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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/23/2020
By /s/ Ivana Petani
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

ALLEN GARCIA, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SEE'S CANDIES, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:20-CIV-01633

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

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

DEMAND OVER \$25,000.00

Plaintiff Allen Garcia (together, "Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendant See's Candies, Inc. and Does 1 through 50 (hereinafter collectively referred to as "Defendants") on behalf of himself and the class of all other similarly situated current and former employees of Defendants, for penalties and/or damages for failure to provide accurate itemized wage statements under the California Labor Code as follows:

1 **INTRODUCTION**

2 1. This class action is within the Court’s jurisdiction under California Labor Code
3 §§ 226 and 2698, *et seq.* and the applicable Wage Orders of the California Industrial Welfare
4 Commission (“IWC”).

5 2. This complaint challenges systemic illegal employment practices resulting in
6 violations of the California Labor Code against individuals who worked for Defendants.

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

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

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

18 **JURISDICTION AND VENUE**

19 6. The Court has jurisdiction over the violations of the California Labor Code
20 §§ 226 and 2698, *et seq.*

21 7. Venue is proper because Defendants do business in San Mateo County and
22 Plaintiff worked for Defendants in San Mateo County.

23 **PARTIES**

24 8. Plaintiff was hired by Defendants on or about August 23, 2019. Plaintiff works as
25 a maintenance mechanic in South San Francisco.

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

1 10. Plaintiff is informed and believes and based thereon alleges that Defendant See's
2 Candies, Inc. was and is a California corporation doing business in the State of California
3 manufacturing and selling confections such as chocolates and candies.

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

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

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

17 14. At all times herein mentioned, each of said defendants participated in the doing of
18 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
21 acting within the course and scope of said agency and employment.

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

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

4 17. At all times herein mentioned, the acts and omissions of various Defendants, and
5 each of them, concurred and contributed to the various acts and omissions of each and all of the
6 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
7 herein mentioned, Defendants, and each of them, ratified each and every act or omission
8 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
9 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
10 damages as herein alleged.

11 **CLASS ACTION ALLEGATIONS**

12 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure § 382. Plaintiff proposes the following class: all current and
14 former non-exempt employees who worked for Defendants in the State of California and were
15 paid shift differential wages at any time from March 23, 2019, to the present (the “Class”).

16 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
17 that joinder of all members would be impractical, if not impossible. The identities of the
18 members of the Class are readily ascertainable by review of Defendants’ records, including
19 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to provide accurate, itemized wage statements.

21 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
22 necessary steps to represent fairly and adequately the interests of the Class defined above.
23 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and
24 the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
25 actions in the past and currently have a number of wage-and-hour class actions pending in
26 California state and federal courts.

27 21. Defendants uniformly administered a corporate policy and practice of failing to
28 provide accurate itemized wage statements in violation of Labor Code § 226(a).

1 22. **Common Question of Law and Fact:** There are predominant common questions
2 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
3 concerning Defendants' policy and practice of failing to provide accurate itemized wage
4 statements in violation of Labor Code § 226(a).

5 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
6 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
7 as the Class Members. As with other Class Members, Plaintiff was not provided proper and
8 accurate itemized wage statements. Specifically, during Plaintiff's employment with
9 Defendants, Plaintiff earned shift differential wages. Whenever shift differential wages were
10 paid, the wage statements issued to Plaintiff failed to identify the correct rates of pay and
11 applicable number of hours worked in violation of Labor Code § 226(a)(9). Therefore, Plaintiff
12 is a member of the Class and has suffered the alleged violations of California Labor Code § 226.

13 24. The California Labor Code upon which Plaintiff bases these claims are broadly
14 remedial in nature. These laws and labor standards serve an important public interest in
15 establishing minimum working conditions and standards in California. These laws and labor
16 standards protect the average working employee from exploitation by employers who may seek
17 to take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment.

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

1 26. The prosecution of separate actions by the individual class members, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
3 to individual class members against the Defendants and which would establish potentially
4 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
5 individual class members which would, as a practical matter, be dispositive of the interest of the
6 other class members not parties to the adjudications or which would substantially impair or
7 impede the ability of the class members to protect their interests. Further, the claims of the
8 individual members of the class are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the concomitant costs and expenses.

10 27. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
13 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
14 § 226, 226.3, and Code of Civil Procedure § 1021.5.

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

18 29. The Plaintiff class is commonly entitled to a specific fund with respect to the
19 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
20 entitled to restitution of those funds being improperly withheld by Defendants. This action is
21 brought for the benefit of the entire Class and will result in the creation of a common fund.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226**

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

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

27 31. Defendants failed in their affirmative obligation to provide accurate itemized
28 wage statements. Defendants, as a matter of policy and practice, did not provide accurate

1 records in violation of Labor Code § 226.

2 32. Labor Code § 226(a)(9) requires that an employer provide employees with wage
3 statements that show all applicable hourly rates and the corresponding number of hours worked
4 at each rate. The wage statements issued by Defendants to Plaintiff and Class Members did not
5 list the hourly rates of pay and applicable number of hours worked for shift differential wages.

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

11 **SECOND CAUSE OF ACTION**

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

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

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

16 35. Plaintiff brings this cause of action on behalf of the State of California and seeks
17 penalties on behalf of all aggrieved employees from March 10, 2019, through the present, for
18 Defendants' violation of Labor Code § 226.

19 36. Defendants failed in their affirmative obligation to provide accurate itemized
20 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
21 records in violation of Labor Code § 226. Specifically, the wage statements provided to
22 Defendants' employees did not identify the hourly rates of pay and/or number of hours worked
23 for shift differential wages.

24 37. On or about March 10, 2020, Plaintiff sent written notice to the California Labor
25 & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 226,
26 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA").

27 38. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
28 to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the

1 written notice.

2 39. As such, pursuant to Labor Code § 2699(a), Plaintiff and the aggrieved employees
3 may seek recovery of all applicable civil penalties on behalf of the State of California for
4 Defendants' violations of Labor Code § 226.

5 **PRAYER FOR RELIEF**

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

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

19
20 DATED: March 23, 2020

DIVERSITY LAW GROUP, P.C.

21 By: 
22 Larry W. Lee
23 Max W. Gavron
24 Attorneys for Plaintiff and the Class
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