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For All Purposes

Case Management Conference

05/18/2023 08:30 AM - Department 07

Attorneys for Plaintiff FRANCISCO GARICA,
on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

FRANCISCO GARCIA, on behalf of himself
and other aggrieved employees,

Plaintiff,

vs.

SETTON PISTACHIO OF TERRA BELLA,
INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No.: VCU295216

PAGA ACTION

**PLAINTIFF FRANCISCO GARCIA'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff FRANCISCO GARCIA ("Plaintiff"), who alleges and complains
against Defendants SETTON PISTACHIO OF TERRA BELLA, INC.; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

1 hours worked at minimum wage; all overtime hours worked at the overtime rate of pay; failure to
2 authorize or permit all legally required and/or legally compliant meal periods or pay meal period
3 premium wages; failure to authorize or permit all legally required and/or legally compliant rest
4 periods or pay rest period premium wages; statutory penalties for failure to timely pay earned
5 wages; statutory penalties for failure to provide accurate wage statements; waiting time penalties
6 in the form of continuation wages for failure to timely pay employees all wages due upon
7 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
8 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
9 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
10 others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Tulare County at 9370 Road 234, Terra Bella, CA 93270.

20 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
21 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
22 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
23 tolled from April 6, 2020, until October 1, 2020.

24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce
26 Development Agency on behalf of himself and other current and former employees subject to
27 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
28 filed include current, former and/or future employees of Defendants who work, worked, or will

1 work for Defendants as direct employees as well as temporary employees employed through temp
2 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
3 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
4 employed by Defendants in an hourly position at Defendants' location in Tulare from in or around
5 August 2019 through on or around September 22, 2022.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant SETTON
7 PISTACHIO OF TERRA BELLA, INC. is authorized to do business within the State of California
8 and is doing business in the State of California and/or that Defendants DOES 1-50 are, and at all
9 times relevant hereto were persons acting on behalf of Defendant SETTON PISTACHIO OF
10 TERRA BELLA, INC. in the establishment of, or ratification of, the aforementioned illegal wage
11 and hour practices or policies. Defendant SETTON PISTACHIO OF TERRA BELLA, INC.
12 operates in Tulare County and employed Plaintiff and aggrieved employees in Tulare County,
13 including but not limited to, at 9370 Road 234, Terra Bella, CA 93270.

14 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
15 through 50 are corporations, or are other business entities or organizations of a nature unknown to
16 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
17 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
18 working conditions of employment of Plaintiff and aggrieved employees.

19 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
20 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
21 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
22 supervisor, independent contractor and/or employee of each defendant who violated or caused to
23 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
24 the Industrial Welfare Commission's wage orders regulating hours and days of work.

25 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
26 sues said defendants by said fictitious names, and will amend this complaint when the true names
27 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
28 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously

1 named defendants is in some manner responsible for the events and allegations set forth in this
2 complaint.

3 9. Plaintiff makes the allegations in this complaint without any admission that, as to
4 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
5 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

6 **FIRST CAUSE OF ACTION**

7 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

8 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

9 **(Against all Defendants by Plaintiff)**

10 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11 11. During the period beginning one (1) year preceding Plaintiff sending the initial
12 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
13 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and Sections 14 and 15 of the applicable
14 Wage Orders.

15 12. Specifically, Defendants have committed the following violations of California
16 Labor Code:

17 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services which inure to the benefit of the employer.

23 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
24 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
25 Wage Orders.

26 15. In this case, Plaintiff and other current and former aggrieved California-based
27 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
28 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former

1 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
2 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
3 not limited to:

4 (a) "Rounding down" or "shaving down" Plaintiff and other current and former
5 aggrieved California-based hourly non-exempt employees punches to the nearest quarter of an
6 hour to the benefit of Defendants without paying Plaintiff and other current and former aggrieved
7 California-based hourly non-exempt employees for this time.

8 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
9 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
10 control without paying wages for that time. This resulted in Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt employees working time for which they were not
12 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
13 Wage Order.

14 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
15 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
16 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
17 which includes all time that an employee is under control of the employer and all time the
18 employee is suffered and permitted to work. This includes the time an employee spends, either
19 directly or indirectly, performing services that inure to the benefit of the employer.'

20 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
21 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
22 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

23 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
24 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
25 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
26 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
27 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
28 rate of pay for an employee. In addition, any work in excess of eight (8) 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.

Labor Code section 510.

1 19. In this case, Defendants failed to pay Plaintiff and other current and former
2 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
3 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

4 (a) "Rounding down" or "shaving down" Plaintiff and other current and former
5 aggrieved California-based hourly non-exempt employees punches to the nearest quarter of an
6 hour to the benefit of Defendants without paying Plaintiff and other current and former aggrieved
7 California-based hourly non-exempt employees for this time.

8 20. The foregoing policies, practices, and/or procedures resulted in time during each
9 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
10 employees were under the control of Defendants but were not compensated. To the extent that the
11 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
12 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
13 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
14 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
15 sections 510 and 1194 and the applicable Wage Order.

16 21. **Failure to pay wages to hourly non-exempt employees for workdays that**
17 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
18 current and former aggrieved California-based hourly non-exempt employees regularly worked
19 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

20 22. California law requires an employer to authorize or permit an employee an
21 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
22 all duties and the employer relinquishes control over the employee's activities prior to the
23 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker*
24 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
25 employee for a work period of more than ten (10) hours per day without providing the employee
26 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
27 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
28 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal

period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

23. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

24. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures, including but not limited to:

(a) Defendants "rounded down" or "shaved down" Plaintiff and other current and former aggrieved California-based hourly non-exempt employees punches to the nearest quarter of an hour at the time they clocked in and out for meal periods resulting in meal periods of less than 30 minutes.

25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

26. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays during which Defendants did not provide them with meal periods in compliance with California law.

27. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

28. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 9 at §12. Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 9 at §12. Additionally, the rest period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

29. If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage Order 9 at § 12.

30. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit all legally required and/or compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees by failing to provide duty-free rest periods of a net 10-minutues for every four hours worked or major fraction thereof.

31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday they did not receive legally required and compliant rest periods, in violation of Labor Code section 226.7.

32. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff

1 and other current and former aggrieved California-based hourly non-exempt employees not
2 receiving wages to compensate them for workdays in which Defendants did not provide them with
3 rest periods in compliance with California law.

4 **33. Failure to timely pay earned wages during employment:** In California, wages
5 must be paid at least twice during each calendar month on days designated in advance by the
6 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
7 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
8 16th and the 26th day of that month and wages earned between the 16th and the last day,
9 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
10 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
11 paid within seven (7) calendar days following the close of the payroll period in which wages were
12 earned. Labor Code section 204(d).

13 **34.** As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
14 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
15 exempt employees' earned wages (including minimum wages, overtime wages, period premium
16 wages and/or rest period premium wages), in violation of Labor Code section 204. Defendants'
17 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and
18 other current and former aggrieved California-based hourly non-exempt employees' their earned
19 wages within the applicable time frames outlined in Labor Code section 204.

20 **35. Failure to provide complete and accurate wage statements:** Labor Code section
21 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
22 employee his or her wages, the employer must "furnish each of his or her employees ... an
23 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
24 employee, except for any employee whose compensation is solely based on a salary and who is
25 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
26 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
27 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
28 deductions made on written orders of the employee may be aggregated and shown as one item, (5)

1 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
2 name of the employee and his or her social security number, (8) the name and address of the legal
3 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked at each hourly rate by the employee.”

5 36. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
6 and other current and former aggrieved California-based hourly non-exempt employees all wages
7 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
8 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
9 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
10 section 226.

11 37. **Failure to pay employees all wages due at time of termination/resignation:** An
12 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
13 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
14 hours of resignation (Labor Code section 202).

15 38. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
16 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
17 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
18 and/or rest period premium wages), Defendants failed to pay those employees timely after each
19 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

20 39. Defendants’ violations of Wage Order 9 constituted violations of Labor Code
21 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

22 40. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
23 employee, on behalf of himself or herself and other current or former employees, to bring a civil
24 action to recover civil penalties against all Defendants pursuant to the procedures specified in
25 Labor Code section 2699.3.

26 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
27 Code section 2699.3. On November 10, 2022, Plaintiff filed a PAGA Claim Notice with the
28 LWDA and provided notice to Defendants by certified mail which provided notice of the specific

provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends to investigate Plaintiff's claims.

43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510, 512, 1194, 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, 1198,; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

44. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of

reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: January 17, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



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