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GILDARDO DIAZBARRIGA

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County of Sonoma
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA**

GILDARDO DIAZBARRIGA, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

vs.

NOVAVINE, a California Corporation; and
DOES 1 TO 50,

Defendants.

CASE NO.: 24CV01623

**INDIVIDUAL & CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE MEAL PERIODS**
- 2. WAITING TIME PENALTY FOR NONPAYMENT OF WAGES**
- 3. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
- 4. WRONGFUL DISCHARGE – PUBLIC POLICY**
- 5. DISABILITY DISCRIMINATION – DISPARATE TREATMENT**
- 6. RETALIATION**

[UNLIMITED CIVIL JURISDICTION]

INTRODUCTION

1. Defendant NOVAVINE (the “Company”) required its employees, including Plaintiff Gildardo Diazbarriga to work over five consecutive hours without legally compliant meal period (as reflected in employee time records). The Company failed to pay Plaintiff premium pay based on missed or delayed meal periods. Plaintiff brings this action, on

1 behalf of himself and all similarly situated non-exempt employees of the Company, to
2 recover unpaid wages, penalties, attorney's fees and costs, and all other forms of relief
3 authorized by law. Plaintiff also brings this action, on behalf of himself, for wrongful
4 termination based on his disability.

5 **JURISDICTION AND VENUE**

6 2. Plaintiff, on behalf of himself and all other similarly situated, hereby brings
7 this Complaint for recovery of unpaid wages and penalties under California Business and
8 Professions Code § 17200, *et seq.*, applicable provisions of the California Labor Code,
9 including 201, 203, 226.7 and 512, and the applicable Industrial Welfare Commission
10 Wage Order (the "IWC Wage Order"), in addition to declaratory relief and restitution.

11 3. This court has jurisdiction over Defendants' violations of the California Labor
12 Code because the amount in controversy exceeds this court's jurisdictional minimum.
13 Venue in this court is proper because Defendants actively and regularly conducted
14 business in Sonoma County, and a significant portion of the events giving rise to this action
15 occurred here.

16 4. Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings
17 causes of action based solely on, and arising from, California law. The claims of the class
18 are also individual claims for violations of California law described herein. These claims
19 arise from Defendants' common and systemic failure to provide timely meal breaks, failure
20 to pay all wages due upon separation, and their unfair business practices based on the
21 foregoing.

22 **PARTIES**

23 5. Plaintiff Gildardo Diazbarriga is a natural person and domiciled in Sonoma
24 County, California.

25 6. Defendant Novavine, a California Corporation, was at all relevant times
26 doing business in Sonoma County, California.

27 7. Plaintiff is ignorant of the true names and capacities of the defendants sued
28 under the fictitious names of Does 1 through 50. Plaintiff will amend this Complaint to show

1 their true names and capacities when the same have been ascertained. Plaintiff is
2 informed and believes that each of the fictitiously named Doe Defendants is legally
3 responsible in some manner for the occurrences alleged and that Plaintiff's injuries and
4 damages, as alleged, were proximately caused by these Doe Defendants' actions.

5 8. Defendant Novavine and Doe Defendants 1 through 50, inclusive, are
6 referred to herein collectively as "Defendants". Plaintiff is informed and believe and
7 thereon allege that at all times pertinent hereto, each Defendant was the agent and
8 employee of each of its co-Defendants, and in doing the things described herein, was
9 acting within the course and scope of his/her authority as such agent and employee, and
10 each Defendant ratified and approved the acts of his/her agents and employees.
11 Defendants acted as Plaintiff's "employer" and are responsible for any and all damages
12 claimed by Plaintiff in this action under Labor Code section 558.1.

13 **CLASS ACTION ALLEGATIONS**

14 9. Plaintiff brings this case as a class action pursuant to California Code of Civil
15 Procedure § 382 on behalf of a class (hereafter the "Class") and on behalf of a sub-class
16 (hereafter the "Waiting Time Penalties Subclass") consisting of the following:

17 a. The Class: All persons who performed services in the State of
18 California during the Class Period as non-exempt employees for the Company ("Class
19 Members"). The Class Period is the time period starting four years before the filing of the
20 initial Complaint in this action plus any additional time during which the statutes of
21 limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the
22 California Rules of Court, the "Emergency Rules Related to COVID-19".

23 b. The Waiting Time Penalties Subclass: All members of the Class who
24 separated from their working relationship with the Company during the three years
25 immediately preceding the filing of the Complaint through the present plus any additional
26 time during which the statute of limitation was tolled pursuant to the Emergency Rules
27 Related to COVID-19 (the "Subclass Members"). On information and belief, all members
28

1 of the Waiting Time Penalty Subclass that are no longer working for the Company were
2 not paid all wages due at the time of their respective separation/termination.

3 10. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of
4 Court to amend or modify the class description with greater specificity, by division into
5 subclasses, or by limitation to particular issue.

6 11. This action has been brought and may properly be maintained as a class
7 action under the provisions of § 382 of the Code of Civil Procedure because there is a
8 well-defined community of interest in the litigation and the Class and Waiting Time
9 Penalties Subclass are easily ascertainable.

10 12. Numerosity. The members of the Class and Waiting Time Penalties
11 Subclass are so numerous that joinder of all members would be unfeasible and not
12 practicable. The membership of the class and subclass are unknown to Plaintiff at this
13 time; however, it is estimated that the Class and Subclass number greater than fifty (50)
14 individuals. The identity of such membership is readily ascertainable via inspection of the
15 Company's employment and personnel records.

16 13. Typicality. Plaintiff's claims are typical of the claims of the members of the
17 Class. Defendants subjected all Class Members and Subclass Members to identical
18 violations of the California Labor Code, the Wage Orders of the California Industrial
19 Welfare Commission, and the California Business and Professions Code. The factual
20 grounds of Defendants' violations are common to all Class Members and Subclass
21 Members and represent a common thread of unlawful conduct resulting in injury to all
22 members of the Class and Subclass.

23 14. Commonality. Common questions of law and fact exist with respect to all
24 members of the Class and predominate over any questions solely affecting individual
25 members. Issues of law and fact common to the Class include:

26 a. Whether Plaintiff and members of the Class were provided with and
27 were able to take 30 minute off-duty meal breaks for every five hours of work;

28 b. Whether Plaintiff and members of the Class were paid one hour of

premium pay for each day Defendants failed to provide a meal break;

c. Whether Plaintiff and members of the Subclass who are former employees were paid all wages owed to them upon separation pursuant to Cal. Labor Code §§ 201-203;

d. Whether the violations alleged in (a-c) above constitutes unfair business practices in violation of California's Unfair Competition Law, Section 17200 et seq. of the Business and Professions Code.

15. Adequacy. Plaintiff will fairly and adequately represent the interests of the Classes and has no interests adverse to or in conflict with other Class Members. Plaintiff is represented by attorneys who have class action experience in wage and hour and class action law and are committed to vigorously prosecuting this action on behalf of the members of the Class.

16. Superiority. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy since, among other things, joinder of all Class Members is impracticable, and a class action will reduce the risk of inconsistent adjudications or repeated litigation over the same conduct. Further, the expense and burden of individual lawsuits would make it virtually impossible for Class Members, Defendant, or the court to cost-effectively redress separately the unlawful conduct alleged. Plaintiff knows of no difficulties to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL FACTUAL ALLEGATIONS

17. Defendants operate a grapevine nursery in Sonoma County, California.

18. Plaintiff worked for Defendants as a non-exempt employee for over 21 years. In this capacity, Plaintiff's responsibilities were typically divided into two distinct roles: cold storage duties for the first half of the year and loading tasks for the second half.

19. Defendants provided Plaintiff and similarly aggrieved employees with one 30-minute meal period per shift. Plaintiff regularly and routinely worked in excess of five hours prior to his meal break (as reflected in employee time records). Plaintiff was

therefore generally deprived of timely meal periods. Defendants failed to compensate Plaintiff (and all other putative class members) with required premium pay for missed and delayed meal breaks.

20. In June 2023, Plaintiff developed trigger finger, a condition that impaired his ability to load company trucks. Recognizing his disability, Defendants accommodated Plaintiff by reassigning him to a new position that aligned with his limitations from June 2023 through October 2023. However, in January 2023, Plaintiff was informed that due to alleged “restructuring”, his position was being eliminated, and he would be terminated effective April 2024. On information and belief, individuals with less seniority and experience than Plaintiff continue to be employed by Defendants and were not selected for layoff.

21. Plaintiff's disability and request for accommodation played a significant role in the decision to terminate his employment.

22. Plaintiff and the Class Members, including the Subclass Members, were employed as non-exempt workers in California by the Defendants at various times during the Class Period.

A. Failure to Pay Break Premiums

23. During the Class Period, Plaintiff, like other members of the Class, was discouraged from taking code compliant meal breaks and Company did not authorize or permit code compliant meal breaks. For example, Class Members were regularly provided with one thirty-minute meal period after the fifth hour of work due to work demands imposed by Defendants. During the Class Period, Plaintiff, like other members of the Class, was not paid one hour of premium pay for missed or delayed meal breaks.

B. Failure to Pay All Wages Upon Separation

24. During the Class Period, Plaintiff separated from employment with the Company. However, and like other Subclass Members, he was not paid all wages owed to him at the time of separation, including premium pay for missed and delayed meal periods. On information and belief, the Company's refusal to pay all wages owed to former

1 employees continues, and none of the Subclass Members have been paid all wages owed,
2 despite weeks, months, and years since their respective employment separations.

3 **LABOR CODE SECTION 558.1 LIABILITY**

4 25. Doe Defendants 1-50 acted as an employer or “other person acting on behalf
5 of an employer” with regard to Plaintiff and the Class. Defendants violated, or caused to
6 be violated Labor Code sections 203, 226.7, and 512. Defendants are therefore liable
7 under Labor Code section 558.1(a) as the employer for such violation(s).

8 **PAGA ALLEGATIONS**

9 26. On or around the date of the filing of this Complaint, Plaintiff filed a claim
10 with the California Labor and Workforce Development Agency (hereafter, “LWDA”) and
11 provided a copy by certified mail to Defendant. The LWDA has 60 calendar days to
12 respond and, if it does not do so, Plaintiff will have exhausted Plaintiff’s administrative
13 remedies and, pursuant to Labor Code section 2699.2, will be permitted to pursue
14 Plaintiff’s PAGA claims in this court. The period for the LWDA to respond to the has not
15 expired. If the LWDA does not respond within the applicable statutory period, Plaintiff will
16 amend this Complaint to add a cause of action under PAGA.

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL PERIODS**
19 **(Plaintiff on Behalf of Himself and the Class against All Defendants)**

20 27. Plaintiff, on behalf of himself and the Class Members, incorporates by
21 reference all other paragraphs of this Complaint as if they were re-alleged and set forth
22 herein.

23 28. California Labor Code § 512 provides, in pertinent part, as follows: “An
24 employer may not employ an employee for a work period of more than five hours per day
25 without providing the employee with a meal period of not less than 30 minutes except that
26 if the total work period per day of the employee is no more than six hours, the meal period
27 may be waived by mutual consent of both the employer and the employee”.

28 29. Pursuant to Defendants’ policies, the demands of Plaintiff’s and the Class
Members’ duties, Plaintiff was required to, and actually did, forego the meal periods

1 required to be provided to Plaintiff or was required to take them in an untimely manner that
2 violated the law. By failing to provide Plaintiff and the Class Members with these meal
3 periods, Defendants violated California Labor Code sections 512 and 226.7 and the
4 applicable IWC Wage Order. As a result of the unlawful acts of Defendants set forth herein,
5 Plaintiff and the Class Members are entitled to additional wages for the missed and
6 delayed meal periods.

7 **SECOND CAUSE OF ACTION**
8 **WAITING TIME VIOLATIONS**
9 **(Plaintiff on Behalf of Himself and the Class against All Defendants)**

10 30. Plaintiff, on behalf of himself and the Waiting Time Penalty Subclass,
11 incorporates by reference all other paragraphs of this Complaint as if they were re-alleged
12 and set forth herein.

13 31. California Labor Code §201(a) provides, in pertinent part, as follows: "If an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge
15 are due and payable immediately."

16 32. California Labor Code §202(a) provides, in pertinent part, as follows: "If an
17 employee not having a written contract for a definite period quits his or her employment,
18 his or her wages shall become due and payable not later than 72 hours thereafter, unless
19 the employee has given 72 hours previous notice of his or her intention to quit, in which
20 case the employee is entitled to his or her wages at the time of quitting."

21 33. California Labor Code §206(a) provides, in pertinent part, as follows: "In
22 case of a dispute over wages, the employer shall pay, without condition, and within the
23 time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to
24 the employee all remedies he might otherwise be entitled to as to any balance claimed."

25 34. Where an employer willfully fails to pay, without abatement or reduction, in
26 accordance with sections 201 through 203 of the California Labor Code, all wages due to
27 an employee who has been discharged or has quit, California Labor Code §203 entitles
28 the affected employee to receive from the employer a penalty of up to 30 days wages
calculated from the due date of the wages until the time an action to recover the wages is

1 commenced.

2 35. As alleged herein, Defendants have failed to pay wages (including but not
3 limited to break premiums) to Plaintiff and the Waiting Time Penalty Subclass at the time
4 they became due and payable, and has thus violated sections 201, 202, 203 and 206 of
5 the California Labor Code.

6 36. Defendants' failure to pay wages as alleged herein was willful in that
7 Defendants knew that Plaintiff and the Waiting Time Penalty Subclass were not receiving
8 all of their earned compensation because, inter alia, Defendants knowingly did not fully,
9 fairly and properly compensate Plaintiff and the Waiting Time Penalty Subclass for
10 untimely and missed breaks.

11 37. As a result of Defendants' willful, unlawful acts, discussed herein, Plaintiff
12 and the Waiting Time Penalty Subclass Class are entitled to recover, pursuant to California
13 Labor Code §203, continuing wages as a penalty for a total of 30 days.

14 **THIRD CAUSE OF ACTION**
15 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200**
16 **(Plaintiff on Behalf of Himself and the Class against All Defendants)**

17 38. Plaintiff, on behalf of himself and the Class Members, incorporates by
18 reference all other paragraphs of this Complaint as if they were re-alleged and set forth
19 herein.

20 39. Defendants' violations of the Labor Code and other laws and regulations as
21 alleged by this Complaint, and other wrongful, tortious and illegal acts and omissions, all
22 constitute unfair business practices in violation of the Unfair Competition Law, Business
23 and Professions Code § 17200 et seq.

24 40. As a result of Defendants' unfair business practices, Defendants have
25 reaped unfair benefits and illegal profits at the expense of Plaintiff, the Class Members,
26 and members of the public. Defendants' utilization of such unfair business practices
27 constitutes unfair competition and provides an unfair advantage over Defendants'
28 competition. Defendants should be made to disgorge the ill-gotten gains and restore such
monies to Plaintiff and the Class Members.

1 41. Defendants' unfair business practices entitles Plaintiff and the Class
2 Members to seek preliminary and permanent injunctive relief, including but not limited to
3 orders that Defendants account for, disgorge and restore to Plaintiff and the Class
4 Members any compensation unlawfully withheld from Plaintiff and the Class Members,
5 and for which Defendants were unjustly enriched.

6 **FOURTH CAUSE OF ACTION**
7 **WRONGFUL DISCHARGE – PUBLIC POLICY**
8 **(Plaintiff on Behalf of Himself Against All Defendants)**

9 42. Plaintiff incorporates by reference all other paragraphs of this Complaint as
10 if they were re-alleged and set forth herein.

11 43. Plaintiff was employed by Defendants. Defendants discharged Plaintiff from
12 employment. As further alleged herein, a substantial motivating reason for Plaintiff's
13 discharge was in violation of public policy.

14 44. Defendants' discharge of Plaintiff was a substantial factor in causing Plaintiff
15 was harmed by the discharge in that, and among other damages, Plaintiff to suffer harm
16 and damages.

17 **FIFTH CAUSE OF ACTION**
18 **DISABILITY DISCRIMINATION – DISPARATE TREATMENT**
19 **(Plaintiff on Behalf of Himself Against All Defendants)**

20 45. Plaintiff incorporates by reference all other paragraphs of this Complaint as
21 if they were re-alleged and set forth herein.

22 46. Defendants employed Plaintiff as further described and alleged herein.

23 47. Defendants knew and/or perceived that Plaintiff had a physical or mental
24 condition that limited a major life activity, or a history of such a condition. Plaintiff was able
25 to perform the essential job duties of Plaintiff's position either with or without reasonable
26 accommodations.

27 48. Defendants took adverse employment action against Plaintiff. Plaintiff's
28 history of a physical or mental condition that limited a major life activity, or a history of such
a condition, was a substantial motivating reason for the adverse employment action
against Plaintiff.

49. Plaintiff was harmed and suffered legal damages, and Defendants' conduct was a substantial factor in causing Plaintiff's harm.

SIXTH CAUSE OF ACTION

RETALIATION UNDER FEHA

(Against All Defendants)

50. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

51. Plaintiff engaged in protected activity under the FEHA. Defendants took adverse employment action against Plaintiff and/or subjected Plaintiff to adverse employment action as described herein. Plaintiff's engagement in protected activity was a substantial motivating reason for Defendants' decision to take or subject Plaintiff to the adverse employment action described herein.

52. Plaintiff has suffered harm and legal damages and Defendants decision to take and/or subject Plaintiff to adverse employment action was a substantial factor in causing Plaintiff to suffer harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants:

1. For compensatory and statutory damages in the amount of Plaintiff's and each Class Members break premiums, as well as an award of costs, interest, and reasonable attorney's fees.

2. For waiting time penalties pursuant to Labor Code § 203 for Plaintiff and each Subclass Member who was terminated or resigned equal to their daily wage times thirty (30) days;

3. For temporary, preliminary, and permanent injunctive relief enjoining Defendants from unlawfully depriving Plaintiff and Class Members from unpaid break premiums, and wages upon termination/resignation in accordance with the law;

4. For restitution for unfair competition pursuant to Business and Professions Code section 17200, *et seq.*, including disgorgement of profits, in an amount as may be

1 determined;

- 2 5. For compensatory damages in an amount to be proven at trial;
- 3 6. General and special damages, in an amount to be proven at trial;
- 4 7. For punitive and exemplary damages;
- 5 8. Pre-judgment interest on any damages or other amounts deemed payable;
- 6 9. For attorney's fees and costs of suit; and
- 7 10. For other or further relief as the Court deems just and proper.

8 Dated: March 6, 2024

HAULK & HERRERA

9
10 By: 

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