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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLARENCE SMITH, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO. **20CV365250**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
226(A);**

**(2) VIOLATION OF CAL. LABOR CODE §
2698, ET SEQ. (PRIVATE ATTORNEYS
GENERAL ACT)**

DEMAND EXCEEDS \$25,000.00

1 Plaintiff Clarence Smith ("Plaintiff") hereby submits this Class and Representative
2 Action Complaint ("Complaint") against Defendant Watlow Electric Manufacturing Company
3 ("Defendant"), and DOES 1-50 (collectively, "Defendants"), on behalf of himself and all other
4 similarly situated current and former employees of Defendants for penalties and/or damages
5 for failure to provide accurate itemized wage statements under the California Labor Code, as
6 follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court's jurisdiction under
9 California Labor Code §§ 226 and 2698, *et seq.*, and the applicable Wage Orders of the California
10 Industrial Welfare Commission ("IWC").

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against individuals who worked for Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 jointly and severally have acted knowingly and intentionally, and with deliberate indifference and
15 conscious disregard to the rights of all employees by failing to provide complete and accurate
16 wage statements to Plaintiff and other employees.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code and
19 the applicable IWC Wage Orders by creating and maintaining policies, practices, and customs
20 that knowingly deny its employees to above-stated rights and benefits.

21 5. The policies, practices and customs of Defendants described above and below have
22 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
23 routinely adhere to the strictures of the California Labor Code.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction over the violations of the California Labor Code §§ 226
26 and 2698, *et seq.*

27 7. Venue is proper in Santa Clara County because Defendants do business in Santa
28 Clara County and Plaintiff worked for Defendants in Santa Clara County.

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PARTIES

8. Plaintiff was hired by Defendants on or about September 13, 2017. Plaintiff worked as a janitor for Defendants until on or about January 28, 2020. Throughout his employment with Defendants, Plaintiff was a non-exempt employee and was paid hourly.

9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 226 and 2698, *et seq.*

10. Plaintiff is informed and believes and based thereon alleges that Defendant was and is a Missouri corporation, licensed to do business and actually doing business in the State of California. Defendant manufactures industrial heaters, sensors and controllers. Defendant operates numerous manufacturing facilities and sales offices throughout the United States, including locations in the State of California and in Santa Clara County.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

12. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

13. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14. At all times herein mentioned, each of said defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity.
6 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
7 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 16. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the
11 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 17. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all
15 times herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
17 and abetted the acts and omissions of each and all of the other Defendants in proximately
18 causing the damages as herein alleged.

18 CLASS ACTION ALLEGATIONS

19 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
20 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: All current
21 and former non-exempt employees of Defendants in the State of California who were paid
22 overtime wages at any time from March 18, 2019, through the present (the “Class”).

23 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
24 that joinder of all members would be impractical, if not impossible. The identities of the
25 members of the Class are readily ascertainable by review of the Defendants’ records, including
26 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 failed to provide accurate itemized wage statements in violation of Labor Code § 226(a).

28 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all

1 necessary steps to represent fairly and adequately the interests of the Class defined above.

2 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
3 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
4 actions in the past and currently have a number of wage-and-hour class actions pending in
5 California state and federal courts.

6 21. Defendants uniformly administered a corporate policy and practice of failing to
7 provide accurate itemized wage statements in violation of Labor Code § 226(a). Specifically,
8 whenever overtime wages were paid to Plaintiff and the Class, the wage statements failed to
9 correctly identify the overtime rates of pay and the total hours worked in the pay period.

10 22. **Common Question of Law and Fact:** There are predominant common
11 questions of law and fact and a community of interest amongst Plaintiff and the claims of the
12 Class concerning the Defendants' policy and practice of failing to provide accurate itemized
13 wage statements that identify the correct overtime rates of pay and the total number of hours
14 worked, in violation of Labor Code §§ 226(a)(2) and (a)(9).

15 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of
16 the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
17 manner as the Class Members. As with other Class Members, Plaintiff worked overtime and
18 was paid overtime wages. However, whenever Plaintiff was paid overtime wages, Plaintiff was
19 not provided with accurate itemized wage statements that complied with Labor Code § 226(a).
20 In this regard, the overtime rate of pay was identified as the half-time (0.5) rate, instead of one
21 and one-half (1.5) times the regular rate of pay. This is a violation of Labor Code § 226(a)(9),
22 since the wage statements do not accurately list the overtime rate of pay, which is an hourly pay
23 rate. As a separate violation of Labor Code § 226(a), the total hours worked as listed on
24 Plaintiff's wage statements were inaccurately listed whenever overtime wages were paid.
25 Similarly, whenever the hours worked as listed on the wage statements are added up, it does not
26 correspond to the actual total hours worked in violation of Labor Code § 226(a)(2). Thus,
27 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
28 Code § 226(a).

24. The California Labor Code and upon which Plaintiff bases these claims is

1 broadly remedial in nature. These laws and labor standards serve an important public interest in
2 establishing minimum working conditions and standards in California. These laws and labor
3 standards protect the average working employee from exploitation by employers who may seek
4 to take advantage of superior economic and bargaining power in setting onerous terms and
5 conditions of employment.

6 25. The nature of this action and the format of laws available to Plaintiff and
7 members of the Class identified herein make the class action format a particularly efficient and
8 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
9 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
10 advantage since it would be able to exploit and overwhelm the limited resources of the
11 individual plaintiff with their vastly superior financial and legal resources. Requiring each
12 Class member to pursue an individual remedy would also discourage the assertion of lawful
13 claims by employees who would be disinclined to file an action against their former and/or
14 current employer for real and justifiable fear of retaliation and permanent damage to their
15 careers at subsequent employment.

16 26. The prosecution of separate actions by the individual Class members, even if
17 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
18 to individual Class members against the Defendants and which would establish potentially
19 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
20 individual Class members which would, as a practical matter, be dispositive of the interest of
21 the other Class members not parties to the adjudications or which would substantially impair or
22 impede the ability of the Class members to protect their interests. Further, the claims of the
23 individual members of the Class are not sufficiently large to warrant vigorous individual
24 prosecution considering all of the concomitant costs and expenses.

25 27. Such a pattern, practice and uniform administration of corporate policy regarding
26 illegal employee compensation described herein is unlawful and creates an entitlement to
27 recovery by Plaintiff and the Class identified herein, in a civil action, for any and all applicable
28 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
of California Labor Code §§ 226 and Code of Civil Procedure § 1021.5.

1 28. Proof of a common business practice or factual pattern, which the named
2 Plaintiff experienced and is representative of, will establish the right of each of the members of
3 the Class to recovery on the causes of action alleged herein.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226(A)**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as
8 though fully set forth herein.

9 30. Labor Code § 226(a)(requires employers to provide itemized wage statements to
10 its employees that identify accurate information, including without limitation, the total hours
11 worked by the employee and all applicable hourly rates of pay in effect during the pay period.
12 Defendants failed in their affirmative obligation to provide accurate itemized wage statements
13 in violation of Labor Code § 226(a).

14 31. Plaintiff and the Class were paid hourly as non-exempt employees. As such, the
15 wage statements should have complied with all of the enumerated requirements set forth in
16 Labor Code § 226(a). However, whenever Plaintiff and Class Members were paid overtime
17 wages, their wage statements failed to identify the necessary information. In this regard,
18 Defendants had a policy and practice of inaccurately listing the overtime rate of pay as the half-
19 time (0.5) rate, instead of one and one-half (1.5) times the regular rate of pay. This policy and
20 practice directly violations Labor Code § 226(a)(9).

21 32. As a separate violation of Labor Code § 226(a), Defendants also provided wage
22 statements to Plaintiff and Class members that inaccurately identified the total hours worked
23 whenever overtime wages were paid. Additionally, whenever the hours worked as listed on the
24 wage statements are added up, the sum total does not correspond to the actual total hours
25 worked in the pay period. Thus, Plaintiff and Class members cannot determine the total hours
26 worked just by looking at the wage statements or by simple calculation. This is a direct
27 violation of Labor Code § 226(a)(2).

28 33. Such a pattern, practice and uniform administration of corporate policy as
described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class

1 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
2 including interest thereon, attorneys' fees, and costs of suit according to the mandate of Labor
3 Code § 226.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

6 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

7 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as
8 though fully set for herein.

9 35. Plaintiff brings this cause of action as a proxy for the State of California and in
10 this capacity, seeks penalties on behalf of all Aggrieved Employees from February 24, 2019,
11 through the present, for Defendants' violations of Labor Code § 226(a). As alleged above,
12 Defendants, as a matter of policy and practice, did not provide accurate itemized wage
13 statements to Plaintiff and other Aggrieved Employees that failed to identify the correct
14 overtime rates of pay and the total hours worked.

15 36. On or about February 24, 2020, Plaintiff sent written notice to the California
16 Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
17 § 226(a), pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys' General Act ("PAGA").
18 As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as
19 to whether it intends to investigate the Labor Code violations provided for in the written notice.
20 Pursuant to Labor Code § 2699.3, Plaintiff also sent written notice of the alleged Labor Code §
21 226(a) violations to Defendant via certified mail.

22 37. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and
23 all applicable civil penalties for Defendants' violations of Labor Code § 226(a) for the time
24 period described above, on behalf of himself and other Aggrieved Employees.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
27 this suit is brought against Defendants, jointly and severally, as follows:

- 28
1. For an order certifying the proposed Class;
 2. For an order appointing Plaintiff as the representative of the Class as described

1 herein;

2 3. For an order appointing counsel for Plaintiff as Class counsel;

3 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
4 California Labor Code § 226, *et seq.*, and for interest, costs and attorneys' fees;

5 5. Upon the Second Cause of Action, for the full amount of civil penalties
6 according to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and
7 attorneys' fees;

8 6. On all causes of action, for attorneys' fees and costs as provided by California
9 Labor Code §§ 226 and 2699, Code of Civil Procedure § 1021.5; and

10 7. For such other and further relief as the Court may deem just and proper.

11 DATED: March 18, 2020

DIVERSITY LAW GROUP, P.C.

12
13 By: 

Larry W. Lee
Mai Tulyathan

14 Attorneys for Plaintiff, the Class, and Aggrieved
15 Employees
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