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GERARDO AYALA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

GERARDO AYALA,

Plaintiff,

vs.

STEELE CANYON GOLF CLUB
CORPORATION, a California Corporation;
DOVE CANYON GOLF CLUB, LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive;

Defendants.

Case No.: 30-2021-01195684-CU-WT-CJC
Assigned to: Assigned for All Purposes
Dept.: Judge Martha K. Gooding

COMPLAINT FOR DAMAGES FOR:

1. Failure to Provide Rest Days (*Labor Code Sections 551 – 553*);
2. Unpaid Missed Rest Breaks (*Labor Code Section 226.7(a) and IWC Wage Order No. 5-2001 section 12*);
3. Unpaid Missed Meal Breaks (*Labor Code Sections 226.7 and 512 and IWC Wage Order No. 5-2001 section 11*);
4. Failure to Pay for all Overtime Worked (*Labor Code Sections 510 and 1194 and IWC Wage Order No. 5-2001 section 3*);
5. Failure to Pay all Wages Earned (*Labor Code Section 204*);
6. Failure to Maintain Accurate Payroll Records (*Labor Code Sections 226a and 1174 and IWC Wage Order No. 5-2001 section 7*);
7. Failure to Pay Wages Upon Separation (*Labor Code Sections 201 – 203*);
8. Denial of Equal Pay for Substantially Similar Work in Violation of the California Fair Pay Act (*Labor Code Sections 1197.5 and 1199.5*);
9. Unlawful Discrimination Based on Cal. Gov. Code § 12940;

1) **10. Wrongful Termination in Violation of**
2) **Public Policy;**

3) **DEMAND FOR JURY TRIAL**
4)
5)
6)

7 COMES NOW PLAINTIFF, GERARDO AYALA, and alleges as follows:

8 The allegations in this Complaint, stated on information and belief, have evidentiary support
9 and/or are likely to have evidentiary support after reasonable opportunity for further investigation and
10 discovery.

11 **NATURE OF THE ACTION**

- 12 1. Defendant STEELE CANYON GOLF CLUB CORPORATION, and Defendant DOVE
13 CANYON CLUB, LLC, located in Orange County, California, were at all relevant times
14 operating golf clubs in Trabuco Canyon, Murrieta, Jamul, Pauma Valley, and Bermuda
15 Dunes, California, which are in Orange County, Riverside County and in San Diego
16 County.
- 17 2. During the relevant timeframe, Plaintiff was employed by STEELE CANYON GOLF
18 CLUB CORPORATION and DOVE CANYON CLUB, LLC, as a laborer and landscaper
19 at Trabuco Canyon, California, county of Orange.
- 20 3. This action for relief arises from Defendants' failure to provide required days of rest;
21 wrongful termination of Plaintiff's employment; failure to provide rest periods and meal
22 periods as required by law; failure to compensate Plaintiff at the required rate for each
23 occasion in which Defendants failed to provide rest breaks or meal periods; failure to pay
24 overtime wages; failure to keep accurate payroll records; failure to pay wages due upon
25 separation; denial of equal pay for substantially similar work, and wrongful termination.

26 **THE PARTIES**

- 27 4. Plaintiff, GERARDO AYALA, is a resident of the State of California.
- 28 5. Defendant STEELE CANYON GOLF CLUB CORPORATION is the owner of Defendant
DOVE CANYON CLUB, LLC.

- 1 6. Defendants STEELE CANYON GOLF CLUB CORPORATION and DOVE CANYON
2 CLUB, LLC, were employers which at all times hereinafter mentioned, had employees in
3 California.
- 4 7. The true names and capacities, whether individual, corporate, associate or otherwise of
5 each of the Defendants designated herein as a DOE, 1 to 50, are unknown to Plaintiff at this
6 time, who therefore, sues said Defendants by fictitious names, and will ask leave of this
7 Court for permission to amend this Complaint to show their names and capacities when the
8 same have been ascertained. Plaintiff is informed and believes and thereon alleges that
9 each of the Defendants designated as a DOE is legally responsible in some manner for the
10 events and happenings herein referred to, and caused injuries and damages thereby to
11 Plaintiff as herein alleged.
- 12 8. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
13 to "Defendants," such reference shall refer to all Defendants, to include STEELE
14 CANYON GOLF CLUB CORPORATION and DOVE CANYON CLUB, LLC, and all
15 Doe defendants, collectively.
- 16 9. Plaintiff, on information and belief and based upon such basis, alleges that at all times
17 herein mentioned, each of the Defendants were acting as the agent, servant, employee of
18 each of the other Defendants, within the scope of said agency and employment.
- 19 10. During the times and places of the incident in question, Defendants, and each of them, their
20 agents, servants and employees became liable to Plaintiff for the reasons described in the
21 complaint herein, and thereby proximately caused Plaintiff to sustain damages as set forth
22 herein.
- 23 11. Plaintiff, on information and belief and based upon such basis, alleges that all Defendants
24 carried out a joint scheme, business plan or policy in all respects pertinent hereto and all
25 acts and omissions herein complained of were performed within the course and scope of
26 said employment, service, agency, common scheme, plan and/or policy.
- 27 12. Plaintiff, on information and belief and based upon such basis, alleges that Defendants'
28 founders, owners, shareholders, executive officers, managers, and supervisors directed,
authorized, ratified and/or participated in the conduct that gives rise to the claims asserted
herein and derived personal financial benefit from such conduct at the expense of Plaintiff.

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- 1 21. During the relevant timeframe, Plaintiff worked shifts of over five (5) hours, and was not
2 given a thirty-minute, uninterrupted meal break for each such shift. Plaintiff worked
3 during the meal periods either under the direction and supervision of Defendant, or with
4 Defendants' knowledge and consent. Furthermore, Defendants created schedules that
5 made it difficult or impossible for Plaintiff to take his meal breaks.
- 6 22. Defendants failed to compensate Plaintiff at the required rate for each occasion in which
7 Defendants failed to provide rest breaks and meal breaks. As such, Defendants failed to pay
8 for all the hours worked and all wages earned by Plaintiff.
- 9 23. Defendants failed to compensate Plaintiff at the required rate for each occasion in which
10 Defendants failed to provide rest breaks.
- 11 24. During the relevant timeframe, Defendants were paying their Latino immigrant employees,
12 with extremely limited educational backgrounds and no knowledge of labor law, less
13 compared to their other employees of other races or ethnicity for substantially similar work
14 and performed under similar working conditions.
- 15 25. Plaintiff had worked for Defendants for over a decade. At the time of the termination,
16 Plaintiff was 65 years old. Plaintiff was a dedicated employee and either met expectations
17 or exceeded them annually, while working for Defendants. However, due to his age,
18 Plaintiff could not work at the same pace and intensity as Defendants wished. Therefore,
19 Plaintiff believes and contends that Defendants terminated him due to his age (65 years
20 old).
- 21 26. Defendants terminated Plaintiff on or about October 30, 2020, but failed to tender his final
22 paycheck with accurate dollar amount, within the timeframe prescribed by law. As such,
23 Plaintiff is seeking his final paycheck, along with waiting time penalties.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

- 24 27. Prior to initiating this lawsuit, Plaintiff complied with the requirement to make a
25 claim and complaint against each named Defendant with the California Department
26 of Fair Employment and Housing ("DFEH") pursuant to section 19200, *et seq.*, of the
27 California Government Code, alleging the claims described in this complaint. On
28 April 14, 2021, DFEH issued a "right to sue" letter. A true and correct copy of the
administrative complaint and "right to sue letter" are attached hereto as **Exhibit "A"**.

1 The action is filed within one year of the date that the DFEH issued its right to sue
2 letter.

3 **FIRST CAUSE OF ACTION**

4 ***Violation of Labor Code §§ 551 and 552 - Failure to Provide Rest Days***

5 *(By Plaintiff against all Defendants)*

6 28. Plaintiff incorporates by reference and re-allege, as if fully stated herein, the material
7 allegations set forth in paragraphs 1 through 27 of this Complaint.

8 29. At all times herein set forth, Labor Code section 551 provides that “Every person employed
9 in any occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code
10 section 552 provides that “No employer of labor shall cause his employees to work more
11 than six days in seven.” Labor Code section 553 provides that “Any person who violates
12 this chapter is guilty of a misdemeanor.” Plaintiff alleges that Defendants caused them to
13 work more than six days in seven, and failed to provide them with one day’s of rest, in
14 violation of Labor Code sections 551- 553.

15 30. Pursuant to *California Labor Code* § 558, Plaintiff and Class members are entitled to fifty
16 dollars (\$50) for each pay period for which they were underpaid in addition to an amount
17 sufficient to recover underpaid wages and for each subsequent violation, one hundred
18 dollars (\$100) for each pay period for which the employee was underpaid in addition to an
19 amount sufficient to recover underpaid wages.

20 **SECOND CAUSE OF ACTION**

21 ***Violation of Labor Code §§ 226.7(a) and IWC Wage Order No. 5-2001 section 12 – Unpaid***
22 ***Missed Rest Breaks***

23 *(By Plaintiff Against all Defendants)*

24 31. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
25 allegations set forth in paragraphs 1 through 30 of this Complaint.

26 32. At all times herein set forth, Labor Code section 218 authorizes an employee to sue directly
27 for any wages or penalty due to him or her under this article of the Labor Code.

28 33. At all times herein set forth, Labor Code section 226.7(a) provides that no employer shall
require an employee to work during any rest period mandated by an applicable order of the
IWC.

- 1 34. The language of IWC Wage Order No. 5-2001 section 12(A) relating to rest periods tracks
2 the language of the Labor Code. (*Code of Regulations*, title 8, section 11070, subd. 11.).
3 Pursuant to IWC Wage Order No. 5-2001 section 12(A), "Every employer shall authorize
4 and permit all employees to take rest periods, which insofar as practicable shall be in the
5 middle of each work period. The authorized rest period time shall be based on the total
6 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
7 fraction thereof. However, a rest period need not be authorized for employees whose total
8 daily work time is less than three and one-half (3 ½) hours. Authorized rest period time
9 shall be counted as hours worked for which there shall be no deductions from wages."
10 35. During the relevant time period, Plaintiff worked more than three and one-half (3 ½) hours
11 per workday, and was not allowed to take paid rest breaks that he was legally entitled to
12 pursuant to IWC Wage Order No. 5-2001 section 12.
13 36. Defendants' conduct, as alleged herein, violates IWC Wage Order No. 5-2001 section 12
14 and Labor Code § 226.7(a), which provides that no employer shall require any employee to
15 work during any rest period mandated by an applicable order of the IWC.
16 37. Pursuant to Labor Code section 226.7(b), and IWC Wage Order No. 5-2001 section 12
17 (B), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at
18 Plaintiff's regular rate of compensation for each workday that a rest period was not
19 provided, for a three-year statutory period dating back from the date of the commencement
20 of this action.
21 38. Pursuant to Labor Code section 558, Plaintiff is entitled to fifty dollars (\$50.00) for each
22 pay period for which he was underpaid in addition to an amount sufficient to recover
23 underpaid wages and for each subsequent violation, one hundred dollars (\$100.00) for each
24 pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover
25 underpaid wages.

THIRD CAUSE OF ACTION

26 ***Violation of Labor Code §§ 226.7(a) and 512(a) and IWC Wage Order No. 5-2001 section 11 –***
27 ***Unpaid Missed Meal Breaks***
28 ***(By Plaintiff Against all Defendants)***

39. Plaintiff incorporates by reference and re-allege, as if fully stated herein, the material
allegations set out in paragraphs 1 through 38 of this Complaint.

- 1 40. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly
2 for any wages or penalty due to them under this article of the California Labor Code.
- 3 41. At all times herein set forth, Labor Code section 226.7(a) provides that no employer shall
4 require an employee to work during any meal period mandated by an applicable order of
5 the IWC.
- 6 42. At all times herein set forth, Labor Code section 512(a) provides that an employer may not
7 employ an employee for a work period of more than five (5) hours per day without
8 providing the employee with a meal period of not less than thirty (30) minutes, except that
9 if the total work period per day of the employee is not more than six (6) hours, the meal
10 period may be waived by mutual consent of both the employer and the employee.
- 11 43. At all times herein set forth, Labor Code section 512(a) further provides that an employer
12 may not employ an employee for a work period of more than ten (10) hours per day
13 without providing the employee with a second meal period of not less than thirty (30)
14 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
15 meal period may be waived by mutual consent of the employer and the employee, only if
16 the first meal period was not waived.
- 17 44. The language of IWC Wage Order No. 5-2001 section 11 relating to meal periods tracks
18 the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)
- 19 45. During the relevant time period, Plaintiff was required to work in excess of five (5) hours
20 and/or ten (10) hours without receiving a first or second “uninterrupted” meal period of not
21 less than thirty (30) minutes.
- 22 46. Defendant fostered a work environment where the taking of uninterrupted thirty (30)
23 minute meal breaks by its employees was essentially prohibited because Defendant was
24 more concerned about their profit margin, than its own employees’ welfare. As such,
25 Plaintiff could not take any thirty (30) minute uninterrupted meal breaks without the risk of
26 being reprimanded or terminated.
- 27 47. Because Defendant failed to afford proper meal periods, they are liable to Plaintiff for one
28 hour of additional pay at the regular rate of compensation for each meal period not
provided, pursuant to Cal. Labor Code Section 226.7(b) and IWC Wage Order No. 5-2001,
section 11(B).

1 48. By violating Cal. Labor Code Section 226.7 and 512, and IWC Wage Order No. 5, section
2 11, Defendant is also liable to Plaintiff for reasonable attorneys' fees and costs under Cal.
3 Labor Code Section 218.5.

4 **FOURTH CAUSE OF ACTION**

5 ***Failure to Pay All Overtime Wages Earned, in Violation of Labor Code Sections 510 and 1194***
6 ***and IWC Wage Order No. 5-2001 section 3***

7 *(By Plaintiff Against all Defendants)*

8 49. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
9 allegations set forth in paragraphs 1 through 48 of this Complaint.

10 50. At all relevant times during the applicable limitations period, Plaintiff has been a non-
11 exempt employee of Defendants and entitled to the benefits of Cal. Labor Code Sections
12 510 and 1194 and the Wage Order.

13 51. Section 2(k) of the Wage Order defines hours worked as "the time during which an
14 employee is subject to the control of an employer, and includes all the time the employee is
15 suffered or permitted to work, whether or not required to do so."

16 52. In relevant part, Section 3 of the Wage Order states: (A) Daily Overtime- General
17 Provisions:

18 (1) The following overtime provisions are applicable to employees 18 years of age or
19 over and to employees 16 or 17 years of age who are not required by law to attend
20 school and are not otherwise prohibited by law from engaging in the subject work. Such
21 employees shall not be employed more than eight (8) hours in any workday or more
22 than 40 hours in any workweek unless the employee receives one and one-half (1 ½)
23 times such employee's regular rate of pay for all hours worked over 40 hours in the
24 workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight
25 (8) hours in any workday or more than six (6) days in any workweek is permissible
26 provided the employee is compensated for such overtime at not less than:

27 (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including twelve (12) hours in any
workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day
of work in a workweek; and

1 (b) Double the employee's regular rate of pay for all hours worked in excess of 12
2 hours in any workday and for all hours worked in excess of eight (8) hours on the
3 seventh (7th) consecutive day of work in a workweek.

4 (c) The overtime rate of compensation required to be paid to a nonexempt full-time
5 salaried employee shall be computed by using the employee's regular hourly salary as
6 one fortieth (1/40) of the employee's weekly salary.

7 53. Cal. Labor Code Section 510 states: "Eight hours of labor constitutes a day's work. Any
8 work in excess of eight hours in one workday and any work in excess of 40 hours in any
9 one workweek and the first eight hours worked on the seventh day of work in any one
10 workweek shall be compensated at the rate of no less than one and one-half times the
11 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
12 compensated at the rate of no less than twice the regular rate of pay for an employee. In
13 addition, any work in excess of eight hours on any seventh day of a workweek shall be
14 compensated at the rate of no less than twice the regular rate of pay of an employee.
15 Nothing in this section requires an employer to combine more than one rate of overtime
16 compensation in order to calculate the amount to be paid to an employee for any hour of
17 overtime work."

18 54. With respect to overtime wages, the regular rate of pay under California law must include
19 "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14
20 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to,
21 commissions and nondiscretionary bonuses. See *Huntington Memorial Hosp. v. Superior*
22 *Court* (2005) 131 Cal App. 4th 893, 904-05.

23 55. Plaintiff has been damaged in a sum to be proven and request relief as described below.

24 **FIFTH CAUSE OF ACTION**

25 ***Failure to Pay All Wages Earned, in Violation of Labor Code Section 204***

26 *(By Plaintiff Against all Defendants)*

27 56. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
28 allegations set forth in paragraphs 1 through 55 of this Complaint.

57. Cal. Labor Code Section 204 requires California employers to pay employees for all wages
earned.

1 58. Defendants failed to compensate Plaintiff for all hours worked, including, but not limited
2 to, the hours Plaintiff worked during his rest and meal breaks, and for which he did not
3 receive the proper compensation under the law, and half an hour each work day during
4 which he was ordered to transport water for other employees working in the greenhouse
5 while he was off the clock.

6 59. Plaintiff has been damaged in a sum to be proven.

7 **SIXTH CAUSE OF ACTION**

8 ***Failure to Maintain Accurate Payroll Records; in Violation of California Labor Code***
9 ***Sections 226(a) and 1174 and IWC Wage Order No. 5-2001 section 7***

10 *(By Plaintiff Against all Defendants)*

11 60. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
12 allegations set out in paragraphs 1 through 59 of this Complaint.

13 61. Cal. Labor Code Section 226(a), IWC wage order No. 5-2001, Sections 7(A) and 7(B), and
14 Cal. Labor Code Section 1174 require employers to maintain accurate payroll records and
15 to provide semi-monthly or at the time of each payment of wages to furnish each employee
16 with a statement itemizing, among other things, the total hours worked by the employee.

17 62. Defendants have violated Cal. Labor Code Sections 226(a) and 1174, and IWC wage order
18 No. 5, Sections 7(A) and 7(B) by willfully failing to keep required payroll records showing
19 the actual hours worked each day by Plaintiff. As a direct and proximate result of
20 Defendants' failure to maintain payroll records, Plaintiff has suffered economic harm as he
21 has been precluded from accurately monitoring the number of hours worked and thus
22 seeking payment in connection with the hours for all the missed rest and meal breaks.

23 63. Plaintiff is entitled to \$4,000 in damages for Defendants' violation and being liable for this
24 cause of action, in addition to an award of costs and reasonable attorneys' fees under Labor
25 Code section 226(e)(1).

26 **SEVENTH CAUSE OF ACTION**

27 ***Failure to Pay Wages Upon Separation (Labor Code Sections 201-203)***

28 *(By Plaintiff Against all Defendants)*

64. Plaintiff incorporates by reference and re-alleges, as if fully state herein, the material
allegations set out in paragraphs 1 through 63 of this Complaint.

1 65. Labor Code sections 201 – 203 provide that if an employer discharges an employee, the
2 wages earned and unpaid at the time of discharge are due and payable immediately, and
3 that if an employee voluntarily leaves his or her employment, his or her wages shall
4 become due and payable not later than seventy-two (72) hours thereafter; unless the
5 employee had given seventy-two (72) hours previous notice of his or her intention to quit,
6 in which case the employee is entitled to his or her wages at the time of quitting. Labor
7 Code section 203 provides that if an employer willfully fails to pay wages owed, in
8 accordance with Labor Code sections 201 and 202, then the wages of the employee shall
9 continue as a penalty from the due date, and at the same rate until paid or until an action is
10 commenced; but the wages shall not continue for more than thirty (30) days.

11 66. During the relevant time period, Defendant failed to pay Plaintiff, who is no longer
12 employed by Defendant, Plaintiff's wages, earned and unpaid, either at the time of
13 discharge, or within seventy-two (72) hours of his leaving Defendant's employ in violation
14 of Labor Code section 201 – 203.

15 67. Additionally, Plaintiff has been damaged in a sum to be proven and request relief as
16 described below.

17 **EIGHTH CAUSE OF ACTION**

18 ***Denial of Equal Pay for Substantially Similar Work in Violation of the California Fair Pay Act*** 19 ***(Labor Code Sections 1197.5 and 1199.5)***

20 *(By Plaintiff Against all Defendants)*

21 68. Plaintiff incorporates by reference and re-allege, as if fully stated herein, the material
22 allegations set out in paragraphs 1 through 67 of this Complaint.

23 69. Labor Code section 1197.5 provides: "An employer shall not pay any of its employees at
24 wage rates less than the rates paid to employees of another race or ethnicity for
25 substantially similar work, when viewed as a composite of skill, effort, and responsibility,
26 and performed under similar working conditions."

27 70. Labor Code section 1199.5 provides: "Every employer or other person acting either
28 individually or as an officer, agent, or employee of another person is guilty of a
misdemeanor and is punishable by a fine of not more than ten thousand dollars (\$10,000),
or by imprisonment for not more than six months, or by both, who willfully does any of the

1 following: (a) Pays or causes to be paid any employee a wage less than the rate paid to an
2 employee of another sex, race, or ethnicity, as required by Section 1197.5.”

3 71. During the relevant timeframe, Defendants were paying their Latino immigrant employees,
4 with extremely limited educational backgrounds and no knowledge of labor law, less
5 compared to their other employees of other races or ethnicity for substantially similar work
6 and performed under similar working conditions.

7 72. Plaintiff has been damaged in a sum to be proven.

8 **NINTH CAUSE OF ACTION**

9 **Unlawful Discrimination Based on Violation of *California Government Code* § 12940**

10 *(By Plaintiff Against All Defendants)*

11 73. Plaintiff re-alleges and incorporate by reference as if fully stated herein, the material
12 allegations set out in each and all previous paragraphs of this Complaint.

13 74. At all times herein set forth, *California Government Code* § 12926(d) provides:
14 “‘Employer’ includes any person regularly employing five or more persons, or any
15 person acting as an agent of an employer, directly or indirectly, the state or any political
16 or civil subdivision of the state, and cities . . .”

17 75. Defendants employ more than five employees. Defendants violated Cal. Gov. Code §
18 12940. Defendants discriminated against Plaintiff. As a result of Defendants’ acts,
19 Plaintiff has suffered and will continue to suffer damages, including lost wages, lost
20 benefits, as well as other pecuniary and physical and emotional injuries. The amount of
21 Plaintiff’s damages will be ascertained at trial.

22 76. Plaintiff is legally protected from disability discrimination and age discrimination.

23 77. Defendants wrongfully terminated Plaintiff from his employment on or about October
24 30, 2020. When Plaintiff inquired about his working schedule, a new supervisor, John,
25 who seemingly replaced Plaintiff’s previous supervisor, Earl Kennel, informed Plaintiff
26 he was not familiar with Plaintiff and did not consider him to be an employee of
27 Defendants refusing to assign him any work. Therefore, Plaintiff contends he was
28 wrongfully terminated. At that time, he was 65 years old.

78. Plaintiff was replaced by a much younger employee.

79. In committing the foregoing acts, Defendants are guilty of oppression, fraud, and/or
malice under California Civil Code Section 3294, thereby entitling Plaintiff to punitive

1 damages in an amount to be proven at trial. Defendants' employees committed the acts
2 of oppression, fraud, and/or malice. Defendants, had advance knowledge of each
3 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified
4 the wrongful conduct for which an award of punitive damages is sought. The advance
5 knowledge and conscious disregard, authorization, ratification, or act of oppression,
6 fraud and/or malice, was committed by or on part of an officer, director, or managing
7 agent of each of the Defendants. Therefore, Plaintiff is entitled to punitive damages
8 against Defendants.

80. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
9 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed
10 and will continue to employ attorneys for the initiation and prosecution of this action.
11 Plaintiff has incurred and will continue to incur attorneys' fees and costs. Plaintiff is
12 entitled to an award of reasonable attorneys' fees and costs since Defendants
13 discriminated against Plaintiff due to his age, medical condition, and disability.

14 **TENTH CAUSE OF ACTION**

15 ***Wrongful Termination in Violation of Public Policy***

16 *(By Plaintiff Against all Defendants)*

- 17 81. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
18 allegations set out in paragraphs 1 through 72 of this Complaint.
- 19 82. "Public policy" has been defined broadly to mean "that principle of law which holds that
20 no citizen can lawfully do that which has a tendency to be injurious to the public or against
21 the public good" [*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal.
22 App. 2d 184, 188, 344 P.2d 25]. Furthermore, an employer discharging an employee's
23 employment based on the employee's age is a violation of Public Policy because "age
24 discrimination" is supported by either constitutional or statutory provisions; they inure to
25 the benefit of the public at large rather than serving merely the interests of the individual;
26 are articulated at the time of the discharge; and California's policy against age
27 discrimination is "substantial and fundamental."
- 28 83. Plaintiff alleges that the reason as to why he was terminated from his employment was due
to his age as he could not work at the same pace and intensity as Defendants wished.

1 Therefore, Plaintiff alleges that Defendants have terminated Plaintiff's employment in
2 violation of Public Policy. Plaintiff alleges that as a direct and proximate result of
3 Defendants' wrongful conduct (Plaintiff's employment being terminated on the above
4 described bases); Plaintiff has now sustained monetary damages and severe emotional
5 distress in an amount to be proven at trial.

6 84. Each of the wrongful and deliberated acts committed by Defendants, as herein alleged,
7 were acts that constitute oppression and malice because they were committed with the sole
8 intent to discharge Plaintiff from his employment due to his age.

9 85. Plaintiff is informed and believes and thereon alleges that each of the oppressive and
10 malicious acts committed by Defendants, as herein above alleged, were committed and/or
11 ratified by Defendants and their directors, officers, managing employees, and therefore,
12 Plaintiff is entitled to an award of punitive damages against Defendants and each of them.

13 86. Plaintiff is informed and believes and thereon alleges that each of the oppressive and
14 malicious acts committed by Defendants, as herein above alleged, were committed and/or
15 ratified by Defendants and their directors, officers, managing employees, and therefore,
16 Plaintiff is entitled to an award of punitive damages against Defendants and each of them.

17 **REQUEST FOR JURY TRIAL**

18 Plaintiff hereby requests a trial by jury for all issues so triable.

19 **PRAYER FOR RELIEF**

20 Plaintiff requests:

- 21 1. For general and special compensatory damages, according to proof;
- 22 2. For payments pursuant to *California Labor Code* § 226.7;
- 23 3. For payments pursuant to *California Code of Civil Procedure* § 338;
- 24 4. For reasonable attorney's fees and for costs of suit incurred herein pursuant to *Labor*
25 *Code* §§ 218.5, 226(e);
- 26 5. For pre-judgment interest on any unpaid wages from the date such amounts were due
27 pursuant to *California Labor Code* § 218.6; 246(a), 1194, 1194.2, 1197, 1197.1 and
28 any other applicable statute.
6. For civil penalties pursuant to *Labor Code* § 558, 1197.1;
7. For penalties pursuant to Cal. Labor Code Section 1198.5(k);

8. For the disgorgement of any and all “unpaid wages” and incidental losses, according to proof;
9. For restitution of "unpaid wages" and pre-judgment interest from the day such amounts were due and payable;
10. For reasonable attorney's fees pursuant to *Code of Civil Procedure* § 1021.5;
11. For exemplary and punitive damages;
12. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
13. For such other and further relief as the court deems just and proper.

DATED: April 14, 2021

LAW OFFICES OF FARRAH MIRABEL

BY: Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEYS FOR PLAINTIFF,
GERARDO AYALA

EXHIBIT “A”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfefh.ca.gov

April 14, 2021

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202104-13246415
Right to Sue: AYALA / STEELE CANYON GOLF CLUB CORPORATION et al.

Dear Farrah Mirabel:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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April 14, 2021

RE: **Notice of Filing of Discrimination Complaint**

DFEH Matter Number: 202104-13246415

Right to Sue: AYALA / STEELE CANYON GOLF CLUB CORPORATION et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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April 14, 2021

GERARDO AYALA
2515 S. Baker Street Apt B
Santa Ana, California 92707

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202104-13246415
Right to Sue: AYALA / STEELE CANYON GOLF CLUB CORPORATION et al.

Dear GERARDO AYALA:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 14, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

GERARDO AYALA

DFEH No. 202104-13246415

Complainant,

vs.

STEELE CANYON GOLF CLUB CORPORATION
3199 STONEFIELD DR
JAMUL, California 91935

DOVE CANYON GOLF CLUB, LLC
22682 GOLF CLUB DR
TRABUCO CANYON, California 92679

Respondents

1. Respondent **STEELE CANYON GOLF CLUB CORPORATION** is an employer **STEELE CANYON GOLF CLUB CORPORATION** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **DOVE CANYON GOLF CLUB, LLC** business as Co-Respondent(s).

3. Complainant **GERARDO AYALA**, resides in the City of **Santa Ana**, State of **California**.

4. Complainant alleges that on or about **October 30, 2020**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical or mental), age (40 and over).

Complainant was discriminated against because of complainant's disability (physical or mental), age (40 and over) and as a result of the discrimination was terminated.

Additional Complaint Details: Defendants STEELE and DOVE employed Plaintiff AYALA as a non-exempt hourly employee beginning in 2007. Plaintiff was employed as a general laborer. From 2007, his work as a laborer and landscaper was from 6:00 a.m. to 2:30 p.m., seven (7) days a week, from Monday through Sunday. As of 2018, Plaintiff worked five (5)

1 days per week. Plaintiff's last pay rate \$15.00 per hour. Defendants failed to pay overtime
2 wages at the legal rates of pay for all overtime hours worked. Defendants wrongfully
3 terminated Plaintiff from his employment on or about October 30, 2020. When Plaintiff
4 inquired about his working schedule, a new supervisor, John, who seemingly replaced
5 Plaintiff's previous supervisor, Earl Kennel, informed Plaintiff he was not familiar with Plaintiff
6 and did not consider him to be an employee of Defendants refusing to assign him any work.
7 Therefore, Plaintiff contends he was wrongfully terminated. Plaintiff had worked for
8 Defendants for over a decade. At the time of the termination, Plaintiff was 65 years old.
9 Plaintiff was a dedicated employee and either met expectations or exceeded them annually,
10 while working for Defendants. However, due to his age, Plaintiff could not work at the same
11 pace and intensity as Defendants wished. Therefore, Plaintiff believes and contends that
12 Defendants terminated him due to his age (65 years old). Of course at his age, he had
13 certain body aches and pains which caused him to need accommodations too. Not only he
14 was denied his regular uninterrupted statutory breaks but also he was not accommodated
15 by taking his age into consideration. He claims discrimination.
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1 VERIFICATION

2 I, **Farrah Mirabel**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On April 14, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, CA**
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