

FARRAH MIRABEL, SBN # 162933
fmesq@fmirabel.com
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, CA 90077
TELEPHONE: (714) 972-0707 | FAX: (949) 417-1796

E-FILED
4/7/2022 5:40 PM
Superior Court of California
County of Fresno
By: E. Meyer, Deputy

Attorneys for Plaintiffs, on behalf of themselves and for all similarly situated persons

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

CLAUDIO CABRERA, ARTURO CABRERA,
CHRISTIAN GURROLA, on behalf of themselves
for all similarly situated persons, and the general
public,

Plaintiffs,

vs.

JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP; and DOES 1-50 ALL
INCLUSIVE,

Defendants.

Case No.: **22CECG01065**

Assigned to:

Dept.:

**CLASS ACTION COMPLAINT FOR DAMAGES
FOR:**

1. Unpaid Missed Rest Breaks (Labor Code § 226.7(a) and IWC Wage Order No. 4-2001 and 9-2001 Section 12);
2. Unpaid Missed Meal Breaks (Labor Code §§ 226.7 and 512(a) and IWC Wage Order No. 4-2001 and 9-2001 Section 11);
3. Failure to Pay for All Overtime Wages Earned (Labor Code §§ 510 and 1194 and IWC Wage Order 4-2001 and 9-2001 Section 3);
4. Failure to Pay Minimum Wage and Pay for All Wages Earned (Labor Code §§ 204, 1194 and 1197);
5. Failure to Maintain Accurate Payroll Records (Labor Code §§ 226(a), 1174 and 1198.5 and IWC Wage Order No. 4-2001 and 9-2001 Section 7);
6. Failure to Pay Wages Upon Separation (Labor Code §§ 201 – 203);
7. Failure to Reimburse Required Business Expenses (Labor Code § 2802);
8. Denial of Equal Pay for Substantially Similar Work in Violation of the California Fair Pay Act (Labor Code §§ 1197.5 and 1199.5);
9. Violation of California Business and Professions Code § 17200, et seq.;
10. Unlawful Discrimination and Retaliation

Based on Cal. Govt. Code § 12940;

11. Failure To Provide Workers' Compensation Coverage, (Labor Code §§ 3600, 3700);

12. Failure to Provide Employees with Safe Drinkable Water and Rest Area and close by Restroom (Labor Code §§ 226.7, 2441) (incorporating OSHA Regulations);

13. Wrongful Termination in Violation of Public Policy; and

14. Civil Penalties Pursuant to Labor Code § 2699 (PAGA Penalties)

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFFS, CLAUDIO CABRERA, ARTURO CABRERA, and CHRISTIAN GURROLA, individually on behalf of themselves and on behalf of all similarly situated individuals, and the general public, and allege as follows:

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

NATURE OF THE ACTION

1. Defendants are operating a business in Fresno, California.
2. During the relevant timeframe, Plaintiffs were employed by Defendant, JAMES B. WALKER FAMILY LIMITED PARTNERSHIP, in various capacities. Plaintiffs and Class Members worked at Defendants' 3649 W. Beechwood Ave., #101, Fresno, CA 93711 location.
3. This action for relief arises from Defendants' failure to provide off-duty rest and meal periods as required by law; failure to compensate Plaintiffs and Class Members at the required rate for each occasion in which Defendants failed to provide rest and meal breaks; failure to pay overtime wages and for all hours worked; failure to keep accurate payroll records, such that Plaintiffs and Class Members and were given no wage statements to accurately reflect all the hours worked and all wages earned; failure to timely pay all wages due upon separation; failure to pay the minimum wage and all wages earned; failure to provide employees with safe drinkable water and rest area and close by restroom; and failure to reimburse for necessary business expenditures.

1 Defendants were paying Plaintiffs and Class Members, their Latino immigrant
2 employees, with extremely limited educational backgrounds and no knowledge of labor
3 law, less wages compared to their other employees of other races or ethnicity for
4 substantially similar work and performed under similar working conditions. Plaintiff
5 ARTURO CABRERA has an individual claim for Defendants' failure to provide
6 workers' compensation coverage. Plaintiffs also have an individual cause of action for
unlawful discrimination and wrongful termination/retaliation against public policy.

7 THE PARTIES

- 8 4. Plaintiffs, CLAUDIO CABRERA, ARTURO CABRERA, and CHRISTIAN
9 GURROLA, are residents of California.
- 10 5. Defendants, at all times mentioned herein, are employers whose employees worked for
11 throughout the County of Fresno in the State of California.
- 12 6. The true names and capacities, whether individual, corporate, associate or otherwise of
13 each of the Defendants designated herein as a DOE are unknown to Plaintiffs and Class
14 Members at this time, who therefore, sue said Defendants by fictitious names, DOES 1 to
15 50, and will ask leave of this Court for permission to amend this Complaint to show their
16 names and capacities when the same have been ascertained. Plaintiffs and Class Members
17 are informed and believe and thereon allege that each of the Defendants designated as a
18 DOE is legally responsible in some manner for the events and happenings herein referred
19 to, and caused injuries and damages thereby to Plaintiffs and Class Members as herein
alleged.
- 20 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
21 to "Defendant" such reference shall refer to all Defendants.
- 22 8. Plaintiffs and Class Members, on information and belief and based upon such basis,
23 allege that at all times herein mentioned, each of the Defendants were acting as the agent,
24 servant, employee of each of the other Defendants, within the scope of said agency and
employment.
- 25 9. During the times and places of the incident in question, Defendants, and each of them,
26 their agents, servants and employees became liable to Plaintiffs and Class Members for
27 the reasons described in the complaint herein, and thereby proximately caused Plaintiffs
28 and Class Members to sustain damages as set forth herein.

1 10. Plaintiffs and Class Members, on information and belief and based upon such basis,
2 allege that all Defendants carried out a joint scheme, business plan or policy in all
3 respects pertinent hereto and all acts and omissions herein complained of were performed
4 within the course and scope of said employment, service, agency, common scheme, plan
and/or policy.

5 11. Plaintiffs and Class Members, on information and belief and based upon such basis,
6 allege that Defendants' founders, owners, shareholders, executive officers, managers, and
7 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise
8 to the claims asserted herein and derived personal financial benefit from such conduct at
9 the expense of Plaintiffs and Class Members.

10 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

11 12. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
12 there exists such a unity of interest and ownership between Defendants and DOES 1-50
13 that the individuality and separateness of Defendant have ceased to exist.

14 13. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
15 despite the formation of purported corporate existence, Defendants and DOES 1-50 are,
16 in reality, one and the same as Defendants, including, but not limited to because:

17 a. Defendants are completely dominated and controlled by DOES 1-50, who personally
18 committed the frauds and violated the laws as set forth in this complaint, and who have
19 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
accomplish some other wrongful or inequitable purpose.

20 b. DOES 1-50 derive actual and significant monetary benefits by and through
21 Defendants' unlawful conduct, and by using Defendants as the funding source for their
22 own personal expenditures.

23 c. Plaintiffs and Class Members are informed and believe that Defendants and DOES 1-
24 50, while really one and the same, were segregated to appear as though separate and
25 distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing
some other wrongful or inequitable purpose.

26 d. Plaintiffs and Class Members are informed and believe that Defendants do not comply
27 with all requisite corporate formalities to maintain a legal and separate corporate
28 existence.

1 e. Plaintiffs and Class Members are informed and believe, and based thereon allege, that
2 the business affairs of Defendants and DOES 1-50 are, and at all times relevant were, so
3 mixed and intermingled that the same cannot reasonably be segregated, and the same are
4 in inextricable confusion. Defendants are, and at all times relevant hereto were, used by
5 DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs,
6 and are, and were, the alter ego of DOES 1-50. The recognition of the separate existence
7 of Defendants would not promote justice, in that it would permit Defendants to insulate
8 themselves from liability to Plaintiffs and Class Members for violations of the
9 Government Code and other statutory violations. The corporate existence of Defendants
10 and DOES 1-50 should be disregarded in equity and for the ends of justice because such
11 disregard is necessary to avoid fraud and injustice to Plaintiffs and Class Members
12 herein.

12 14. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their
13 separate corporate existence must be disregarded.

14 15. As a result of the aforementioned facts, Plaintiffs and Class Members are informed and
15 believe, and based thereon allege that Defendants and DOES 1-50 are Plaintiffs and Class
16 Members' joint employers by virtue of a joint enterprise, and that Plaintiffs and Class
17 Members are employees of Defendants, and DOES 1-50. Plaintiffs and Class Members
18 performed services for each and every one of Defendants, and to the mutual benefit of all
19 Defendants, and all Defendants shared control of Plaintiffs and Class Members as
20 employees, either directly or indirectly, and the manner in which Defendants' business
21 was and is conducted.

21 16. Alternatively, Plaintiffs and Class Members are informed and believe and, based
22 thereupon allege, that as and between DOES 1-50 and Defendants, (1) there is an express
23 or implied agreement of assumption pursuant to which DOES 1-50 agreed to be liable for
24 the debts of Defendants, (2) the transaction between DOES 1-50 and Defendants amounts
25 to a consolidation or merger of the two corporations, (3) DOES 1-50 is a mere
26 continuation of Defendants, or (4) the transfer of assets to DOES 1-50 is for the
27 fraudulent purpose of escaping liability for Defendants' debts. Accordingly, DOES 1-50
28 are the successors of Defendants, and are liable on that basis.

JURISDICTION AND VENUE

1 17. This Court has jurisdiction over this action pursuant to California Code of Civil
2 Procedure § 410.10. The damages exceed the jurisdictional minimum of this Court.

3 18. Venue is proper in this Court, pursuant to California Code of Civil Procedure § 395.5
4 because the incidents complained of occurred in Fresno County, California.

5 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

6 19. Plaintiffs and Class Members are informed and believe that Defendants own, manage,
7 and/or operate JAMES B. WALKER FAMILY LIMITED PARTNERSHIP, a farming
8 business in Fresno County.

9 20. During the relevant timeframe, Defendant employed Plaintiff, CLAUDIO CABRERA,
10 beginning on or around August 3, 2020. Plaintiff was employed as a general worker
11 whose duties included fruit picking and tractor driving. He worked from around 7:00 a.m.
12 to 4:00 p.m., from Mondays through Saturdays. Plaintiff's last pay rate was
13 approximately \$14.25 per hour. Sabino Cabrera was his supervisor. On October 29, 2021,
14 he was terminated by owner Brandon Walker under the pretext that there was no longer
15 any work available for him.

16 21. While working for Defendant, on November 17, 2020, Plaintiff CLAUDIO CABRERA
17 dislocated his right thumb when heavy tube fell on his finger. He received multiple
18 physical treatments at Concerta (CMC-Fresno North) beginning November 23, 2020, thru
19 May 19, 2021. Plaintiff was placed on modified work status by his provider beginning
20 November 23, 2020, until mid-February 2021, restricted from using his right thumb and
21 required to wear a brace/splint on his right upper extremity at all times. He was also
22 instructed to take Ibuprofen 800 mgs three times daily. He completed treatment in May
23 2021 but soon Defendant retaliated against him and terminated his employment in
24 October 2021. On October 9, 2021, he was terminated by owner Brandon Walker under
25 the pretext that there was no longer any work available for him.

26 22. During the relevant timeframe, Defendant employed Plaintiff, ARTURO CABRERA,
27 beginning on or around July 30, 2020. Plaintiff was employed as a general laborer, whose
28 duties included machine operating, use of the tractor, tree trimming, and tree watering.
He worked either from around 7:00 a.m. or 7:30 a.m. to 4:00 p.m. or 4:30 p.m., Mondays
through Saturdays. Plaintiff's last pay rate was \$14.25 per hour. Sabino Cabrera was his
supervisor. He suffered from a cumulative trauma from October 9, 2020, through October

- 1 9, 2021; he was suffering from a hernia. On October 9, 2021, he was terminated by owner
2 Brandon Walker under the pretext that there was no longer any work available for him.
- 3 23. During the relevant timeframe, Defendant employed Plaintiff, CHRISTIAN GURROLA,
4 beginning on or around August 29, 2016, as a machine operator, whose duties included
5 general operation of the ranch machines, fruit picking, fruit spraying, in addition to oil
6 and filter change. He worked either from around 6:30 a.m. or 7:00 a.m. to 4:00 p.m.,
7 Mondays through Saturdays. Plaintiff's last pay rate was approximately \$14.35 per hour.
8 Sabino Cabrera was his supervisor. On October 9, 2021, he was terminated by owner
9 Brandon Walker under the pretext that there was no longer any work available for him.
10 Plaintiff Christian Gurrola was terminated in retaliation for complaining about bodily
11 injury and pain due to his job duties of heavy lifting and pulling.
- 12 24. Plaintiffs and Class Members incurred necessary business expenses including purchasing
13 water to carry out their job duties; they were not provided with safe drinking water.
14 Plaintiffs and Class Members were even required to use their personal cellphones (they
15 received instruction on where to go and what activity to perform on their personal
16 cellphones). They were also required to travel between two locations almost daily, which
17 were 30-40 minutes between one another. Defendant never reimbursed them for these
18 costs.
- 19 25. During the relevant timeframe, Defendants failed to pay for all hours worked, and
20 overtime wages at the legal rates of pay for all overtime hours worked.
- 21 26. During the relevant timeframe, Plaintiffs and Class Members worked shifts of over four
22 hours, and were not given a ten-minute, uninterrupted rest break for each such shift.
23 Plaintiffs and Class Members worked during the rest periods either under the direction
24 and supervision of Defendants, or with Defendants' knowledge and consent.
25 Furthermore, Defendants created schedules that made it difficult or impossible for
26 Plaintiffs and Class Members to take their rest breaks.
- 27 27. During the relevant timeframe, Plaintiffs and Class Members worked shifts of over five
28 hours, and were not given a thirty-minute, uninterrupted meal break for each such shift.
Also, Plaintiffs and Class Members were not provided with a second meal break when
they worked more than 10 hours a day. Plaintiffs and Class Members worked during the
meal periods either under the direction and supervision of Defendant, or with

- 1 Defendant's knowledge and consent. Furthermore, Defendant created schedules that
2 made it difficult or impossible for Plaintiffs and Class Members to take their meal breaks.
- 3 28. During the relevant timeframe, Defendants failed to compensate Plaintiffs and Class
4 Members at the required rate for each occasion in which Defendants failed to provide rest
5 breaks and meal breaks. As such, Defendants failed to pay for all the hours worked and
6 all wages earned by Plaintiffs and Class Members.
- 7 29. During the relevant timeframe, Defendants failed to maintain accurate payroll records,
8 such that Plaintiffs and Class Members were given no wage statements to accurately
9 reflect their true compensation and all the hours worked. Defendant failed to provide
10 Plaintiffs and Class Members with a means of accurate timekeeping.
- 11 30. During the relevant timeframe, Defendants were paying Plaintiffs and Class Members,
12 their Hispanic immigrant employees, with extremely limited educational backgrounds
13 and no knowledge of labor law, less wages compared to their other employees of other
14 races or ethnicity for substantially similar work and performed under similar working
15 conditions. Plaintiffs overheard their boss, Chris Villavazo, amidst other employees, state
16 that all employees with the last name "Cabrera", a common Hispanic last name, would be
17 terminated.
- 18 31. During the relevant timeframe, Defendants failed to provide Plaintiffs and Class
19 Members fresh and pure drinking water during working hours. There was not access
20 to drinking water at reasonable and convenient times and places. Plaintiffs and Class
21 Members were to purchase their own drinking water since the drinking water provided by
22 Defendants through a hole was not safe to drink as there was no certification of safety.
- 23 32. During the relevant timeframe, Defendants did not issue an accurate final paycheck to
24 Plaintiffs and Class Members in accordance with the timeframes prescribed by law.

CLASS ACTION ALLEGATIONS

- 25 33. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other
26 persons similarly situated, and thus, seek class certification. The class shall be defined as
27 follows:
28 "All persons who were employed at JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP, in the State of California during the period commencing four years

1 from the date of PAGA filing, April 7, 2022, through the entry of final judgment in this
2 action.”

3 34. Plaintiffs propose that the following sub-classes be created:

- 4 a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
5 individuals who have been employed and are currently employed at JAMES
6 B. WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
7 periods prior to the filing of this Complaint until resolution of this lawsuit
8 who did not receive their required meal breaks pursuant to the California
9 *Labor Code* and/or applicable orders of the IWC.
- 10 b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
11 individuals who have been employed and are currently employed at JAMES
12 B. WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
13 periods prior to the filing of this Complaint until resolution of this lawsuit
14 who did not receive their required rest breaks pursuant to the California *Labor*
15 *Code* and/or applicable orders of the IWC.
- 16 c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All
17 individuals who have been and are currently employed at JAMES B.
18 WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
19 periods prior to the filing of this Complaint until resolution of this lawsuit
20 who were not paid full complete and accurate compensation for all hours
21 worked.
- 22 d. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All
23 individuals who have been and are currently employed at JAMES B.
24 WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
25 periods prior to the filing of this Complaint until resolution of this lawsuit
26 who were not paid full complete and accurate compensation for all overtime
27 worked.
- 28 e. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
individuals who have been and are currently employed at JAMES B.
WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
periods prior to the filing of this Complaint until resolution of this lawsuit

1 whose wage statements were inaccurate. This subclass includes the Class
2 Members whose final paycheck did not accurately reflect gross wages earned.
3 Specifically, all the hours worked, the overtime and additional hours of pay
4 employees earn for each workday they did not receive a meal and/or rest
5 break and/or the accrued sick days.

- 6 f. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All
7 individuals who were employed at JAMES B. WALKER FAMILY LIMITED
8 PARTNERSHIP within the relevant time periods prior to the filing of this
9 Complaint until resolution of this lawsuit who did not receive their final
10 paycheck on the day of termination and/or within 72 hours after the final day
11 of work or at the time of their termination.
- 12 g. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All
13 individuals who have been and are currently employed at JAMES B.
14 WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
15 periods prior to the filing of this Complaint until resolution of this lawsuit
16 who did not receive at least the minimum wage for all the hours worked.
- 17 h. A proposed sub-class (*hereinafter* “Business Expenses Class”) is defined as:
18 All individuals who have been and are currently employed at JAMES B.
19 WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
20 periods prior to the filing of this Complaint until resolution of this lawsuit
21 who did not receive reimbursement for necessary business expenses.
- 22 i. A proposed sub-class (*hereinafter* “Equal Pay Class”) is defined as: All
23 individuals who have been and are currently employed at JAMES B.
24 WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
25 periods prior to the filing of this Complaint until resolution of this lawsuit
26 who were denied equal pay for substantially similar work.
- 27 j. A proposed sub-class (*hereinafter* “Drinkable Water Class”) is defined as: All
28 individuals who have been and are currently employed at JAMES B.
WALKER FAMILY LIMITED PARTNERSHIP, within the relevant time
periods prior to the filing of this Complaint until resolution of this lawsuit

who were not provided with safe drinkable water and rest area and close by restroom pursuant to Labor Code §§ 226.7 and 2441.

35. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime Class, Wage Statement Class, Final Paycheck Class, Minimum Wage Class, and Business Expenses Class, Equal Pay Class, and Drinkable Water Class.
36. All claims alleged herein arise under California law for which Plaintiffs and Class Members seek relief authorized by California law.
37. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s) have a controlling interest, any officers, directors, and shareholders of Defendant, and legal representatives, heirs, successors, and assigns of Defendant.
38. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:
- k. Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiffs at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant’s employment records.
 - l. Typicality: Plaintiffs are qualified to and will fairly and adequately protects the interests of each Class Member with whom they have a well-defined community of interest, and Plaintiffs’ claims (or defenses, if any), are typical of all Class Members as demonstrated herein.
 - m. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protects the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiffs acknowledge that they have an obligation to the Court to make known any relationship, conflict, or differences with any Class Member. Plaintiffs’ attorneys and proposed Class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and, throughout the duration of this action, will continue to incur costs and

attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

- n. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. Class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- o. There are common questions of law and fact as to the Class (and each subclass, if any), that predominate over questions affecting only individual members, including but not limited to:
- p. Whether Defendant had a policy of not providing uninterrupted statutory mandated rest periods to Plaintiffs and Class Members or compensation for rest periods;
- q. Whether Defendant had a policy of not providing uninterrupted statutory mandated meal periods to Plaintiffs and Class Members or compensation for meal periods;
- r. Whether Defendant created schedules in such a manner that made it difficult or impossible for Plaintiffs, and similarly situated Class Members, to take uninterrupted rest periods;
- s. Whether Defendant created schedules in such a manner that made it difficult or impossible for Plaintiffs, and similarly situated Class Members, to take uninterrupted meal periods;
- t. Whether Defendant failed to pay Plaintiffs and Class Members for the overtime hours worked during the relevant timeframe;
- u. Whether Defendant had a policy of requiring Plaintiffs and Class Members to work before clocking in or continue working after clocking out;
- v. Whether Defendant failed to pay Plaintiffs and Class Members for the total hours worked during the relevant timeframe and pay for necessary business expenses;

- 1 w. Whether Defendant provided Plaintiffs and Class Members with safe
2 drinkable water and rest area and close by restroom pursuant to Labor Code
3 §§ 226.7 and 2441.
4 x. Whether Defendant failed to pay Plaintiffs and Class Members equal pay for
5 substantially similar work;
6 y. Whether Defendant failed to keep accurate payroll records, such that
7 inaccurate wage statements were issued to Plaintiffs and Class Members;
8 z. Whether Defendant failed to pay Plaintiffs and Class Members an accurate
9 and timely final paycheck;
10 aa. Whether Defendant failed to pay Plaintiffs and Class Members at least
11 minimum wage for all the hours worked;
12 bb. Whether Defendant improperly retained, converted, appropriated, or deprived
13 Plaintiffs and other Class Members of the use of monies or sums, which
14 Plaintiffs and Class Members were legally entitled to;
15 cc. Whether Defendant engaged in unfair business practices in violation of
16 California *Business and Professions Code* §§ 17200, et seq.; and
17 dd. The appropriate amount of damages, restitution, or monetary penalties
18 resulting from Defendant's violations of California law.

17 **FIRST CAUSE OF ACTION**

18 ***Unpaid Missed Rest Breaks***

19 ***(Labor Code section 226.7(a) and IWC Wage Order No. 4-2001 and 9-2001 Section 12)***

20 ***(By Plaintiffs and Class Members Against All Defendants)***

- 21 39. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
22 herein, the material allegations set out in each and all previous paragraphs of this
23 Complaint.
24 40. At all times herein set forth, Labor Code Section 218 authorizes an employee to sue
25 directly for any wages or penalty due to him or her under this article of the Labor Code.
26 41. At all times herein set forth, Labor Code Section 226.7(a) provides that no employer shall
27 require an employee to work during any rest period mandated by an applicable order of
28 the IWC.

- 1 42. The language of IWC Wage Order No. 4-2001 and 9-2001, Section 12 relating to rest
2 periods tracks the language of the Labor Code. (*Code of Regulations*, title 8, section
3 11070, subd. 11.). Pursuant to IWC Wage Order No. 4-2001 and 9-2001 Section 12:
4 “Every employer shall authorize and permit all employees to take rest periods, which
5 insofar as practicable shall be in the middle of each work period. The authorized rest
6 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
7 net rest time per four hours (4) or major fraction thereof. However, a rest period need not
8 be authorized for employees whose total daily work time is less than three and one-half
9 (3 ½) hours. Authorized rest period time shall be counted as hours worked for which
there shall be no deductions from wages.”
- 10 43. During the relevant time period, Plaintiffs and Class Members worked more than three
11 and one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that
12 they were legally entitled to pursuant to IWC Wage Order 4-2001 and 9-2001, Section
13 12.
- 14 44. During the relevant period, on one occasion, Plaintiff ARTURO CABRERA and his
15 colleagues were asked to sign a document reflecting they were waiving their rest breaks;
16 Plaintiff refused to sign the document.
- 17 45. Defendants’ conduct, as alleged herein, violates IWC Wage Order 4-2001 and 9-2001,
18 Section 12 and Labor Code Section 226.7(a), which provides that no employer shall
19 require any employee to work during any rest period mandated by an applicable order of
the IWC.
- 20 46. Pursuant to Labor Code Section 226.7(b), Plaintiffs and Class Members are entitled to
21 recover from Defendants one (1) additional hour of pay at Plaintiffs and Class Members’
22 regular rate of compensation for each work day that a rest period was not provided, for a
23 three-year statutory period dating back from the date of the commencement of this action.
- 24 47. Pursuant to Labor Code Sections 558 and 1197.1, Plaintiffs and Class Members are
25 entitled to fifty dollars (\$50.00) for each pay period for which they were underpaid in
26 addition to an amount sufficient to recover underpaid wages and for each subsequent
27 violation, one hundred dollars (\$100.00) for each pay period for which they were
28 underpaid in addition to an amount sufficient to recover underpaid wages.

SECOND CAUSE OF ACTION

Unpaid Missed Meal Breaks
(Labor Code Sections 226.7(a) and 512(a) and IWC Wage Order No. 4-2001 and 9-2001 Section 11)

(By Plaintiffs and Class Members Against All Defendants)

48. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

49. At all times herein set forth, Labor Code Section 218 authorizes employees to sue directly for any wages or penalty due to them under this article of the California Labor Code.

50. At all times herein set forth, Labor Code Section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

51. At all times herein set forth, Labor Code Section 512(a) provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

52. At all times herein set forth, Labor Code Section 512(a) further provides 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.

53. The language of applicable IWC Order, Section 11 relating to meal periods tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)

54. Defendants fostered a work environment where the taking of uninterrupted thirty (30) minute meal breaks by its employees was essentially prohibited because Defendants were more concerned about their profit margin, than its own employees' welfare. As such, Plaintiffs and Class Members could not take any thirty (30) minute uninterrupted meal breaks without the risk of being reprimanded or terminated.

- 1 55. Because Defendants failed to afford proper meal periods, they are liable to Plaintiffs and
2 Class Members for one hour of additional pay at the regular rate of compensation for
3 each workday that the proper meal periods were not provided, pursuant to Labor Code
4 Section 226.7(b) and applicable IWC Wage Order 4-2001 and 9-2001 Section 11.
5 56. By violating Labor Code Sections 226.7 and 512, and applicable Wage Order 4-2001 and
6 9-2001 Section 11, Defendants are also liable to Plaintiffs and Class Members for
7 reasonable attorneys' fees and costs under Labor Code Section 218.5.

8 **THIRD CAUSE OF ACTION**

9 ***Failure to Pay for All Overtime Wages Earned***

10 ***(Labor Code sections 510 and 1194 and IWC Wage Order No. 4-2001 and 9-2001***

11 ***Section 3)***

12 ***(By Plaintiffs and Class Members Against All Defendants)***

- 13 57. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
14 herein, the material allegations set out in each and all previous paragraphs of this
15 Complaint.
16 58. At all relevant times during the applicable limitations period, Plaintiffs and Class
17 Members have been non-exempt employees of Defendants and entitled to the benefits of
18 Labor Code Sections 510 and 1194 and the pertinent Wage Order.
19 59. Section 2(G) of the Wage Order defines "hours worked" as "the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee
21 is suffered or permitted to work, whether or not required to do so."
22 60. In relevant part, Section 3 of the Wage Order 4-2001 and 9-2001 states:
23 (A) The following overtime provisions are applicable to employees eighteen (18)
24 years of age or over and to employees sixteen (16) or seventeen (17) years of age
25 who are not required by law to attend school:
26 (1) Such employees shall not be employed more than ten (10) hours in any one
27 workday or more than six (6) days in any workweek unless the employee receives
28 one and one-half (1 1/2) times such employee's regular rate of pay for all hours
worked over ten (10) hours in any workday and for the first eight (8) hours on the
seventh (7th) day of work and double the employee's regular rate of pay for all
hours worked over eight (8) on the seventh (7th) day of work in the workweek.

(2) For employers of more than 25 employees:

(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

61. Labor Code Section 510 states: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. 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 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime

1 compensation in order to calculate the amount to be paid to an employee for any hour of
2 overtime work.”

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

8 63. During the relevant timeframe, Plaintiffs and Class Members worked more than eight
9 hours a day and more than 40 hours a week and were not paid all the overtime wages they
10 were entitled to.

11 64. Plaintiffs and Class Members have been damaged in a sum to be proven and request
12 relief as described below.

13 **FOURTH CAUSE OF ACTION**

14 ***Failure to Pay Minimum Wage and Pay for All Wages Earned***

15 ***(Labor Code Sections 204, 1194 and 1197)***

16 ***(By Plaintiffs and Class Members Against All Defendants)***

17 65. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
18 herein, the material allegations set out in each and all previous paragraphs of this
19 Complaint.

20 66. Labor Code Section 204 requires California employers to pay employees for all wages
21 earned.

22 67. Defendants failed to compensate Plaintiffs and Class Members for all hours worked,
23 including, but not limited to, the hours worked during their meal and rest breaks, as well
24 as overtime pay, and for which they did not receive the proper compensation under the
25 law.

26 68. Plaintiffs and Class Members have been damaged in a sum to be proven and requests
27 relief as described below.

28 **FIFTH CAUSE OF ACTION**

Failure to Maintain Accurate Payroll Records

***(Labor Code Sections 226(a), 1174 and 1198.5 and IWC Wage Order No. 4-2001 and
9-2001 Section 7)***

(By Plaintiffs and Class Members Against All Defendants)

69. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

70. Labor Code Section 226(a), applicable IWC such as Wage Order No. 4-2001 and 9-2001, Section 7(A), and Labor Code Section 1174 require employers to maintain accurate payroll records and to provide semi-monthly or at the time of each payment of wages to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee.

71. Defendants have violated Labor Code Sections 226(a), 1174 and 1198.5, and applicable IWC wage order such as Wage Order No. 4-2001 and 9-2001, Section 7(A), by willfully failing to keep required personnel and payroll records showing the actual hours worked each day by Plaintiffs and Class Members. Defendant failed to provide Plaintiffs and Class Members with a means of accurate timekeeping. As a direct and proximate result of Defendants' failure to maintain accurate payroll records, Plaintiffs and Class Members have suffered economic harm as they have been precluded from accurately monitoring the number of hours worked and thus seeking payment for all hours worked, as well as for all the missed meal periods and rest breaks.

72. The wage statements are not compliant with the requirement of labor code section 226 as the information of the employer is incomplete and employee's information are also not complete as required.

73. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

SIXTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation

(Labor Code Sections 201-203)

(By Plaintiffs and Class Members Against All Defendants)

74. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

- 1 75. 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
10 is commenced; but the wages shall not continue for more than thirty (30) days.
- 11 76. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members,
12 who are no longer employed by Defendant, their final paycheck (inclusive of
13 compensation for all hours worked, and compensation for missed rest and meal breaks)
14 either at the time of discharge, or within seventy-two (72) hours of their leaving
15 Defendant's employ in violation of Labor Code Section 201 – 203.
- 16 77. Plaintiffs and Class Members have been damaged in a sum to be proven and request
17 relief as described below.

18 **SEVENTH CAUSE OF ACTION**

19 ***Failure to Reimburse Required Business Expenses***

20 ***(Labor Code Section 2802)***

21 ***(By Plaintiffs and Class Members Against All Defendants)***

- 22 78. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
23 herein, the material allegations set out in each and all previous paragraphs of this
24 Complaint.
- 25 79. Labor Code Section 2802 requires an employer to "indemnify his or her employee for all
26 necessary expenditures or losses incurred by the employee in direct consequence of the
27 discharge of his or her duties..."
- 28 80. Plaintiffs and Class Members incurred necessary business expenses including purchasing
water to carry out their job duties; they were not provided with safe drinking water.
Plaintiffs and Class Members were even required to use their personal cellphones (they
received instruction on where to go and what activity to perform on their personal

cellphones). They were also required to travel between two locations almost daily, which were 30-40 minutes between one another.

81. All said expenses were necessary for Plaintiffs and Class Members to fulfill their job function for the Defendants.

82. Plaintiffs and Class Members sought reimbursement of these necessary expenses incurred at Defendants' direction and with assurance of payment, but Defendants have consistently refused to reimburse and indemnify for Plaintiffs and Class Members for these expenses.

83. Accordingly, for Plaintiffs and Class Members have been deprived of legally required reimbursement, and Defendants should be liable to for Plaintiffs and Class Members for these sums, plus attorney's fees, plus interest.

84. The monies retained by Defendants should be deemed for Plaintiffs and Class Members' monies, held in trust for Plaintiffs and Class Members and subject to a proper claim for reimbursement and disgorgement.

EIGHTH CAUSE OF ACTION

Denial of Equal Pay for Substantially Similar Work in Violation of the California Fair Pay Act

(Labor Code Sections 1197.5 and 1199.5)

(By Plaintiffs and Class Members Against All Defendants)

85. Plaintiffs and Class Members incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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

87. Labor Code Section 1199.5 provides: "Every employer or other person acting either 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 following: (a) Pays or causes to be paid any employee a wage less than the rate paid to an employee of another sex, race, or ethnicity, as required by Section 1197.5.”

88. During the relevant timeframe, Defendants were paying their Hispanic immigrant employees, including Plaintiffs and Class Members, with extremely limited educational backgrounds and no knowledge of labor law, less compared to their other employees of other races or ethnicity for substantially similar work and performed under similar working conditions.

89. Plaintiffs and Class Members overheard their boss, Chris Villavazo, amidst other employees, state that all employees with the last name “Cabrera”, a common Hispanic last name, would be terminated.

90. Plaintiffs and Class Members have been damaged in a sum to be proven.

NINTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(By Plaintiffs Against All Defendants)

91. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

92. California Business & Professions Code Section 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

93. California Business & Professions Code Section 17204 allows “any person acting for the interest of itself, its members or the general public” to prosecute a civil action for violation of the UCL.

94. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to the filing of this action, Defendants have improperly, fraudulently, and unlawfully failed to provide Plaintiffs with meal and rest breaks, failed to provide compensation for the missed meal and rest breaks, failed to provide compensation for all hours worked and all wages earned, failed to pay compensation for all over-time hours worked, failed to pay for necessary business expenses, failed to pay their Latino immigrant employees, including Plaintiffs, with extremely limited educational backgrounds and no knowledge of labor law, the same or similar compensation compared to their other employees of other races or ethnicity for substantially similar work and performed under similar working conditions, and provided Plaintiffs with no accurate wage statements, and have thereby

committed unlawful, unfair, and/or fraudulent business acts and practices as defined by California Business & Professions Code Section 17200, by engaging in the following:

- i. Failing and refusing to provide meal periods to Plaintiffs and similarly situated employees;
- ii. Failing to pay all accrued meal period break compensation to the employees;
- iii. Failing and refusing to provide rest periods to Plaintiffs and similarly situated employees;
- iv. Failing to pay all accrued rest period break compensation to the employees;
- v. Failing to pay all accrued overtime compensation to the employees;
- vi. Failing to pay for necessary business expenses;
- vii. Failing to pay to the employees for all hours worked;
- viii. Failing to maintain accurate payroll record and provide accurate itemized wage statement to Plaintiffs and similarly situated employees;
- ix. Failing to pay accurate wages for its employees' final paycheck;
- x. Failing to pay at least minimum wage for all hours worked; and
- xi. Failing to pay their Latino immigrant employees, including Plaintiffs, with extremely limited educational backgrounds and no knowledge of labor law, the same or similar compensation compared to their other employees of other races or ethnicity for substantially similar work and performed under similar working conditions.

The violation of these laws serves as unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of California Business and Professions Code Section 17200.

95. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants have received and continue to hold ill-gotten gains belonging to Plaintiffs. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs have suffered economic injuries including, but not limited to, compensation for missed meal periods, rest breaks, and over-time hours worked.

Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices in failing to provide meal period and rest break compensation to Plaintiffs, as well as compensation for overtime hours worked.

96. Plaintiffs are entitled to restitution pursuant to California Business & Professions Code Sections 17203 and 17208 for all meal period and rest break compensation, unpaid wages and interest as of four years prior to the filing date of this action.

- 1 97. Plaintiffs are entitled to enforce all applicable penalty provisions of the California Labor
2 Code pursuant to California Business & Professions Code Section 17202.
- 3 98. Plaintiffs' success in this action will enforce important rights affecting the public interest.
4 In this regard, Plaintiffs sue on behalf of themselves and the general public. Plaintiffs
5 seek and are entitled to unpaid compensation, declaratory and injunctive relief, civil
6 penalties, and any other appropriate remedy.
- 7 99. Injunctive relief is necessary and appropriate to prevent Defendants from continuing and
8 repeating their unlawful, unfair and fraudulent business acts and practices alleged above.
- 9 100. In order to prevent Defendants from profiting and benefitting from their wrongful and
10 illegal acts and continuing those acts, an order requiring Defendants to disgorge all the
11 profits and gains they have reaped and restore such profits and gains to the Plaintiffs,
12 from whom they were unlawfully taken.
- 13 101. Plaintiffs have assumed the responsibility of enforcement of the laws and lawful claims
14 specified herein. There is a financial burden incurred in pursuing this action, which is in
15 the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal.
16 Code of Civil Procedure Section 1021.5.
- 17 102. By all of the said foregoing alleged conduct Defendants have committed, and are
18 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within
19 the meaning of Cal. Business & Professions Code Section 17200, et seq.
- 20 103. As a direct and proximate result of the unfair business practices described above,
21 Plaintiffs have suffered significant losses and Defendants have been unjustly enriched.
- 22 104. Pursuant to California Business & Professions Code Section 17203, Plaintiffs are entitled
23 to: (a) restitution of money acquired by Defendants by means of their unfair business
24 practices, in amounts not yet ascertained but to be ascertained at trial; (b) injunctive relief
25 against Defendants' continuation of their unfair business practices, and (c) a declaration
26 that defendants' business practices are unfair within the meaning of the statute.

27 **TENTH CAUSE OF ACTION**

28 ***Unlawful Discrimination Based on Cal. Govt. Code § 12940***

(By Plaintiffs Against all Defendants)

105. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
allegations set out in each and all previous paragraphs of this Complaint.

- 1 106. At all times herein set forth, California Government Code § 12926(d) provides:
2 “‘Employer’ includes any person regularly employing five or more persons, or any
3 person acting as an agent of an employer, directly or indirectly, the state or any political
4 or civil subdivision of the state, and cities...”
- 5 107. Defendants employ more than five employees. Defendants violated Cal. Gov. Code §
6 12940. Defendants discriminated against Plaintiffs due to their national origin.
- 7 108. As a result of Defendants’ acts, Plaintiffs have suffered and will continue to suffer
8 damages, including lost wages, lost benefits, as well as other pecuniary and physical and
9 emotional injuries. The amount of Plaintiffs’ damages will be ascertained at trial.
- 10 109. Plaintiffs are legally protected from race discrimination.
- 11 110. Plaintiff Arturo Cabrera was terminated in retaliation for requesting time off to go to a
12 doctor after he was experiencing chronic abdominal pain resulted due to his job duties of
13 heavy lifting and pulling.
- 14 111. Plaintiff Claudio Cabrera was terminated in retaliation for requesting workers
15 compensation benefits and needing job accommodation due to his thumb industrial
16 injury. Shortly after the job restrictions were lifted, he was terminated.
- 17 112. Plaintiff Christian Gurrola was terminated in retaliation for complaining about bodily
18 injury and pain due to his job duties of heavy lifting and pulling.
- 19 113. Also, Plaintiffs overheard their boss, Chris Villavazo, amidst other employees, state that
20 all employees with the last name “Cabrera”, a common Hispanic last name, would be
21 terminated.
- 22 114. In committing the foregoing acts, Defendants are guilty of oppression, fraud, and/or
23 malice under California Civil Code Section 3294, thereby entitling Plaintiff to punitive
24 damages in an amount to be proven at trial. Defendants’ employees committed the acts
25 of oppression, fraud, and/or malice. Defendants had advance knowledge of each
26 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified
27 the wrongful conduct for which an award of punitive damages is sought. The advance
28 knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud
and/or malice, was committed by or on part of an officer, director, or managing agent of
each of the Defendants. Therefore, Plaintiffs are entitled to punitive damages against
Defendants.

1 115. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
2 prevailing Plaintiffs in an action brought under its provisions. Plaintiffs have employed
3 and will continue to employ attorneys for the initiation and prosecution of this action.
4 Plaintiffs have incurred and will continue to incur attorneys' fees and costs. Plaintiffs are
5 entitled to an award of reasonable attorneys' fees and costs since Defendants
6 discriminated against Plaintiffs.

7 **ELEVENTH CAUSE OF ACTION**

8 ***Failure To Provide Workers' Compensation Coverage***

9 *(Violation of Labor Code §3600 et seq)*

10 *(By Plaintiff ARTURO CABRERA, Against all Defendants)*

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

14 117. Labor Code Section 3700 requires employers to secure the payment of compensation by
15 stating that: "Every employer except the state shall secure the payment of compensation
16 in one or more of the following ways: (a) By being insured against liability to pay
17 compensation by one or more insurers duly authorized to write compensation insurance
18 in this state."

19 118. Labor Code Section 3600 specifies the circumstances in which an employer is liable for
20 compensation in a work-related injury. Labor Code Section 3706 provides that "If any
21 employer fails to secure the payment of compensation, any injured employee or his
22 dependents may bring an action at law against such employer for damages, as if this
23 division did not apply."

24 119. While working for Defendant, Plaintiff ARTURO CABRERA injured himself when a
25 pipe fell off a corral and onto his head, leaving him unconscious for a couple of minutes.
26 Upon waking up, Plaintiff felt a strong pain in his head, which continued on for a month.
27 Plaintiff reported the incident to a foreman and asked for medical attention, but he was
28 not provided with any assistance. Despite the palpable bruise on Plaintiff's head, Mr.
Cardozo only told him to be careful. Defendants did not refer him to its workers'
compensation insurer.

1 120. Additionally, during his employment with Defendant, Plaintiff ARTURO CABRERA
2 sustained a cumulative injury (on September 21, 2021, and October 4, 2021) to his waist
3 from repeatedly pulling on ~800-pound cows as a part of his duties. Plaintiff was not
4 provided with any assistance, including a workers' compensation claim form. Defendants
5 did not refer him to its workers' compensation insurer, if any.

6 121. Plaintiff has been damaged in a sum to be proven and requests relief as described below.

7 **TWELFTH CAUSE OF ACTION**

8 ***Failure to Provide Employees with Safe Drinkable Water and Rest Area and close by
9 Restroom***

10 *(Labor Code §§ 226.7, 2441) (incorporating OSHA Regulations)*

11 *(By Plaintiffs and Class Members Against all Defendants)*

12 122. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
13 herein, the material allegations set out in each and all previous paragraphs of this
14 Complaint.

15 123. Labor Code Section 2441 states" "Every employer of labor in this state shall, without
16 making a charge therefor, provide fresh and pure drinking water to his or her employees
17 during working hours. Access to the drinking water shall be permitted at reasonable and
18 convenient times and places. Any violation of this section is punishable for each offense
19 by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or
20 by imprisonment for not more than 30 days, or by both the fine and imprisonment."

21 124. During the relevant timeframe, Defendants failed to provide Plaintiffs and Class
22 Members fresh and pure drinking water during working hours. There was not access
23 to drinking water at reasonable and convenient times and places. Plaintiffs and Class
24 Members were to purchase their own drinking water since the drinking water provided by
25 Defendants through a hole was not safe to drink as there was no certification of safety.

26 125. Plaintiffs and Class Members did not have access to close by restrooms despite the
27 requirements of Health and Sanitation § 8397.4 and California Health and Safety Code §
28 114250.

126. Plaintiffs and Class Members have been damaged in a sum to be proven and requests
relief as described below.

THIRTEENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiffs Against all Defendants)

127. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

128. “Public policy” has been defined broadly to mean “that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good”. (*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal.App.2d 184, 188.) An employer discharging an employee’s employment based on the employee’s nationality and/ethnicity is a violation of Public Policy because “ethnic discrimination” and “nationality discrimination” are supported by either constitutional or statutory provisions; it inures to the benefit of the public at large rather than serving merely the interests of the individual; is articulated at the time of the discharge; and California's policy against nationality is “substantial and fundamental.”

129. During the relevant timeframe, Defendants Plaintiffs overheard their boss, Chris Villavazo, amidst other employees, state that all employees with the last name “Cabrera”, a common Hispanic last name, would be terminated.

130. Therefore, Plaintiffs allege that Defendants have terminated their respective employment(s) in violation of Public Policy. Plaintiff alleges that as a direct and proximate result of Defendants’ wrongful conduct, Plaintiff’ employment being terminated on the above described bases, Plaintiffs have now sustained monetary damages and severe emotional distress in an amount to be proven at trial.

131. Each of the wrongful and deliberated acts committed by Defendants, as herein alleged, were acts that constitute oppression and malice because they were committed with the sole intent to discharge Plaintiffs from their employments due to their nationality and/or ethnicity.

132. Plaintiffs are informed and believes and thereon allege that each of the oppressive and malicious acts committed by Defendants, as herein above alleged, were committed and/or ratified by Defendants and their directors, officers, managing employees, and therefore, Plaintiffs are entitled to an award of punitive damages against Defendants and each of them.

FOURTEENTH CAUSE OF ACTION

Civil Penalties Pursuant to Labor Code § 2699

(PAGA penalties)

(By Plaintiffs on behalf of State of California Against all Defendants)

133. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in previous paragraphs of this Complaint.
134. Plaintiffs on behalf of the people of the State of California and as “Aggrieved Employees” acting as private attorney under the California Labor Code Private Attorneys General Act of 2004, §2698, *et seq.*, brings this action, on a representative basis. All current and former employees of Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.
135. Defendants failed to comply with Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiffs bring this representative action on behalf of himself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiffs provided notice of their claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiffs following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiffs now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*
136. As a result of the actions alleged herein, Plaintiffs seek penalties under Labor Code Sections 2698 and 2699 because of Defendant’s violation of Labor Code Sections 98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.3, 226.7, 510-512, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5, 2442, 2698-2699, 2802 and 2699.5, and applicable IWC, which call for civil penalties.
137. Plaintiffs and Aggrieved Parties request for Penalties Pursuant to Labor Code §2699:
- a. As applicable, for civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;

- 1 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
2 independent and apart from any other penalty provided in the Labor Code), for
3 violations of Labor Code §§500-556, in the amount of \$50 for each underpaid
4 aggrieved employee for each pay period the aggrieved employee was underpaid in
5 addition to an amount sufficient to recover underpaid wages, and \$100 for each
6 subsequent violation for each underpaid employee for each pay period for which
7 the employee was underpaid in addition to an amount sufficient to recover
8 underpaid wages;
- 9 c. As applicable, for civil penalties under Labor Code §1197.1 (in addition to and
10 entirely independent and apart from any other penalty provided in the Labor
11 Code), for violations of Labor Code §§1194 and 1197, in the amount of \$100 for
12 each underpaid aggrieved employee for each pay period the aggrieved employee
13 was intentionally underpaid in addition to an amount sufficient to recover
14 underpaid wages, and \$250 for each subsequent violation for each underpaid
15 aggrieved employees regardless of whether the initial violation was intentionally
16 committed in addition to an amount sufficient to recover underpaid wages;
- 17 d. As applicable, for civil penalties under Labor Code §210 (in addition to and
18 entirely independent and apart from any other penalty provided in the Labor
19 Code), for each employee who is/was not paid wages in accordance with Labor
20 Code §§201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of
21 a civil penalty of \$100 for each aggrieved employee per pay period for each initial
22 violation, and \$200 for each aggrieved employee per pay period for each
23 subsequent violation;
- 24 e. As applicable, for civil penalties under Labor Code §226.3 (in addition to and
25 entirely independent and apart from any other penalty provided in the Labor
26 Code), for each violation of Labor Code §226(a), in the amount of \$250 for each
27 aggrieved employee per pay period for each violation and \$1,000 for each
28 aggrieved employee per pay period for each subsequent violation; and
- f. As applicable, for any and all additional civil penalties and sums as provided by
the Labor Code and/or other relevant statutes.

138. In addition, Plaintiffs seek seventy-five percent (75%) of all penalties obtained under

1 Labor Code §2699 to be allocated to the LWDA, for education of employers and
2 employees about their rights and responsibilities under the Labor Code, and twenty-five
3 percent (25%) to Plaintiff and all other similarly situated aggrieved employees.

4 139. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to
5 Labor Code §§2699(g)(1) and any other applicable statute.

6 140. Labor Code Section 2699.3 provides that "The aggrieved employee or representative
7 shall give written notice by certified mail to the Labor and Workforce
8 Development Agency and the employer of the specific provisions of this code
9 alleged to have been violated, including the facts and theories to support the
10 alleged violation."

11 141. Plaintiffs complied with Labor Code Section 2699.3. Written notice was served on
12 Defendant in accordance with the provision of Section 2699.3 on November 22, 2021. To
13 date, the California Labor and Workforce Development Agency has not provided
14 Plaintiffs with a notice of intent to investigate these violations, and more than 65 days
15 have since passed from the postmark date of the notice provided by Plaintiffs. Attached
16 to this complaint as **Exhibit "A"**, is a copy of the proof of mailing. Moreover, Defendant
17 has failed to provide Plaintiffs with notice that it has cured the violations, will cure the
18 violations now, or will cure the violations in the future. Consequently, pursuant to Labor
19 Code Section 2699.3(a)(2)(A), Plaintiffs may proceed and file a complaint for penalties
20 pursuant to Labor Code Section 2699.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 142. Prior to initiating this lawsuit, Plaintiffs complied with the requirement to make a claim
23 and complaint against each named Defendants with the California Department of Fair
24 Employment and Housing ("DFEH") pursuant to section 19200, *et seq.*, of the California
25 Government Code, alleging the claims described in this complaint. The DFEH issued a
26 "right to sue" letter for Plaintiffs on April 7, 2022. A true and correct copy of the
27 administrative complaints and "right to sue letter" are attached hereto as **Exhibit "B"**.
28 The action is filed within one year of the date that the DFEH issued its right to sue letters.

REQUEST FOR JURY TRIAL

Plaintiffs and Class Members demand a trial by jury of all issues in this action
triable by a jury, including but not limited to issues of liability and damages.

PRAYER FOR RELIEF

1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses as appropriate under California Code of Civil Procedure Section 382
2. That Plaintiffs be appointed as the Class Representative;
3. That The Law Offices of Farrah Mirabel be appointed as Class Counsel; [SEP]
4. For general and special compensatory damages, according to proof;
5. For statutory damages;
6. For payments pursuant to California Labor Code Section 226.8 and 226.7;
7. For payments pursuant to California Code of Civil Procedure Section 338;
8. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code Sections 218.5 and 226(e);
9. For pre-judgment interest on any unpaid wages from the date such amounts were due pursuant to Labor Code Section 218.6;
10. For civil penalties pursuant to Labor Code Section 558;
11. For the disgorgement of any and all "unpaid wages" and incidental losses, according to proof;
12. For restitution of "unpaid wages" and pre-judgment interest from the day such amounts were due and payable;
13. For reasonable attorney's fees pursuant to Code of Civil Procedure Section 1021.5;
14. For exemplary and punitive damages;
15. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
16. For such other and further relief as the court deems just and proper.

DATED: April 7, 2022

LAW OFFICES OF FARRAH MIRABEL

BY: /S/ Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEY FOR PLAINTIFFS, on behalf
of themselves and for all similarly situated
persons

EXHIBIT “A”

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

November 22, 2021

via CERTIFIED MAIL and ONLINE filing

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

GARY J COELHO II
JAMES B. WALKER
3265 W FIGARDEN DR STE 201
FRESNO CA 93711

JAMES B. WALKER
3649 West Beechwood Ave #101
FRESNO CA 93711

In Re: CHRISTIAN GURROLA, CLAUDIO CABRERA and ARTURO CABRERA v.
JAMES B. WALKER

Dear Sir/Madam:

Our firm represents the interests of *CHRISTIAN GURROLA, CLAUDIO CABRERA and ARTURO CABRERA* v (Plaintiffs), ex-employees of **JAMES B. WALKER** (referred to as the "Defendant"). Plaintiffs were employed by Defendant as follows:

CHRISTIAN GURROLA, an employee between 2016 to October 2021, as a driver/machine operator, \$14.35/HOUR

CLAUDIO CABRERA an employee since 2020, until October 2021, as a general worker/laborer, \$14.25/HOUR

ARTURO CABRERA an employee since 2020, until October 2021, as a general worker/laborer, \$13.25/HOUR

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

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

1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);
2. Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);
3. Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);
4. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);
5. Violation of Labor Code § 204 (Failure to Pay All Wages Earned);
6. Violation of Labor Code §§ 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);
7. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Separation);
8. Violation of Labor Code § 2802 (Failure to Reimburse Business Expenses);
9. Violation of Labor Code § § 1197.5, 1199.5 (paying Latino employees from South America, less than other employees);
10. Violation of Labor Code § § 226.7, 2442 (Failure to Provide Employees with Safe Drinkable Water and Rest Area and close by Restrooms);
(incorporating OSHA Regulations)

During the relevant timeframe, Defendant has employed Plaintiffs as non-exempt hourly employees. Plaintiffs are employed as laborers/drivers/operators.

Defendant's Wage Statement Violations

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Defendant's paystubs issued to Plaintiff and the Aggrieved Employees failed to comply with the above requirements, i.e. address of the employer, employees last 4 SS# or identification number, etc. (See, e.g., **Exhibit A**, an example of one of Defendant's wage statements issued to one of the Plaintiffs). Moreover, the same issue persisted throughout the PAGA period in every single period. *Id.* See *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Notably, for PAGA penalty claims predicated on an underlying Labor Code section 226(a) violation, a plaintiff need not show "injury" or a "knowing and intentional" as ordinarily required by Labor Code section 226(e) to establish a violation sufficient to trigger PAGA penalties. See *Lopez v. Friant & Associates, LLC*, 15 Cal. App. 773, 788 (Cal. App. 2017) ("Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); see also *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

Nevertheless, Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff and the other Aggrieved Employees to incur economic injuries in that they were not aware of the specific inclusive dates for which their wages were being paid, so that that needed to resort to other documents and to make various calculations to understand their wage and pay history and to assess its accuracy. This violates Section 226 of the Labor Code. See e.g., *Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met");

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in

an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

As explained in detail above, Defendants failed to provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).

Defendant's Other Violations

Defendant refuses to compensate Plaintiffs at the required rate for each occasion in which Defendant fails to provide statutory breaks.

Plaintiffs and other employees receive wages and wage statements which do not account for all the hours worked and do not account for the premiums due to employees for the missed breaks, nor account accurately for overtime pay for hours employees work. When Plaintiffs work overtime, they are not paid over time for all the hours worked overtime.

As a result, Defendant fails to pay its employees for all wages earned.

Defendant fails to maintain accurate payroll records, such that Plaintiffs are given wage statements which are inaccurate and Plaintiffs are not paid for all their wages and overtime compensation.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they work in excess of statutory hours per week and do not receive compensation for all the hours of work and are not paid accurate overtime.

Plaintiffs claim that they must use their own cell phones in order to be able to do their job. They also must buy their own water since the water provided by the Defendant through a hole is not safe to drink since there is no certification of safety. Defendant does not provide them with an area to eat their meals. There is no area to take any of their breaks. The restroom is too far and not clean.

Plaintiffs claim that Defendant intentionally discriminates against them and other employees because they are Latino immigrants, non-sophisticated laborers from Southern America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without

getting accurate overtime payment. Plaintiffs are discouraged from taking sick days and are told that if they needed sick days, they had to prove it by having medical proof.

Moreover, Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law. Defendant fails to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

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

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections **98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, and 2698-2699, 2699.5 and 2802 and applicable IWC.**

Very truly yours,
LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.

EXHIBIT "A"

Employee

Arturo Cabrera, 15909 Domengine, Cantua Creek, CA 93608

Pay Period: 12/21/2020 - 01/03/2021

Pay Date: 01/09/2021

Earnings and Hours	Hours	Rate	Current	YTD Amount
Hourly Pay	54:00	13.25	715.50	715.50
Nite pay	36:00	1.00	36.00	36.00
	90:00		751.50	751.50

Taxes	Current	YTD Amount
Medicare Employee Addl Tax	0.00	
Federal Withholding	0.00	
Social Security Employee	-46.59	-46.59
Medicare Employee	-10.90	-10.90
CA - Withholding	0.00	
CA - Disability Employee	-9.02	-9.02
	-66.51	-66.51

Net Pay	684.99	684.99
---------	--------	--------

JAMES B WALKER

1827

Employee

Arturo Cabrera, 15909 Domengine, Cantua Creek, CA 93608

Pay Period: 12/07/2020 - 12/20/2020

Pay Date: 12/18/2020

Earnings and Hours	Hours	Rate	Current	YTD Amount
Christmas Bonus			150.00	150.00
Hourly Pay			0.00	11,010.75
Nite pay			0.00	54.00
Overtime			0.00	4,373.60
Harvest pay			0.00	684.00
Double-time hourly			0.00	106.00
Corona/China Virus Pay			0.00	1,258.75
			150.00	17,637.10

Taxes	Current	YTD Amount
Medicare Employee Addl Tax	0.00	
Federal Withholding	0.00	
Social Security Employee	-8.30	-1,093.50
Medicare Employee	-2.18	-255.74
CA - Withholding	0.00	
CA - Disability Employee	-1.50	-176.37
	-12.98	-1,525.61

Adjustments to Net Pay	Current	YTD Amount
Christmas Tax Credit	12.98	12.98

Net Pay

150.00

16,124.47

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gary J Coelho II
James B. Walker
3265 W. Figarden Dr. Ste 201
Fresno, CA 93711



9590 9402 6581 1028 8202 67

2. Article Number (Transfer from service label)

7020 1290 0000 8818 3108

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

COVID-19 1147

☒ Agent☐ Addressee

B. Received by (Printed Name)

COVID-19

C. Date of Delivery

11/29/21

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

USPS TRACKING #

ERESNO CA 936

29 NOV 2021 PM 1 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 6581 1028 8202 67

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Law Offices of Farrah Mirabel
1070 Stradella Rd.
Los Angeles, CA 90077

Re: Christian Gurrea, Claudio Cabrera
and Arturo Cabrera v. James B. Walker.

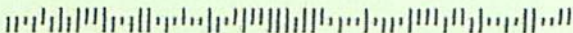


EXHIBIT “B”



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@dfeh.ca.gov

April 7, 2022

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202204-16638207
Right to Sue: CABRERA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

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

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@dfeh.ca.gov

April 7, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202204-16638207
Right to Sue: CABRERA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing 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 & 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@dfeh.ca.gov

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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@dfeh.ca.gov

April 7, 2022

ARTURO CABRERA

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202204-16638207
Right to Sue: CABRERA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

Dear ARTURO CABRERA:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 7, 2022 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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



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@dfeh.ca.gov

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 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

ARTURO CABRERA

DFEH No. 202204-16638207

Complainant,

vs.

JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;
3649 W. Beechwood Ave., #101,
Fresno, CA 93711

Respondents

1. Respondent **JAMES B. WALKER FAMILY LIMITED PARTNERSHIP**; is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **ARTURO CABRERA**, resides in the City of , State of .

3. Complainant alleges that on or about **October 9, 2021**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's race, national origin (includes language restrictions), disability (physical or mental), family care or medical leave (cfra) and as a result of the discrimination was terminated, laid off, denied equal pay, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra).

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care or medical leave (cfra) and as a result was terminated, laid off.

Additional Complaint Details: Defendant employed Plaintiff, ARTURO CABRERA, beginning on or around July 30, 2020. Plaintiff was employed as a general laborer, whose duties included machine operating, use of the tractor, tree trimming, and tree watering. He worked either from around 7:00 a.m. or 7:30 a.m. to 4:00 p.m. or 4:30 p.m., Mondays through Saturdays. Plaintiff's last pay rate was \$14.25 per hour. Sabino Cabrera was his supervisor. He suffered from a cumulative trauma from October 9, 2020, through October 9, 2021; he was suffering from a hernia. On October 9, 2021, he was terminated by owner Brandon Walker under the pretext that there was no longer any work available for him. Also, 83. Plaintiffs overheard their boss, Chris Villavazo, amidst other employees, state that all employees with the last name "Cabrera", a common Hispanic last name, would be terminated.

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 7, 2022, 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**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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@dfeh.ca.gov

April 7, 2022

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202204-16637407
Right to Sue: CABRERA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

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

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@dfeh.ca.gov

April 7, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202204-16637407
Right to Sue: CABRERA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing 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 & 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@dfeh.ca.gov

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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@dfeh.ca.gov

April 7, 2022

CLAUDIO CABRERA

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202204-16637407
Right to Sue: CABRERA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

Dear CLAUDIO CABRERA:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 7, 2022 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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



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@dfeh.ca.gov

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 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

CLAUDIO CABRERA

DFEH No. 202204-16637407

Complainant,

vs.

JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP;

,

Respondents

1. Respondent **JAMES B. WALKER FAMILY LIMITED PARTNERSHIP**; is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **CLAUDIO CABRERA**, resides in the City of , State of .

3. Complainant alleges that on or about **October 9, 2021**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's national origin (includes language restrictions), disability (physical or mental), family care or medical leave (cfra) and as a result of the discrimination was terminated, laid off.

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care or medical leave (cfra) and as a result was terminated, laid off.

Additional Complaint Details: While working for Defendant, on November 17, 2020, Plaintiff CLAUDIO CABRERA dislocated his right thumb when heavy tube fell on his finger. He received multiple physical treatments at Concerta (CMC-Fresno North) beginning

1 November 23, 2020, thru May 19, 2021. Plaintiff was placed on modified work status by his
2 provider beginning November 23, 2020, until mid-February 2021, restricted from using his
3 right thumb and required to wear a brace/splint on his right upper extremity at all times. He
4 was also instructed to take Ibuprofen 800 mgs three times daily. He completed treatment in
5 May 2021 but soon Defendant retaliated against him and terminated his employment in
6 October 2021. On October 9, 2021, he was terminated by owner Brandon Walker under the
7 pretext that there was no longer any work available for him.
8 Also Plaintiff overheard his boss, Chris Villavazo, amidst other employees, state that all
9 employees with the last name "Cabrera", a common Hispanic last name, would be
10 terminated.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 7, 2022, 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**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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@dfeh.ca.gov

April 7, 2022

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202204-16638407
Right to Sue: GURROLA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP

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

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@dfeh.ca.gov

April 7, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202204-16638407
Right to Sue: GURROLA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP

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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing 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 & 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@dfeh.ca.gov

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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@dfeh.ca.gov

April 7, 2022

CHRISTIAN GURROLA

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202204-16638407
Right to Sue: GURROLA / JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP

Dear CHRISTIAN GURROLA:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 7, 2022 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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



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@dfeh.ca.gov

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 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

CHRISTIAN GURROLA

DFEH No. 202204-16638407

Complainant,

vs.

JAMES B. WALKER FAMILY LIMITED
PARTNERSHIP
3649 W. Beechwood Ave., #101
FRESNO, CA 93711

Respondents

1. Respondent JAMES B. WALKER FAMILY LIMITED PARTNERSHIP is an employer subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant CHRISTIAN GURROLA, resides in the City of , State of .

3. Complainant alleges that on or about October 9, 2021, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's race, national origin (includes language restrictions), disability (physical or mental), family care or medical leave (cfra) and as a result of the discrimination was terminated, laid off.

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care or medical leave (cfra) and as a result was terminated, laid off, denied equal pay, denied any employment benefit or privilege, denied family care or medical leave (cfra).

Additional Complaint Details: Defendant employed Plaintiff, CHRISTIAN GURROLA, beginning on or around August 29, 2016, as a machine operator, whose duties included

1 general operation of the ranch machines, fruit picking, fruit spraying, in addition to oil and
2 filter change. Sabino Cabrera was his supervisor. On October 9, 2021, he was terminated
3 by owner Brandon Walker under the pretext that there was no longer any work available for
4 him. Christian Gurrola was terminated in retaliation for complaining about bodily injury and
5 pain due to his job duties of heavy lifting and pulling. Also, he overheard his boss, Chris
6 Villavazo, amidst other employees, state that all employees with the last name "Cabrera", a
7 common Hispanic last name, would be terminated.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 7, 2022, 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**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25