaintiff and all
17 similarly aggrieved employees with rest periods;
- 18 d) Violation of Labor Code § 201 for failure to provide Plaintiff and all
19 similarly aggrieved employees with all wages owed upon termination;
- 20 e) Violation of Labor Code § 226 for failure to provide Plaintiff and all
21 similarly aggrieved employees with accurate, itemized wage statements;
- 22 f) Violation of Labor Code §§ 6310 and 6399.7 for retaliating against
23 Plaintiff and all similarly aggrieved employees for reporting Defendants’
24 unlawful activities;
- 25 g) Violation of Labor Code § 232.5 for wrongfully terminating Plaintiff and
26 all similarly aggrieved employees.

27 118. Plaintiff is also entitled to seek on behalf of himself and all others similarly
28 situated, all reasonable attorneys’ fees and costs of suit pursuant to Labor Code § 2699(g).

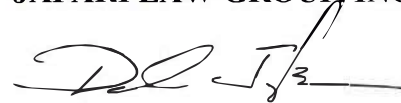
1 119. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
2 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
3 claims such amount as general damages for mental and emotional distress, aggravation, and
4 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
5 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
6

7 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,
8 as follows:

- 9 1. For general and special damages in an amount no less than \$367,570
- 10 2. For punitive damages;
- 11 3. For pre-judgment interest to the extent allowed by law;
- 12 4. For costs of suit incurred herein;
- 13 5. For attorneys' fees; and
- 14 6. For such other and further relief as the Court deems just and proper.

15
16 Dated: June 3, 2021

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
MIGUEL GARIBAY

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: June 3, 2021

JAFARI LAW GROUP, INC.

A handwritten signature in black ink, appearing to read 'David V. Jafari', is written over a horizontal line.

David V. Jafari
Saul Acherman
Attorneys for Plaintiff
MIGUEL GARIBAY