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

FAHEEM KHAN, as an individual and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

AMY'S KITCHEN, INC., a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: SCV-266127

**CLASS AND REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE  
§ 226(A);
- (2) VIOLATION OF CAL. LABOR  
CODE § 2698, *ET SEQ.*

**DEMAND OVER \$25,000.00**

1 Plaintiff Faheem Khan (“Plaintiff”) hereby submits this Class and Representative Action  
2 Complaint (“Complaint”) against Defendant Amy’s Kitchen, Inc. (“Defendant”) and Does 1  
3 through 50 (collectively, “Defendants”) on behalf of himself and all other similarly situated  
4 current and former employees of Defendants, for penalties and/or damages for failure to provide  
5 complete and accurate itemized wage statements in violation of 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.*

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

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

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

### 20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of California Labor Code §§ 226  
22 and 2698, *et seq.*

23 6. Venue is proper because Defendants do business in Sonoma County and Plaintiff  
24 worked for Defendants in Sonoma County, specifically in Santa Rosa, California.

### 25 **PARTIES**

26 7. Plaintiff was employed by Defendants as a Manufacture Operator from about  
27 2014 until on or about August 30, 2019. Throughout his employment with Defendants, Plaintiff  
28 was employed as an hourly, non-exempt employee.

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

4           9.       Plaintiff is informed and believes, and based thereon alleges, that Defendant was  
5 and is a California corporation that produces convenience and frozen organic food products.  
6 Plaintiff is informed and believes, and based thereon alleges, that Defendant operates and  
7 maintains business locations and facilities across the State of California, including several  
8 facilities in Santa Rosa, California.

9           10.      Plaintiff is informed and believes and thereon alleges that at all times herein  
10 mentioned Defendant and Does 1 through 50, are and were corporations, business entities,  
11 individuals, and partnerships, licensed to do business and actually doing business in the State of  
12 California. As such, and based upon all the facts and circumstances incident to Defendants'  
13 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

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

22           12.      At all times herein mentioned, each of said Defendants participated in the doing  
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
24 Defendants, and each of them, were the agents, servants and employees of each of the other  
25 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were  
26 acting within the course and scope of said agency and employment.

27           13.      Plaintiff is informed and believes, and based thereon alleges, that at all times  
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or

1 joint venturer of, or working in concert with each of the other co-Defendants and was acting  
2 within the course and scope of such agency, employment, joint venture, or concerted activity.  
3 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of  
4 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
5 Defendants.

6 14. At all times herein mentioned, Defendants, and each of them, were members of,  
7 and engaged in, a joint venture, partnership and common enterprise, and acting within the course  
8 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

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

#### 16 CLASS ACTION ALLEGATIONS

17 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to  
18 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: All current  
19 and former non-exempt employees of Defendants in the State of California who were paid shift  
20 differential wages at any time from March 4, 2019, through the present (the "Class").

21 17. Plaintiff further reserves the right to amend such Class definition based upon  
22 further discovery.

23 18. **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 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 to its employees that identified the  
28 applicable rates of pay and hours worked for shift differential wages, whenever such wages were

1 paid, in violation of Labor Code § 226(a).

2       19.     **Adequacy of Representation:** The named Plaintiff is fully prepared to take all  
3 necessary steps to represent fairly and adequately the interests of the Class defined above.  
4 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and  
5 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class  
6 actions in the past and currently have a number of wage-and-hour class actions pending in  
7 California state and federal courts.

8       20.     Defendants uniformly administered a corporate policy and practice of failing to  
9 provide accurate itemized wage statements to Plaintiff and the Class that identified the applicable  
10 rates of pay and hours worked for shift differential wages, whenever such wages were paid, in  
11 violation of Labor Code § 226(a).

12       21.     Plaintiff is informed and believes, and based thereon alleges, that this corporate  
13 conduct is accomplished with the advance knowledge and designed intent to willfully and  
14 intentionally fail to accurately record proper rates of pay and hours worked.

15       22.     Plaintiff is informed and believes, and based thereon alleges, that Defendants had  
16 a consistent and uniform policy, practice, and procedure of willfully failing to comply with  
17 Labor Code § 226(a).

18       23.     **Common Question of Law and Fact:** There are predominant common questions  
19 of law and fact and a community of interest amongst Plaintiff and the claims of the Class  
20 concerning Defendants' policy and practice of failing to provide accurate itemized wage  
21 statements to Plaintiff and the Class that identified the applicable rates of pay and hours worked  
22 for shift differential wages in violation of Labor Code § 226(a).

23       24.     **Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
24 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner  
25 as the Class Members. As with Defendants' other California non-exempt employees, Plaintiff  
26 was paid hourly and worked shifts where he received shift differential wages, such as "2nd  
27 ShiftDiff" wages. However, whenever Defendants paid such shift differential wages to Plaintiff,  
28 including without limitation "2nd ShiftDiff" wages, Defendants failed to identify the applicable

1 rate of pay and hours for said wages on wage statements in violation of Labor Code § 226(a)(9).  
2 Instead, the shift differential wages were listed as a particular lump sum without a breakdown of  
3 the applicable rate and hours that were used to calculate the shift differential wages. Therefore,  
4 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor  
5 Code § 226(a).

6 25. The California Labor Code upon which Plaintiff bases these claims are broadly  
7 remedial in nature. These laws and labor standards serve an important public interest in  
8 establishing minimum working conditions and standards in California. These laws and labor  
9 standards protect the average working employee from exploitation by employers who may seek  
10 to take advantage of superior economic and bargaining power in setting onerous terms and  
11 conditions of employment.

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

22 27. The prosecution of separate actions by the individual Class Members, even if  
23 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
24 to individual Class Members against the Defendants and which would establish potentially  
25 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to  
26 individual Class Members which would, as a practical matter, be dispositive of the interest of the  
27 other Class Members not parties to the adjudications or which would substantially impair or  
28 impede the ability of the Class Members to protect their interests. Further, the claims of the

individual Class Members are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

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

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

### **FIRST CAUSE OF ACTION**

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

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

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

31. Labor Code § 226(a) requires employers to provide itemized wage statements to its employees that identify accurate information, including without limitation, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code § 226(a).

32. Plaintiff and the Class were paid hourly as non-exempt employees. As such, the wage statements should have reflected the accurate hourly rates of pay, including for shift differential wages, such as "2nd ShiftDiff" wages, whenever such wages were paid. However, whenever shift differential wages were paid to Plaintiff and the Class, Defendants failed to identify the applicable rates of pay and hours worked used to calculate such shift differential wages on wage statements issued to Plaintiff and the Class. Instead, Defendants had a policy and practice of only identify the amount of shift differential wages earned as a lump sum, without any breakdown as to the hourly rates and applicable number of hours worked. This policy and

1 practice is a direct violation of Labor Code § 226(a)(9).

2 33. Such a pattern, practice and uniform administration of corporate policy as  
3 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class  
4 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,  
5 including interest thereon, attorneys' fees, and costs of suit according to the mandate of  
6 California Labor Code § 226.

7 **SECOND CAUSE OF ACTION**

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

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

10 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33, as  
11 though fully set forth herein.

12 35. Plaintiff brings this cause of action as a proxy for the State of California and in  
13 this capacity, seeks penalties on behalf of all Aggrieved Employees from February 3, 2019,  
14 through the present, for Defendants' violation of Labor Code § 226(a) as alleged above.  
15 Specifically, Defendants violated Labor Code § 226(a) by failing to provide accurate itemized  
16 wage statements to Plaintiff and other Aggrieved Employees that identified the applicable hourly  
17 rates of pay and hours worked for shift differential wages, including without limitation "2nd  
18 ShiftDiff" wages, whenever such wages were paid.

19 36. Plaintiff is an "aggrieved employee" pursuant to Labor Code § 2699, as Plaintiff  
20 has suffered the violations of Labor Code § 226(a) alleged above.

21 37. On or about February 3, 2020, Plaintiff sent written notice to the California Labor  
22 & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code §  
23 226(a), pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA").  
24 As of the date of the filing of this Complaint, the LWDA has not responded to Plaintiff's written  
25 notice nor indicated whether it intends to investigate the Labor Code violations provided for in  
26 the written notice. Pursuant to Labor Code § 2699.3, Plaintiff also sent written notice of  
27 Defendants' violations of the Labor Code to Defendants via certified mail.

28 38. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all

1 applicable civil penalties for Defendants' violations of Labor Code § 226(a) for the time period  
2 described above, on behalf of himself and other Aggrieved Employees.

3 **PRAYER FOR RELIEF**

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

- 6 1. For an order certifying the proposed Class;
- 7 2. For an order appointing Plaintiff as the representative of the Class;
- 8 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 9 4. Upon the First Cause of Action, for penalties and/or damages pursuant to  
10 California Labor Code § 226, *et seq.*, and for interest, costs and attorneys' fees;
- 11 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant  
12 to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys' fees;
- 13 6. On all causes of action for attorneys' fees and costs as provided by California  
14 Labor Code §§ 226, and 2699, and Code of Civil Procedure § 1021.5; and
- 15 7. For such other and further relief that the Court may deem just and proper.

16  
17 DATED: March 4, 2020

DIVERSITY LAW GROUP, P.C.

18 By: 

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Mai Tulyathan

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20 Attorneys for Plaintiff, the Class, and Aggrieved  
21 Employees  
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