

For All Purposes

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**Case Management Conference**

09/27/2023 08:30 AM - Department 07

Attorneys for Plaintiff, JOSE L. GAMEZ, on behalf of himself and for all similarly situated persons

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

JOSE L. GAMEZ, on behalf of himself and  
for all similarly situated persons

Plaintiff,

vs.

SETTON PISTACHIO OF TERRA BELLA,  
INC., and DOES 1-50,

Defendants.

Case No.: VCU298711

Assigned to:

Dept.:

**CLASS ACTION COMPLAINT FOR  
DAMAGES FOR:**

1. Unpaid Missed Rest Breaks (Labor Code § 226.7 and IWC Wage Order No. 4, 9, 13 and 14-2001 Section 12);
2. Unpaid Missed Meal Breaks (Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4, 9, 13 and 14-2001 Section 11);
3. Failure to Pay for All Overtime Wages Worked (Labor Code §§ 510, 1194, 1198 and IWC Wage Order No. 4, 9, 13 and 14-2001 Section 3);
4. Failure to Pay Minimum Wage and Pay for All Wages Earned (Labor Code §§ 204, 1194 and 1197);
5. Failure to Maintain and Produce Accurate Personnel and Payroll Records (Labor Code §§ 226(a), 1174, and 1198.5 and IWC Wage Order No. 4, 9, 13 and 14-2001 Section 7);

6. **Failure to Reimburse Business Expenses** (*Labor Code § 2802*);
7. **Failure to Pay Wages Upon Separation** (*Labor Code §§ 201 – 203*);
8. **Failure to Pay for Sick Days** (*Labor Code § 246(a), et seq.*)
9. **Wrongful Termination-Retaliatory Termination** (**Against Public Policy**);
10. **Unlawful Discrimination and Retaliation Based on Cal. Gov. Code § 12940**;
11. **Violation of California Government Code § 12940 (m) – Wrongful Termination Failure to Accommodate**;
12. **Violation of California Government Code § 12940 (n) – Wrongful Termination Failure to Engage in the Interactive Process**;
13. **Violation of California Business and Professions Code §§ 17200, et seq.; and**
14. **Civil Penalties Pursuant to Labor Code § 2699**

**DEMAND FOR JURY TRIAL**

COMES NOW PLAINTIFF JOSE L. GAMEZ on behalf of himself and on behalf of all similarly situated individuals, and the general public, and alleges as follows: (The allegations in this 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.)

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1. Defendant Setton Pistachio of Terra Bella, Inc., is a California Corporation, operating a farm and dairy business located at 9370 ROAD 234, TERRA BELLA CA 93270.
2. During the relevant timeframe, Plaintiff and Class Members were employed by Defendants.
3. This class action for relief arises from Defendants' failure to provide off-duty rest and meal periods as required by law; failure to compensate Plaintiff 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 pay the minimum wage and all wages earned; failure to keep accurate payroll records, such that Plaintiff and Class Members were given wage statements that did not accurately reflect all the hours worked and all wages earned; failure to wages due upon separation on time; failure to pay for sick days, and failure to reimburse for business expenses. Plaintiff individually alleges discrimination, wrongful termination and retaliatory termination.

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4. Plaintiff, JOSE L. GAMEZ (*hereinafter* “Plaintiff”) is a resident of the State of California.
5. Defendants, SETTON PISTACHIO OF TERRA BELLA, INC. at all times mentioned  
6. herein, are employers whose employees, including Plaintiff and Class Members, worked  
7. throughout the Tulare County and in other counties in the State of California and the  
8. United States.
9. 6. The true names and capacities, whether individual, corporate, associate or otherwise of  
0. each of the Defendants designated herein as a DOE are unknown to Plaintiff and Class  
1. Members at this time, who therefore, sue said Defendants by fictitious names, DOES 1 to  
2. 50, and will ask leave of this Court for permission to amend this Complaint to show their  
3. names and capacities when the same have been ascertained. Plaintiff and Class Members  
4. are informed and believe and thereon allege that each of the Defendants designated as a  
5. DOE is legally responsible in some manner for the events and happenings herein referred  
6. to, and caused injuries and damages thereby to Plaintiff and Class Members as herein  
7. alleged.
8. 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made  
to “Defendants,” such reference shall refer to all Defendants.

- 1 8. Plaintiff and Class Members, on information and belief and based upon such basis, allege  
2 that at all times herein mentioned, each of the Defendants were acting as the agent, servant,  
3 employee of each of the other Defendants, within the scope of said agency and  
4 employment.
- 5 9. During the times and places of the incident in question, Defendants, and each of them, their  
6 agents, servants and employees became liable to Plaintiff and Class Members for the  
7 reasons described in the complaint herein, and thereby proximately caused Plaintiff and  
8 Class Members to sustain damages as set forth herein.
- 9 10. Plaintiff and Class Members, on information and belief and based upon such basis, allege  
10 that all Defendants carried out a joint scheme, business plan or policy in all respects  
11 pertinent hereto and all acts and omissions herein complained of were performed within the  
12 course and scope of said employment, service, agency, common scheme, plan and/or  
13 policy.
- 14 11. Plaintiff and Class Members, on information and belief and based upon such basis, allege  
15 that Defendants' founders, owners, shareholders, executive officers, managers, and  
16 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise to  
17 the claims asserted herein and derived personal financial benefit from such conduct at the  
18 expense of Plaintiff and Class Members.

#### **JURISDICTION AND VENUE**

- 19 12. This Court has jurisdiction over this action pursuant to California *Code of Civil Procedure*  
20 § 410.10. The damages exceed the jurisdictional minimum of this Court.
- 21 13. Venue is proper in this Court, pursuant to California *Code of Civil Procedure* § 395.5  
22 because the incidents complained of occurred in Tulare County, California.

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

- 23 14. Defendants employed Plaintiff as a non-exempt hourly employee beginning in 2017, until  
24 he was wrongfully terminated on February 15, 2023. Plaintiff's last hourly rate was  
25 \$17.42/hour.
- 26 15. Plaintiff worked as a fork lift operator, (machine operator) and a laborer for the  
27 Defendants.  
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- 1 16. While employed and working for the Defendant, Plaintiff hurt his back in January 2022 due  
2 to a work incident. He placed a workers compensation claim and started treating with a  
3 doctor. He was put on restrictions and required accommodation. Defendants assigned him  
4 lighter job duties by asking him to do a cleaning job, but soon after, Defendants laid off  
5 Plaintiff. Berry and Ignacio were his supervisors.
- 6 17. On February 15, 2023, Defendants gave Plaintiff a LAY OFF letter. Berry and Vanessa  
7 were present when Plaintiff was laid off. They told Plaintiff that a group of employees were  
8 being laid off due to slow business. However, Plaintiff had noticed younger looking  
9 employees were being hired. Plaintiff asked HR lady, Candida, why there were younger  
10 people being hired when he was being laid off. Candida did not answer Plaintiff.
- 11 18. Defendants wrongfully terminated and laid off Plaintiff on February 15, 2023. On that day,  
12 Defendant issued a letter of "LAY OFF" to Plaintiff under a pretext of lack of work,  
13 however Plaintiff contends Defendants retaliated against him for placing a workers  
14 compensation claim due to a work injury. Plaintiff was suffering from a work injury and  
15 he needed accommodation and had placed a workers compensation claim. Therefore,  
16 Defendants retaliated against him for placing a workers compensation claim and did not  
17 want to accommodate him anymore.
- 18 19. Defendants failed to discuss with Plaintiff any alleged performance issues Plaintiff might  
19 have had while working for Defendants. The real issue Defendants had with Plaintiff was  
20 his work injury and his need for accommodation.
- 21 20. At the time he was laid off, Plaintiff was a dedicated employee and either met expectations  
22 or exceeded them annually, while working for Defendants. Therefore, Plaintiff believes and  
23 contends that the true reason Defendants chose to lay him off his employment was due to  
24 his suffering from a work injury.
- 25 21. At all relevant times, Defendants employed Plaintiff and Class Members as non-exempt  
26 employees.
- 27 22. During the relevant timeframe, Plaintiff and Class Members often worked shifts of over  
28 four hours, and were not given a ten-minute, uninterrupted rest break for each such shift.  
Plaintiff and Class Members worked during the rest periods either under the direction and  
supervision of Defendants, or with Defendants' knowledge and consent. Furthermore,

Defendants created schedules that made it difficult or impossible for Plaintiff and Class Members to take their rest breaks.

23. During the relevant timeframe, Plaintiff and Class Members worked shifts of over of five hours, and over ten hours but their meal breaks were either interrupted or non-existent. Plaintiff and Class Members worked during the meal periods either under the direction and supervision of Defendants, or with Defendants' knowledge and consent. Furthermore, Defendants created schedules that made it difficult or impossible for Plaintiff and Class Members to take their uninterrupted meal breaks.
24. Plaintiff and Class Members were not paid for missed rest and meal breaks and their paycheck and wage statements did not account for the premiums due to Plaintiff and Class Members for the missed rest and meal breaks, nor accounted for overtime pay for hours Plaintiff and Class Members worked in excess of eight hours per day or 40 hours per week.
25. During the relevant timeframe, there were periods where Plaintiff and Class Members routinely worked more than eight hours per day and 40 hours per week. Defendants failed to pay Plaintiff and Class Members overtime wages at the legal rates of pay for all overtime hours worked.
26. Defendants failed to compensate Plaintiff and Class Members at the required rate for each occasion in which Defendants failed to provide uninterrupted rest breaks and meal breaks. As such, Defendants failed to pay for all the hours worked and all wages earned by Plaintiff and Class Members.
27. Plaintiff and class members working hours were rounded and were not paid accurate wages.
28. Defendants failed to maintain accurate payroll records, such that Plaintiff and Class Members was given wage statements that did not accurately reflect their true compensation and all the hours worked. There was no reliable accurate time keeping method.
29. Defendants failed to give timely final paychecks to Plaintiff and Class Members upon separation, as required by statute. In addition, the final paychecks were not accurate since it did not include payment for all the hours worked and compensation earned, inclusive of all premium payments for missed statutory breaks.

**CLASS ACTION ALLEGATIONS**

30. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification. The class shall be defined as follows:

“All persons who were employed as non-exempt employees by SETTON PISTACHIO OF TERRA BELLA, INC., in the State of California during the period commencing four years from the date of the PAGA filing through the entry of final judgment in this action.”

31. Plaintiff proposes that the following sub-classes be created:

- a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All individuals who have been employed and are currently employed by SETTON PISTACHIO OF TERRA BELLA, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive their required meal breaks pursuant to the *California Labor Code* and/or applicable orders of the IWC.
- b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All individuals who have been employed and are currently employed by SETTON PISTACHIO OF TERRA BELLA, INC. within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive their required rest breaks pursuant to the *California Labor Code* and/or applicable orders of the IWC.
- c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals who have been and are currently employed at SETTON PISTACHIO OF TERRA BELLA, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who were not paid full complete and accurate compensation for all hours worked.
- d. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals who have been and are currently employed at SETTON PISTACHIO OF TERRA BELLA, INC., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who were not paid full, complete and accurate compensation for all overtime worked.
- e. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All individuals who have been and are currently employed at SETTON PISTACHIO OF TERRA BELLA, INC., within the relevant time periods prior to the filing of this

1 Complaint until resolution of this lawsuit whose wage statements did not accurately  
2 reflect gross wages earned. Specifically, all the hours worked, the overtime and  
3 additional hours of pay employees earn for each workday they did not receive a meal  
4 and/or rest break. This subclass includes the class members whose final paycheck did  
5 not accurately reflect gross wages earned. Specifically, all the hours worked, the  
6 overtime and additional hours of pay employees earn for each workday they did not  
7 receive a meal and/or rest break.

- 8 f. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All  
9 individuals who were employed at SETTON PISTACHIO OF TERRA BELLA,  
10 INC., within the relevant time periods prior to the filing of this Complaint until  
11 resolution of this lawsuit who did not receive their final paycheck within 72 hours  
12 after the final day of work or at the time of their termination.
- 13 g. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All  
14 individuals who have been and are currently employed at SETTON PISTACHIO OF  
15 TERRA BELLA, INC., within the relevant time periods prior to the filing of this  
16 Complaint until resolution of this lawsuit who did not receive at least the minimum  
17 wage for all the hours worked.
- 18 h. A proposed sub-class (*hereinafter* “Sick Pay Class”) is defined as: All individuals  
19 who have been and are currently employed at SETTON PISTACHIO OF TERRA  
20 BELLA, INC., within the relevant time periods prior to the filing of this Complaint  
21 until resolution of this lawsuit who were denied to be compensated for their sick days  
22 in violation of the California Labor Code §246 et seq.
- 23 i. A proposed sub-class (*hereinafter* “Business Expenses Class”) is defined as: All  
24 individuals who have been and are currently employed at SETTON PISTACHIO OF  
25 TERRA BELLA, INC., within the relevant time periods prior to the filing of this  
26 Complaint until resolution of this lawsuit who were denied to reimbursement for their  
27 business expenses in violation of the California Labor Code §2802.
- 28 j. A proposed sub-class (*hereinafter* “Personnel and Payroll Records Class”) is defined  
as: All individuals who have been and are currently employed at SETTON  
PISTACHIO OF TERRA BELLA, INC., within the relevant time periods prior to the  
filing of this Complaint until resolution of this lawsuit whose employer failed to

maintain accurate personnel and payroll record(s) for them in violation of the California Labor Code §§ 226(a), 1174, and 1198.5.

32. 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, Sick Pay Class, Business Expenses Class and Personnel and Payroll Records Class.

33. All claims alleged herein arise under California law for which Plaintiff and Class Members seek relief authorized by California law.

34. 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.

35. 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 Plaintiff 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: Plaintiff is qualified to and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest, and Plaintiff’s claims (or defenses, if any), are typical of all Class Members as demonstrated herein.

m. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiff acknowledges that he has an obligation to the Court to make known any relationship, conflict, or differences with any Class Member. Plaintiff’s attorneys and proposed Class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has 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 Defendants had a policy of not providing uninterrupted statutory mandated rest periods to Plaintiff and Class Members or compensation for rest periods;
- q. Whether Defendants had a policy of not providing uninterrupted statutory mandated meal periods to Plaintiff and Class Members or compensation for meal periods;
- r. Whether Defendants created schedules in such a manner that made it difficult or impossible for Plaintiff, and similarly situated class members, to take uninterrupted rest periods;
- s. Whether Defendants created schedules in such a manner that made it difficult or impossible for Plaintiff, and similarly situated class members, to take uninterrupted meal periods;
- t. Whether Defendants failed to pay Plaintiff and Class Members for the overtime hours worked during the relevant timeframe;
- u. Whether Defendants had a policy of requiring Plaintiff and Class Members to continue working after clocking out;
- v. Whether Defendants failed to pay Plaintiff and Class Members for the total hours worked during the relevant timeframe;
- w. Whether Defendants failed to keep accurate payroll records, such that inaccurate wage statements were issued to Plaintiff and Class Members;
- x. Whether Defendants failed to pay Plaintiff and Class Members an accurate and timely final paycheck;

- 1 y. Whether Defendants failed to pay Plaintiff and Class Members at least minimum  
2 wage for all the hours worked;  
3 z. Whether Defendants failed to pay Plaintiff and Class Members for rest days during  
4 the relevant timeframe;  
5 aa. Whether Defendants failed to pay Plaintiff and Class Members for sick pay for during  
6 the relevant timeframe;  
7 bb. Whether Defendants failed to reimburse Plaintiff and Class Members for their  
8 business expense during the relevant timeframe;  
9 cc. Whether Defendants failed to maintain accurate personnel and payroll records for  
10 Plaintiff and Class Members during the relevant timeframe;  
11 dd. Whether Defendants improperly retained, converted, appropriated, or deprived  
12 Plaintiff and other Class Members of the use of monies or sums, which Plaintiff and  
13 Class Members were legally entitled to;  
14 ee. The appropriate amount of damages, restitution, or monetary penalties resulting from  
15 Defendant's violations of California law.

16 **FIRST CAUSE OF ACTION**

17 **Unpaid Missed Rest Breaks**

18 **(Labor Code § 226.7(a) and IWC Wage Order No. 4, 9, 13-2001 and 14-2001 Section 12)**

19 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

20 *Against All Defendants)*

- 21 36. Plaintiff and Class Members incorporate by reference and reallege each and every one of the  
22 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
23 set forth herein.  
24 37. 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 38. 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 the  
28 IWC.  
39. The language of IWC Wage Order No. 4, 9, 13 and 14-2001 section 12 relating to rest  
periods tracks the language of the Labor Code. (*Code of Regulations*, title 8, section

1 11070, subd. 11.), which states: "Every employer shall authorize and permit all employees  
2 to take rest periods, which insofar as practicable shall be in the middle of each work period.  
3 The authorized rest period time shall be based on the total hours worked daily at the rate of  
4 ten (10) minutes net rest time per four hours or major fraction thereof. However, a rest  
5 period need not be authorized for employees whose total daily work time is less than three  
6 and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked  
7 for which there shall be no deductions from wages."

8 40. During the relevant time period, Plaintiff and Class Members worked more than three and  
9 one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that they  
10 were legally entitled to pursuant to IWC Wage Order No. 4, 9, 13 and 14-2001 section 12.

11 41. Defendants' conduct, as alleged herein, violates IWC Wage Order No. 4, 9, 13 and 14-2001  
12 section 12 and Labor Code § 226.7(a), which provides that no employer shall require any  
13 employee to work during any rest period mandated by an applicable order of the IWC.

14 42. Pursuant to Labor Code section 226.7(b), and IWC Wage Order No. 4 9, and 13-2001  
15 section 12(B), Plaintiff and Class Members are entitled to recover from Defendants one (1)  
16 additional hour of pay at Plaintiff and Class Members' regular rate of compensation for  
17 each work day that a rest period was not provided, for a three-year statutory period dating  
18 back from the date of the commencement of this action.

19 43. Pursuant to Labor Code Sections 558 and 1197.1, Plaintiff and Class Members are entitled  
20 to fifty dollars (\$50.00) for each pay period for which they were underpaid in addition to an  
21 amount sufficient to recover underpaid wages and for each subsequent violation, one  
22 hundred dollars (\$100.00) for each pay period for which they were underpaid in addition to  
23 an amount sufficient to recover underpaid wages.

## 24 **SECOND CAUSE OF ACTION**

### 25 **Unpaid Missed Meal Breaks**

26 **(Labor Code §§ 226.7(a) and 512 and IWC Wage Order No. 4, 9, 13 and 14-2001 Section**

27 **11)**

28 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

*Against All Defendants)*

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

52. By violating Cal. Labor Code Section 226.7 and 512, and applicable wage order, section 11, Defendants are also liable to Plaintiff and Class Members for reasonable attorneys' fees and costs under Cal. Labor Code Section 218.5.

### **THIRD CAUSE OF ACTION**

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

**(Labor Code §§ 510 and 1194 and IWC Wage Order No. 4, 9, 13 and 14-2001 Section 3)**

*(By Plaintiff and on Behalf of all Similarly Situated Class Members,  
Against All Defendants)*

53. Plaintiff 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.

54. At all relevant times during the applicable limitations period, Plaintiff and Class Members have been non-exempt employees of Defendants and are entitled to the benefits of Cal. Labor Code Sections 510 and 1194 and the pertinent Wage Order(s).

55. IWC Wage Order No. 4 and 9-2001 section 3, 2(K) and IWC Wage Order No. 13 and 14-2001 section 3, 2(G) define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

56. In relevant part, section 3 of the applicable Wage Order(s) states: (A) Daily Overtime-General Provisions:

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

- 1 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours  
2 worked in excess of eight (8) hours up to and including twelve (12) hours in any  
3 workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day  
4 of work in a workweek; and  
5 (b) Double the employee’s regular rate of pay for all hours worked in excess of 12  
6 hours in any workday and for all hours worked in excess of eight (8) hours on the  
7 seventh (7th) consecutive day of work in a workweek.  
8 (c) The overtime rate of compensation required to be paid to a nonexempt full-time  
9 salaried employee shall be computed by using the employee’s regular hourly salary as  
one fortieth (1/40) of the employee’s weekly salary.

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

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

25 59. Plaintiff and Class Members were working more than eight hours a day and more than 40  
26 hours a week and they were not paid overtime.

27 60. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as  
28 described below.

1 **FOURTH CAUSE OF ACTION**

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

3 **(Labor Code §§ 204, 1194 and 1197)**

4 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

5 *Against All Defendants)*

- 6 61. Plaintiff and Class Members incorporate by reference and reallege each and every one of the  
7 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
8 set forth herein.
- 9 62. Cal. Labor Code Section 204 requires California employers to pay employees for all wages  
10 earned.
- 11 63. Cal. Labor Code Section 1194 provides: "...any employee receiving less than the legal  
12 minimum wage or the legal overtime compensation applicable to the employee is entitled  
13 to recover in a civil action the unpaid balance of the full amount of this minimum wage or  
14 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of  
15 suit."
- 16 64. Defendants failed to compensate Plaintiff and Class Members for all hours worked,  
17 including, but not limited to, the hours Plaintiff and Class Members were on call, the hours  
18 worked during their meal and rest breaks, as well as overtime pay, and for which they did  
19 not receive the proper compensation under the law.
- 20 65. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as  
21 described below.

22 **FIFTH CAUSE OF ACTION**

23 **Failure to Maintain and Produce Accurate Payroll Records**

24 **(Labor Code §§ 226(a), 1174, and 1198.5, IWC Wage Order No. 4, 9, 13 and 14-2001 Section 7)**

25 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

26 *Against All Defendants)*

- 27 66. Plaintiff and Class Members incorporate by reference and reallege each and every one of the  
28 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
set forth herein.

- 1 67. Cal. Labor Code Section 226(a), applicable IWC such as wage order No. 4, 9, 13 and 14-  
2 2001, section 7(A), and Cal. Labor Code section 1174 require employers to maintain accurate  
3 payroll records and to provide semi-monthly or at the time of each payment of wages to  
4 furnish each employee with a statement itemizing, among other things, the total hours  
5 worked by the employee.
- 6 68. Defendants have violated Cal. Labor Code Sections 226(a), 1174, 1198.5 and IWC Wage  
7 Order No. 4, 9, 13 and 14-2001, section 7(A) by willfully failing to keep required accurate  
8 personnel records and payroll records showing the actual events of Plaintiff's employment  
9 and the actual hours worked each day by Plaintiff and Class Members. As a direct and  
10 proximate result of Defendants' failure to maintain payroll records, Plaintiff and Class  
11 Members have suffered economic harm as they have been precluded from accurately  
12 monitoring the number of hours worked and thus seeking payment for all missed meal  
13 periods and rest breaks.
- 14 69. On March 10, 2023, Plaintiff requested a copy of his personnel file and payroll records via  
15 certified mail written request. Defendant refused to produce them despite Plaintiff's repeat  
16 requests and several emails to Defense counsel.
- 17 70. Plaintiff and Class Members have been damaged in a sum to be proven and request relief  
18 as described below.

### 19 **SIXTH CAUSE OF ACTION**

#### 20 ***Failure to Reimburse Required Business Expenses***

#### 21 ***(Labor Code § 2802)***

22 *(By Plaintiff And On Behalf Of All Similarly Situated Class Members,*

23 *Against All Defendants)*

- 24 71. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated  
25 herein, the material allegations set out in prior paragraphs of this Complaint.
- 26 72. Labor Code section 2802 requires an employer to "indemnify his or her employee for  
27 all necessary expenditures or losses incurred by the employee in direct consequence  
28 of the discharge of his or her duties . . . ."
73. Plaintiff and Class Members were required to spend their own money to purchase  
necessary business expenditures, and were not reimbursed by the Defendant.

1 74. All said expenses were necessary for Plaintiff and Class Members to fulfill their job  
2 functions for the Defendants.

3 75. Plaintiff and Class Members sought reimbursement of these necessary expenses  
4 incurred at Defendants' direction and with assurance of payment, but Defendants  
5 have consistently refused to reimburse and indemnify Plaintiff and Class Members  
6 for these expenses.

7 76. Accordingly, Plaintiff and Class Members have been deprived of legally required  
8 reimbursement, and Defendants should be liable to Plaintiff and Class Members for  
9 these sums, plus attorney's fees, plus interest.

10 77. The monies retained by Defendants should be deemed Plaintiff's and Class Members  
11 monies, held in trust for Plaintiff and Class Members and subject to a proper claim for  
12 reimbursement and disgorgement.

### 13 **SEVENTH CAUSE OF ACTION**

#### 14 **Failure to Pay Wages Upon Separation**

#### 15 **(Labor Code §§ 201-203)**

16 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

17 *Against All Defendants)*

18 78. Plaintiff and Class Members incorporate by reference and reallege each and every one of the  
19 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
20 set forth herein.

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

1 80. Plaintiff was terminated on February 15, 2023 but was not paid all wages due him upon his  
2 termination.

3 81. During the relevant time period, Defendants failed to accurately pay Plaintiff and Class  
4 Members, who are no longer employed by Defendants, Plaintiff and Class Members'  
5 wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours  
6 of them leaving Defendant's employ in violation of Labor Code section 201 – 203.

7 82. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as  
8 described below.

9 **EIGHTH CAUSE OF ACTION**

10 ***Failure to Pay for Sick Days***

11 ***(Labor Code § 246 et seq.)***

12 *(By Plaintiff And On Behalf Of All Similarly Situated Class Members,*

13 *Against All Defendants)*

14 83. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated  
15 herein, the material allegations set out in prior paragraphs of this Complaint.

16 84. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July  
17 1, 2015, works in California for the same employer for 30 or more days within a year  
18 from the commencement of employment is entitled to paid sick days as specified in  
19 this section.

20 85. Defendants failed and refused to pay Plaintiff and Class Members for their sick days  
21 unless they could prove they were sick by bringing in a doctor's note which is against  
22 the applicable labor code.

23 **NINTH CAUSE OF ACTION**

24 ***Wrongful Termination-Retaliatory Termination***

25 **AGAINST PUBLIC POLICY**

26 *(By Plaintiff individually Against Defendants)*

27 86. Plaintiff incorporates by reference and realleges each and every one of the allegations  
28 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth  
herein.

- 1 87. Public policy” has been defined broadly to mean “that principle of law which holds that no  
2 citizen can lawfully do that which has a tendency to be injurious to the public or against the  
3 public good.” (*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal.App.2d  
4 184, 188.) Holding an employer liable for discharging an employee’s employment due to a  
5 violation of public policy as it is not supported by either constitutional or statutory provisions  
6 inures to the benefit of the public at large rather than serving merely the interests of the  
7 individual.
- 8 88. An employer discharging an employee’s employment based on the employee’s age, work  
9 injury and disability is a violation of Public Policy because FEHA's public policy is  
10 against disability discrimination. *Prue v. Brady Co./San Diego*, (2015) 242 Cal. App. 4th  
11 1367, 1383, 196 Cal. Rptr. 3d 68, 80–81.
- 12 89. Prior to his termination, Plaintiff suffered from a work injury and placed a workers  
13 compensation claim against the Defendants. He was over 50 years old.
- 14 90. Defendants retaliated against Plaintiff in the terms, conditions and existence of Plaintiff’s  
15 employment after Plaintiff placed a workers compensation claim and required  
16 accommodation.
- 17 91. Defendants’ wrongful conduct proximately caused Plaintiff to suffer general and special  
18 damages in an amount to be proven.
- 19 92. Plaintiff alleges that Defendants terminating him, was done with malice and oppression  
20 because they intended to retaliate against Plaintiff due to his workers compensation claim.  
21 These oppressive and malicious acts, as herein above alleged, were committed by Defendants  
22 and/or each of them through their Directors, Officers, Managing Employees, were ratified  
23 by Defendants and each of them at the time these acts were being committed.
- 24 93. Plaintiff alleges that Defendants terminating him by laying him off, was done with malice  
25 and oppression because they intended to retaliate against Plaintiff due to his placing a  
26 workers compensation claim against Defendants due to a work injury he suffered prior to  
27 being laid off and his age. These oppressive and malicious acts, as herein above alleged, were  
28 committed by Defendants and/or each of them through their Directors, Officers, Managing  
Employees, were ratified by Defendants and each of them at the time these acts were being  
committed.

1 94. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including reinstatement and  
2 reimbursement of lost wages and benefits.

3 95. Plaintiff was forced to hire The Law Offices of Farrah Mirabel, and is entitled to recover  
4 reasonable attorney fees.

5 96. Plaintiff is entitled to damages in an amount according to proof at trial and punitive  
6 damages in an amount sufficient to deter and punish Defendants and each of them pursuant  
7 to Civil Code § 3294.

8 **TENTH CAUSE OF ACTION**

9 **Unlawful Discrimination and Retaliation Based on *California Government Code §***

10 ***12940***

11 *(By Plaintiff Individually Against Defendants)*

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

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

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

23 100. Plaintiff is legally protected from discrimination due to work injury, medical condition,  
24 disability.

25 101. Defendants wrongfully laid off and terminated Plaintiff from his employment due to his  
26 disability, his workers compensation claim and his age (he was over 50 years old when  
27 terminated).

28 102. Defendants discriminated and retaliated against Plaintiff in the terms, conditions and  
existence of Plaintiff’s employment after Plaintiff opposed practices of Defendants forbidden

1 by FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt. Code §§ 12940,  
2 12945.2 (employment discrimination). Defendant's retaliation violated Govt. Code § 12940,  
3 including subsection (h).

4 103. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including reinstatement  
5 and reimbursement of lost wages and benefits.

6 104. In committing the foregoing acts, Defendants are guilty of oppression, fraud, and/or  
7 malice under California Civil Code §3294, thereby entitling Plaintiff to punitive damages in  
8 an amount to be proven at trial. Defendants' employees committed the acts of oppression,  
9 fraud, and/or malice. Defendants, had advance knowledge of each employee who acted with  
10 oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct for  
11 which an award of punitive damages is sought. The advance knowledge and conscious  
12 disregard, authorization, ratification, or act of oppression, fraud and/or malice, was  
13 committed by or on part of an officer, director, or managing agent of each of the Defendants.  
14 Therefore, Plaintiff is entitled to punitive damages against Defendants.

15 105. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a  
16 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will  
17 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has  
18 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to an award  
19 of reasonable attorneys' fees and costs since Defendants discriminated against Plaintiff due  
20 to his medical condition and injury sustained due to hard physical work as a laborer.

## 21 **ELEVENTH CAUSE OF ACTION**

### 22 **Violation of *California Government Code § 12940 (m)* – Wrongful Termination**

#### 23 **Failure to Accommodate**

24 *(By Plaintiff Individually Against Defendants)*

25  
26 106. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material  
27 allegations set out in prior paragraphs of this Complaint.  
28

1 107. Defendants failed to continue making reasonable accommodations for Plaintiff's work  
2 injury and stress, disability and need for medical treatment, which required job restrictions.  
3 Defendants could have and should have allowed Plaintiff for a disability leave if could not  
4 accommodate him, but instead terminated his employment. This violated Govt. Code §  
5 12940, including subsection (m).

6 108. Defendants' wrongful conduct proximately caused Plaintiff to suffer general, special and  
7 statutory damages in an amount to be proven. Plaintiff has been required to hire the Law  
8 Offices of Farrah Mirabel, and is entitled to recover reasonable attorney fees.

9 109. Plaintiff alleges that Defendants' refusal to allow his medical leave, and/or work  
10 accommodations, and terminating his employment were acts that constitute oppression and  
11 malice because they were committed with the sole intent of depriving Plaintiff of being  
12 employed and causing injuries to Plaintiff. These oppressive and malicious acts, as herein  
13 above-alleged, were committed by Defendants and/or each of them through their Directors,  
14 Officers, Managing Employees, were ratified by Defendants and each of them at the time  
15 these acts were being committed. Therefore, Plaintiff is entitled to damages in an amount  
16 according to proof at trial and punitive damages in an amount sufficient to deter and punish  
17 Defendants and each of them pursuant to Civil Code § 3294.

18 110. Plaintiff alleges that as a direct and proximate result of Defendants wrongful conduct, he  
19 has now sustained monetary damages and severe emotional distress.

20  
21 **TWELFTH CAUSE OF ACTION**

22 **Violation of *California Government Code* § 12940 (n) – Wrongful Termination**

23 **Failure to Engage in the Interactive Process**

24 *(By Plaintiff Against Defendants)*

25 111. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material  
26 allegations set out in the prior paragraphs of this Complaint.

27 112. Plaintiff was physically hurt due to work injury which caused him to seek medical care.  
28 He was qualified to be covered under Defendants' workers compensation insurance

1 coverage. Plaintiff was qualified to be accommodated for job restriction and/or for a  
2 disability leave. Plaintiff required temporary work accommodations and/or disability leave.  
3 Defendants first engaged in interactive process but failed to continue to engage in a timely,  
4 good faith, interactive process with Plaintiff to determine effective, reasonable  
5 accommodations for his need for accommodation and/or medical disability leave. This  
6 violated Govt. Code § 12940, including subsection (n). Failure to allow Plaintiff for to take  
7 a medical and disability leave was also against “The California Family Rights  
8 Act” (CFRA) which allows up to 52 week disability leave. Defendants’ wrongful conduct  
9 proximately caused Plaintiff to suffer general, special and statutory damages in an amount to  
10 be proven. Plaintiff was forced to hire the Law Offices of Farrah Mirabel, and is entitled to  
11 recover reasonable attorney fees.

12 113. Plaintiff alleges that Defendants refused to acknowledge and accept his need for  
13 accommodations, and/or disability leave due to his work injury. Plaintiff sought  
14 accommodations but instead was terminated. Such acts constitute oppression and malice  
15 because they were committed with the sole intent of depriving Plaintiff of being employed  
16 and causing injuries to Plaintiff. These oppressive and malicious acts, as herein above-  
17 alleged, were committed by Defendants and/or each of them through their Directors,  
18 Officers, Managing Employees, were ratified by Defendants and each of them at the time  
19 these acts were being committed. Therefore, Plaintiff is entitled to damages in an amount  
20 according to proof at trial and punitive damages in an amount sufficient to deter and punish  
21 Defendants and each of them pursuant to Civil Code § 3294.

22  
23 **THIRTEENTH CAUSE OF ACTION**

24 ***Violation of California Business and Professions Code §§ 17200, et seq.***

25 ***(By Plaintiff and on Behalf of all Similarly Situated Class Members,***

26 ***Against All Defendants)***

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

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

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

6 117. Beginning at an exact date unknown to Plaintiff and Class Members, but at least four  
7 years prior to the filing of this action, Defendants have improperly, fraudulently, and  
8 unlawfully failed to provide Plaintiff and Class Members with meal and rest breaks, failed  
9 to provide compensation for the missed meal and rest breaks, failed to provide compensation  
10 for all hours worked and all wages earned, failed to pay compensation for all over-time hours  
11 worked, and provided Plaintiff with inaccurate wage statements, denying sick pay for in  
12 violation of the California Labor Code §246.5 et seq, failing to provide rest days pursuant to  
13 Labor Code §§ 551-553, failing to reimburse business expenses per Labor Code §246.5,  
14 failure to keep adequate employment records and have thereby committed unlawful, unfair,  
15 and/or fraudulent business acts and practices as defined by California Business & Professions  
16 Code Section 17200, by engaging in the following:

- 17 A. Failing and refusing to provide meal periods and rest breaks to Plaintiff and Class  
18 Members;
- 19 B. Failing to pay all accrued meal period and rest break compensation to Plaintiff and  
20 Class Members;
- 21 C. Failing to pay for all hours worked and pay for all overtime compensation to  
22 Plaintiff and Class Members;
- 23 D. Failing to maintain accurate personnel and payroll record and provide accurate  
24 itemized wage statement to Plaintiff and Class Members;
- 25 E. Failing to pay employees for their sick day; and
- 26 F. Failing to reimburse employees for their business expenses.

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

119. 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 Plaintiff and Class Members. As a direct and proximate result of

Defendants' unlawful business practices, Plaintiff and Class Members have suffered economic injuries including, but not limited to, compensation for missed meal periods 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 Plaintiff and Class Members, as well as compensation for over-time hours worked.

120. Plaintiff and Class Members 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 since four years prior to the filing of this action.

121. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to California Business & Professions Code Section 17202.

122. Plaintiff and Class Members' success in this action will enforce important rights affecting the public interest. In this regard, Plaintiff and Class Members, sues on behalf of themselves and the general public. Plaintiff and Class Members are entitled to unpaid compensation, declaratory and injunctive relief, civil penalties, and any other appropriate remedy.

123. Injunctive relief is necessary and appropriate to prevent Defendants from continuing and repeating their unlawful, unfair and fraudulent business acts and practices alleged above.

124. In order to prevent Defendants from profiting and benefitting from their wrongful and illegal acts and continuing those acts, an order requiring Defendants to disgorge all the profits and gains they have reaped and restore such profits and gains to the Plaintiff and Class Members, from whom they were unlawfully taken.

125. Plaintiff and Class Members have assumed the responsibility of enforcement of the laws and lawful claims specified herein. There is a financial burden incurred in pursuing this action which is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil Procedure Section 1021.5.

126. By all of the said foregoing alleged conduct Defendants have committed, and are continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning of Cal. Business & Professions Code Section 17200, et seq.

1 127. As a direct and proximate result of the unfair business practices described above,  
2 Plaintiff and Class Members have all suffered significant losses and Defendants have been  
3 unjustly enriched.

4 128. Pursuant to Cal. Business & Professions Code Section 17203, Plaintiff and Class  
5 Members are entitled to: (a) restitution of money acquired by Defendants by means of their  
6 unfair business practices, in amounts not yet ascertained but to be ascertained at trial; (b)  
7 injunctive relief against defendants' continuation of their unfair business practices, and (c)  
8 a declaration that defendants' business practices are unfair within the meaning of the  
9 statute.

#### 10 **FOURTEENTH CAUSE OF ACTION**

#### 11 **Civil Penalties Pursuant to Labor Code § 2699**

12 *(By Plaintiff Against Defendants)*

13 129. Plaintiff incorporates by reference and realleges each and every one of the allegations  
14 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth  
15 herein.

16 130. Plaintiff on behalf of the people of the State of California and as "Aggrieved Employees"  
17 acting as private attorney under the California Labor Code Private Attorneys General Act of  
18 2004, §2698, *et seq.*, brings this action, on a representative basis. All current and former  
19 employees of Defendants within one year of serving notice on the LWDA to the present are  
20 aggrieved employees.

21 131. Defendants failed to comply with *Labor Code* requirements due to erroneous, willful and  
22 intentional employment practices and policies. Plaintiff brings this representative action on  
23 behalf of himself, all other similarly situated aggrieved employees, and the State of  
24 California, based upon the claims articulated below. Plaintiff provided notice of their claims  
25 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency ("LWDA")  
26 as illustrated by the attached Exhibit, the content of which is expressly incorporated herein.  
27 The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day  
28 notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint  
for civil penalties under the Private Attorneys General Act ("PAGA"), *Labor Code* §2698 *et seq.*

1 132. As a result of the actions alleged herein, Plaintiff seeks penalties under Labor Code  
2 sections 2698 and 2699 because of Defendant's violation of Labor Code sections 98.6, 201-  
3 204, 210, 216, 218.5, 221, 225.5, 223, 226, 226(a), 226(b), 226.2, 226.3, 226.7, 233, 234,  
4 246, 256, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5  
5 and 2698-2699, 2699.5 and applicable IWC, which call for civil penalties.

6 133. Plaintiff and aggrieved parties request for Penalties Pursuant to *Labor Code* §2699:

- 7 a. As applicable, for civil penalties under *Labor Code* §2699(f), for all violations  
8 of the *Labor Code* except for those for which a civil penalty is specifically  
9 provided, in the amount of one hundred dollars (\$100.00) for each aggrieved  
10 employee per pay period for the initial violation; and two hundred dollars  
11 (\$200.00) for each aggrieved employee per pay period for each subsequent  
12 violation;
- 13 b. As applicable, civil penalties under *Labor Code* §558 (in addition to and  
14 entirely independent and apart from any other penalty provided in the *Labor*  
15 *Code*), for violations of *Labor Code* §§500-556, in the amount of \$50 for each  
16 underpaid aggrieved employee for each pay period the aggrieved employee was  
17 underpaid in addition to an amount sufficient to recover underpaid wages, and  
18 \$100 for each subsequent violation for each underpaid employee for each pay  
19 period for which the employee was underpaid in addition to an amount  
20 sufficient to recover underpaid wages;
- 21 c. As applicable, for civil penalties under *Labor Code* §1197.1 (in addition to and  
22 entirely independent and apart from any other penalty provided in the *Labor*  
23 *Code*), for violations of *Labor Code* §§1194 and 1197, in the amount of \$100  
24 for each underpaid aggrieved employee for each pay period the aggrieved  
25 employee was intentionally underpaid in addition to an amount sufficient to  
26 recover underpaid wages, and \$250 for each subsequent violation for each  
27 underpaid aggrieved employees regardless of whether the initial violation was  
28 intentionally committed in addition to an amount sufficient to recover  
underpaid wages;
- d. As applicable, for civil penalties under *Labor Code* §210 (in addition to and  
entirely independent and apart from any other penalty provided in the *Labor*

Code), for each employee who is/was not paid wages in accordance with *Labor Code* §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

e. As applicable, for civil penalties under *Labor Code* §226.3 (in addition to and entirely independent and apart from any other penalty provided in the *Labor Code*), for each violation of *Labor Code* §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each 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.

134. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to Plaintiff and all other similarly situated aggrieved employees.

135. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to *Labor Code* §§2699(g)(1) and any other applicable statute.

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

137. Plaintiff complied with Labor Code Section 2699.3. Written notice was served on Defendants in accordance with the provision of Section 2699.3 on March 10, 2023 and an amended one on May 26, 2023. To date, the California Labor and Workforce Development Agency has not provided Plaintiff with a notice of intent to investigate these violations, and more than 65 days have since passed from the postmark date of the notice provided by Plaintiff.

1 Attached to this complaint as **Exhibit “A”**, is a copy of the proof of mailing. Moreover,  
2 Defendants have failed to provide Plaintiff with notice that it has cured the violations,  
3 will cure the violations now, or will cure the violations in the future. Consequently,  
4 pursuant to Labor Code Section 2699.3(a)(2)(A), Plaintiff may proceed and file a  
5 complaint for penalties pursuant to Labor Code section 2699.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 138. Prior to initiating this lawsuit, Plaintiff complied with the requirement to make a  
8 claim and complaint against each named Defendants with the California Department  
9 of Fair Employment and Housing (“DFEH”) pursuant to section 19200, *et seq*, of the  
10 California Government Code, alleging the claims described in this complaint. On  
11 May 26, 2023, DFEH issued a “right to sue” letter. A true and correct copy of the  
12 administrative complaint and “right to sue letter” are attached hereto as **Exhibit “B”**.  
13 The action is filed within one year of the date that the DFEH issued its right to sue  
14 letter.

15 **REQUEST FOR JURY TRIAL**

16 Plaintiff and Class Members hereby request a trial by jury for all issues so triable.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, on behalf of himself and the proposed Class, prays for judgment  
19 and the following specific relief against Defendants as follows:  
20

- 21 1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses  
22 as appropriate under California Code of Civil Procedure § 382
- 23 2. That Plaintiff be appointed as the Class Representative;
- 24 3. That The Law Offices of Farrah Mirabel be appointed as Class Counsel;
- 25 4. Unpaid wages and compensation, and statutory penalties, according to proof;
- 26 5. Preliminary and permanent injunctions enjoining and restraining Defendants from  
27 continuing the unfair and unlawful business practices set forth above, and requiring the  
28 establishment of appropriate and effective policies, procedures, and practices in place to

1 prevent future violations, including the maintenance of records that comply with California  
2 Labor Code § 226 and the applicable Wage Order(s);

3 6. Declaratory relief;

4 7. Liquidated damages pursuant California Labor Code §1194.2, for Defendants' violations of  
5 the minimum wage provisions of California Labor Code section 1197, according to proof;

6 8. Reasonable attorneys' fees and costs pursuant to, *inter alia*, California Labor Code §§  
7 218.5, 226, 1194, 2699 and 2802, and California Code of Procedure § 1021.5;

8 9. Interested accrued on damages and penalties, including pre-judgment interest, pursuant to,  
9 *inter alia*, California Labor Code §§ 218.6, 1194, and 1197, and any other applicable  
10 statute.

11 10. Civil penalties pursuant to California Labor Code § 558;

12 11. Penalties pursuant to California Labor Code § 1198.5(k);

13 12. Exemplary and punitive damages;

14 13. For penalties under Labor Code §§ 2698-2699 and 2699.5; and

15 14. For such other and further relief as the court deems just and proper.

16 DATED: May 26, 2023

**LAW OFFICES OF FARRAH MIRABEL**

17  
18 BY: /s/ Farrah Mirabel  
19 Farrah Mirabel, Esq.  
20 ATTORNEY FOR PLAINTIFF  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT “A”**



## Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

May 26, 2023

Farrah Mirabel  
1070 Stradella Rd  
Los Angeles, CA 90077

RE: **Notice to Complainant's Attorney**  
CRD Matter Number: 202305-20796126  
Right to Sue: GAMEZ / SETTON PISTACHIO OF TERRA BELLA, INC.

Dear Farrah Mirabel:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) 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, CRD 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 CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



## Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
[calcivilrights.ca.gov](http://calcivilrights.ca.gov) | [contact.center@calcivilrights.ca.gov](mailto:contact.center@calcivilrights.ca.gov)

May 26, 2023

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

CRD Matter Number: 202305-20796126

Right to Sue: GAMEZ / SETTON PISTACHIO OF TERRA BELLA, INC.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) 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.

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

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



## Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

May 26, 2023

JOSE L. GAMEZ

,

RE: **Notice of Case Closure and Right to Sue**

CRD Matter Number: 202305-20796126

Right to Sue: GAMEZ / SETTON PISTACHIO OF TERRA BELLA, INC.

Dear JOSE L. GAMEZ:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective May 26, 2023 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.

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 CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION  
BEFORE THE STATE OF CALIFORNIA  
Civil Rights Department  
Under the California Fair Employment and Housing Act  
(Gov. Code, § 12900 et seq.)**

**In the Matter of the Complaint of**

JOSE L. GAMEZ

CRD No. 202305-20796126

Complainant,

vs.

SETTON PISTACHIO OF TERRA BELLA, INC.  
9370 ROAD 234  
TERRA BELLA, CA 93270

Respondents

1. Respondent **SETTON PISTACHIO OF TERRA BELLA, INC.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **JOSE L. GAMEZ**, resides in the City of , State of .

3. Complainant alleges that on or about **February 15, 2023**, respondent took the following adverse actions:

**Complainant was harassed** because of complainant's age (40 and over), disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies.

**Complainant was discriminated against** because of complainant's age (40 and over), disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies and as a result of the discrimination was laid off, denied accommodation for a disability, denied family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies.

**Complainant experienced retaliation** because complainant requested or used a disability-related accommodation, requested or used family care and medical leave (cfra) related to

1 serious health condition of employee or family member, child bonding, or military exigencies  
2 and as a result was laid off, denied accommodation for a disability, denied family care and  
3 medical leave (cfra) related to serious health condition of employee or family member, child  
4 bonding, or military exigencies.

5 **Additional Complaint Details:** Defendant SETTON PISTACHIO OF TERRA BELLA, INC.,  
6 employed Plaintiff JOSE L. GAMEZ as a non-exempt hourly employee beginning in 2017,  
7 until he was wrongfully terminated on February 15, 2023. Plaintiff's last hourly rate was  
8 \$17.42/hour.

9 Plaintiff worked as a driver, fork lift operator, (machine operator) and a laborer for the  
10 Defendant.

11 While employed and working for the Defendant, Plaintiff hurt his back in January 2022 due  
12 to a work incident. He placed a workers compensation claim and started treating with a  
13 doctor. He was put on restrictions by the treating doctor and required accommodation.

14 Defendant assigned him lighter job duties by asking him to do a cleaning job, but soon  
15 after, Defendant laid him off. Berry and Ignacio were his supervisors.

16 On February 15, 2023, Defendant gave Plaintiff a LAY OFF letter. Berry and Vanessa were  
17 present when Plaintiff was laid off. They told Plaintiff that a group of employees were being  
18 laid off due to slow business. However, Plaintiff did notice younger looking employees being  
19 hired at the same time he was being laid off. Plaintiff asked HR lady, Candida why there  
20 were younger people being hired when he was being laid off. Candida did not answer her.  
21 Defendant wrongfully terminated and laid off Plaintiff on February 15, 2023. On that day,  
22 Defendant issued a letter of "LAY OFF" to Plaintiff under a pretext of lack of work, however  
23 Plaintiff contends Defendant retaliated against him for placing a workers compensation  
24 claim due to a work injury. Plaintiff was suffering from a work injury and he needed  
25 accommodation and had placed a workers compensation claim. Therefore, Defendant  
26 retaliated against him for placing a workers compensation claim and did not want to  
27 accommodate him anymore. Plaintiff also believes he was discriminated against due to his  
28 age and due to the fact that younger employees were being hired.

Therefore, Plaintiff believes and contends that the true reason Defendant chose to lay him  
off was due to his age and also his suffering from a work injury, needing accommodations.

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 May 26, 2023, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

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**Los Angeles, CA**

# **EXHIBIT “B”**

*Law Offices of*  
*Farrah Mirabel*  
*Attorney At Law*  
*1070 Stradella Rd.*  
*Los Angeles, California 90077*  
*Tel (714) 972-0707 Fax (949) 417-1796*

March 10, 2023

- VIA CERTIFIED U.S. MAIL -

Attn. PAGA Administrator  
**California Labor and Workforce Development Agency**  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102

A Setton Pistachio of Terra Bella, Inc.  
**JEFF GIBBONS**  
9370 ROAD 234  
TERRA BELLA, CA 93270

**In Re Jose L. Gamez v. Setton Pistachio of Terra Bella, Inc.**

Dear PAGA Administrator:

Our firm represents the interests of Jose L. Gamez ("Plaintiff"), against Setton Pistachio of Terra Bella, Inc. (referred to as the "Defendant"). Plaintiff has worked as a laborer, his last pay was \$17.42/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.

Defendant employed Plaintiff Jose L. Gamez as a non-exempt hourly employee who started working as a driver. His supervisor was Berry Nieto. His last pay rate was \$17.42 per hour. Plaintiff suffered from work injury and was assigned duties of a cleaner due to his restriction.

Plaintiff, on his own behalf and also on behalf of past and present employees, alleges that they have the following claims since Defendant has violated the following labor code sections:

1. Violation of Labor Code § 226 and § 226.7(a) (Missed Rest Breaks);
2. Violation of Labor Code § 226.7, 512, and 1198 (Missed Meal Breaks);
3. Violation of Labor Code § 510 and § 1194, § 1198 (Failure to Pay All Overtime

Worked);

4. Violation of Labor Code § 204, §1194, §1197 and IWC 9-2001, § 4 (*Failure to Pay Minimum Wage, Pay for all Wages Earned*);
5. Violation of Labor Code § 201-203 (*Failure to Pay Wages Upon Separation*);
6. Violation of Labor Code §§246(a), 248.5 (*Failure to pay for sick days*);
7. Violation of Labor Code § 2802 (*Failure To Reimburse Required Business Expenses*);
8. Violation of Labor Code § 226(a) and § 1174 (*Improper Wage Statements*);
9. Violation of California Labor Code §§ 226, 1174, 1198.5 and IWC 9-2001 (*Failure to maintain accurate personnel and payroll records*);
10. Violation of Bus. & Prof. Code § 17200, et seq. (*Unfair Competition*);
11. Civil Penalties Pursuant to Labor Code § 2699 (PAGA penalties)

Defendant has also violated applicable California Industrial Welfare Commission wage order including IWC 9-2001.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week. Therefore, Plaintiff was hired to work shifts of over four hours, but was not allowed to take a ten-minute, uninterrupted rest break for each 4 hours they worked. Plaintiff worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Plaintiff worked more than 8 hours and received interrupted rest breaks.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take rest breaks.

Also during his employment, Plaintiff did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift he worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff to take uninterrupted meal breaks in middle of the shift.

Plaintiff received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to Plaintiff for the missed rest and meal breaks, nor accounted for all the hours worked and overtime pay and did not pay for the interrupted or not taken rest and meal breaks that Plaintiff was forced to work. Therefore, Defendant failed to maintain accurate payroll records, such that Plaintiff were given wage statements that did not accurately reflect accurate hours worked and did not reflect the required and due compensation for all the hours worked and rest and meal breaks missed and interrupted.

Plaintiff claims that the past and present employees did not receive an hour of premium

pay, for each missed break, for all days they did not receive a proper rest break and meal break on top of other violations as enumerated below, because Defendant is understaffed and cannot possibly provide its employees including Plaintiff, with their statutory breaks.

Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break and/or meal break, and failed to pay them accurate rate of overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Defendants failed and refused to pay Plaintiff and other employees for their sick days.

Plaintiff claims that Defendant's conduct, as stated herein, including not paying its employees all wages owed, including wages for all hours worked, overtime, missed meal and rest breaks, and not providing its employees with accurate wage statements, 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.

Plaintiff can be contacted through his attorney of record:

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

Plaintiff 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 Plaintiff, 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, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 248.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1197.5, 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.

*Law Offices of Farrah Mirabel*  
1070 Stradella Rd., Los Angeles, CA 90077  
Tel (714) 972-0707 \* Fax (949) 417-1796

**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:

A Setton Pistachio of Terra Bella Inc.  
Jeff Gibbons  
9370 Rd. 234  
Terra Bella, CA 93270



9590 9402 7655 2122 3640 61

2. Article Number (Transfer from service label)

7020 1290 0000 8818 3269

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

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

USPS

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

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

Insured Mail  
Insured Mail Restricted Delivery  
(over \$500)

USPS TRACKING #



SANTA CLARITA CA 913

14 MAR 2023 PM 3 L

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

9590 9402 7655 2122 3640 61

United States  
Postal Service

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

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

Mrs. Jose L. Gomez v. Setton  
Pistachio of Terra Bella, Inc.



*Law Offices of*  
*Farrah Mirabel*  
*Attorney At Law*  
*1070 Stradella Rd.*  
*Los Angeles, California 90077*  
*Tel (714) 972-0707 Fax (949) 417-1796*

May 26, 2023

- VIA CERTIFIED U.S. MAIL -

Attn. PAGA Administrator  
**California Labor and Workforce Development Agency**  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102

A Setton Pistachio of Terra Bella, Inc.  
**JEFF GIBBONS**  
9370 ROAD 234  
TERRA BELLA, CA 93270

**In Re Amended PAGA NOTICE Jose L. Gamez v. Setton Pistachio of Terra Bella, Inc.**

**LWDA-CM-941350-23**

Dear PAGA Administrator:

Our firm represents the interests of Jose L. Gamez ("Plaintiff"), against Setton Pistachio of Terra Bella, Inc. (referred to as the "Defendant"). Plaintiff has worked as a laborer, his last pay was \$17.42/hour.

On March 10, 2023, Plaintiff filed LWDA PAGA NOTICE, LWDA-CM-941350-23, and also on the same day requested a copy of his payroll records. But to date Defendant has refused to produce any records.

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.

Defendant employed Plaintiff Jose L. Gamez as a non-exempt hourly employee who started working as a driver. His supervisor was Berry Nieto. His last pay rate was \$17.42 per hour. Plaintiff suffered from work injury and was assigned duties of a cleaner due to his restriction.

Plaintiff, on his own behalf and also on behalf of past and present employees, alleges that they have the following claims since Defendant has violated the following labor code sections:

1. Violation of Labor Code § 226 and § 226.7(a) (Missed Rest Breaks);
  2. Violation of Labor Code §226.7, 512, and 1198 (Missed Meal Breaks);
  3. Violation of Labor Code §510 and §1194, §1198 (Failure to Pay All Overtime Worked);
  4. Violation of Labor Code § 204, §1194, §1197 and IWC 9-2001, § 4 (*Failure to Pay Minimum Wage, Pay for all Wages Earned*);
  5. Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);
  6. Violation of Labor Code §§246(a), 248.5 (Failure to pay for sick days);
  7. Violation of Labor Code § 2802 (Failure To Reimburse Required Business Expenses);
  8. Violation of Labor Code § 226(a) and § 1174 (Improper Wage Statements);
  9. Violation of California Labor Code §§ 226, 1174, 1198.5 and IWC 9-2001 (Failure to maintain accurate personnel and payroll records);
- Violation of Bus. & Prof. Code § 17200, et seq. (Unfair Competition);
- Civil Penalties Pursuant to Labor Code § 2699 (PAGA penalties)

Defendant has also violated applicable California Industrial Welfare Commission wage order including IWC 4-2001, 9-2001, 13-2001 and 14-2001.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that they worked in excess of 8 hours work shift and 40 hours per week. Therefore, Plaintiff was hired to work shifts of over four hours, but was not allowed to take a ten-minute, uninterrupted rest break for each 4 hours they worked. Plaintiff worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Plaintiff worked more than 8 hours and received interrupted rest breaks.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take rest breaks.

Also during his employment, Plaintiff did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift he worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff to take uninterrupted meal breaks in middle of the shift.

Plaintiff received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to Plaintiff for the missed rest and

meal breaks, nor accounted for all the hours worked and overtime pay and did not pay for the interrupted or not taken rest and meal breaks that Plaintiff was forced to work. Therefore, Defendant failed to maintain accurate payroll records, such that Plaintiff were given wage statements that did not accurately reflect accurate hours worked and did not reflect the required and due compensation for all the hours worked and rest and meal breaks missed and interrupted.

Attached as **Exhibit “1”**, is the wage statement of Plaintiff which shows his working hours were rounded and he was not paid for any working hours beyond 40 hours a week.

Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest break and meal break on top of other violations as enumerated below, because Defendant is understaffed and cannot possibly provide its employees including Plaintiff, with their statutory breaks.

Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest break and/or meal break, and failed to pay them accurate rate of overtime for all hours worked in excess of 8 hours per day and 40 hours per week, the employees’ wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Defendants failed and refused to pay Plaintiff and other employees for their sick days unless they would produce doctor’s note documenting their illness.

Plaintiff claims that Defendant’s conduct, as stated herein, including not paying its employees all wages owed, including wages for all hours worked, overtime, missed meal and rest breaks, and not providing its employees with accurate wage statements, 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.

Plaintiff can be contacted through his attorney of record:

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

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

**CALIFORNIA LWDA**

*Amended Private Attorneys General Act Notice*

**Page 4**

On behalf of Plaintiff, 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, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 248.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1197.5, 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 “1”**

# Earnings Statement



| Employee ID | Company | Distribution | Hourly Rate | Pay Period            | Check Date | Advice No. | Net Pay |
|-------------|---------|--------------|-------------|-----------------------|------------|------------|---------|
| 4485        | SPTB    | 1440         | 17.4200     | 12/19/2022 12/25/2022 | 12/29/2022 | 000019930A | 527.92  |

**Jose L. Gamez**  
2076 W. River Springs Ave  
Porterville, CA 93257

**Tax Exemption**  
Federal  
State CA

**Filing Status**  
Married filing jointly or Qualifying widow(er)  
Married filing jointly or Qualifying widow(er)

**Exemption #**  
0  
0

**Extra Amt**  
0.00  
0.00

|                           | Rate    | Hours/Units | Current Amt | Year to Date Units | Year to Date Amt | Current Amt | Year to Date Amt |
|---------------------------|---------|-------------|-------------|--------------------|------------------|-------------|------------------|
| <b>Gross Earnings</b>     |         |             |             |                    |                  |             |                  |
| Annual Bonus              |         | 0.00        | 0.00        | 0.00               | 600.00           |             |                  |
| Bereavement               |         | 0.00        | 0.00        | 24.00              | 418.08           |             |                  |
| Holiday Pay               |         | 0.00        | 0.00        | 48.00              | 825.44           |             |                  |
| Overtime                  |         | 0.00        | 0.00        | 8.75               | 219.85           |             |                  |
| Personal                  |         | 0.00        | 0.00        | 6.75               | 0.00             |             |                  |
| Regular                   | 17.4200 | 40.00       | 696.80      | 1,729.00           | 29,731.28        |             |                  |
| Sick                      |         | 0.00        | 0.00        | 30.50              | 524.95           |             |                  |
| Sick No Pay               |         | 0.00        | 0.00        | 23.50              | 0.00             |             |                  |
| Vacation                  |         | 0.00        | 0.00        | 16.00              | 278.72           |             |                  |
| Work Comp                 |         | 0.00        | 0.00        | 84.75              | 1,834.32         |             |                  |
| Work Comp Supp Pay        |         | 0.00        | 0.00        | 12.00              | 209.04           |             |                  |
| <b>Sub Total</b>          |         | 40.00       | 696.80      |                    | 34,641.68        |             |                  |
| <b>Pre Tax Deductions</b> |         |             |             |                    |                  |             |                  |
| 401K Percentage           |         |             |             |                    | 0.00             | 20.90       | 1,039.17         |
| MES Vision                |         |             |             |                    | 0.00             | 1.15        | 59.80            |
| Premier Access Dental     |         |             |             |                    | 0.00             | 1.70        | 88.40            |
| UNIT PBS Health           |         |             |             |                    | 0.00             | 41.46       | 2,136.54         |
| <b>Sub Total</b>          |         |             |             |                    | 0.00             | 65.21       | 3,323.91         |
| <b>Taxes</b>              |         |             |             |                    |                  |             |                  |
| Federal                   |         |             |             |                    |                  | 38.16       | 1,912.69         |
| MEDICARE Employee         |         |             |             |                    |                  | 9.47        | 469.18           |
| OASDI Employee            |         |             |             |                    |                  | 40.45       | 2,006.13         |
| SEI CA                    |         |             |             |                    |                  | 7.67        | 381.06           |
| State CA                  |         |             |             |                    |                  | 7.92        | 367.84           |
| <b>Sub Total</b>          |         |             |             |                    | 0.00             | 103.67      | 5,136.90         |
| <b>Total</b>              |         |             |             |                    | 0.00             | 168.88      | 8,460.81         |
| <b>Tax Deferred Match</b> |         |             |             |                    |                  | 10.45       | 273.73           |
| <b>Net Pay</b>            |         |             |             |                    |                  |             |                  |
| <b>Gross Pay</b>          |         |             |             |                    |                  |             |                  |
| <b>Current</b>            |         |             |             |                    |                  |             |                  |
| <b>YTD</b>                |         |             |             |                    |                  |             |                  |

Setton Pistachio of Terra Bella, Inc.  
9370 Road 234  
Terra Bella, CA 93270

PAYROLL ADVICE ONLY - NON NEGOTIABLE