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11 individually and on behalf of all others similarly situated

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

FILED
TULARE COUNTY SUPERIOR COURT
VICTIMS DIVISION

MAY 06 2020

STEPHANIE CAMERON, CLERK
BY: *[Signature]*

282808

15 MICHAEL SMITH, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 LAND O'LAKES, INC.; and DOES 1
20 through 20, inclusive,

21 Defendants.

Case No.

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

**VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LABOR
CODE §§ 2698, *ET SEQ.*)**

DEMAND FOR A JURY TRIAL

CASE MANAGEMENT CONFERENCE

Hearing Date: 9-17-2020

Time: 8:30am

Department: one

26 Assigned to Judicial Officer David C. Mathias
27 For All Purposes
28

FAXED

REPRESENTATIVE ACTION COMPLAINT

1 Plaintiff Michael Smith, individually and on behalf of other aggrieved employees,
2 hereby alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Michael Smith ("Plaintiff") brings this representative action against
5 Defendants Land O'Lakes, Inc. and DOES 1 through 20, inclusive (collectively, "Defendants"),
6 on behalf of himself individually and all other aggrieved employees employed by Defendants
7 throughout California.

8 2. Defendants operate plants which process dairy products.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code ("Labor
11 Code").

12 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time
13 period, Defendants had a consistent policy of violating state wage and hour laws by, among
14 other things:

- 15 (a) failing to pay minimum wages for all hours worked;
- 16 (b) failing to pay overtime wages for all hours worked;
- 17 (c) failing to pay Reporting Time Pay;
- 18 (d) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (e) failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (f) failing to provide accurate itemized wage statements; and
- 22 (g) failing to pay all wages due upon separation of employment.

23 5. Plaintiff brings this representative action seeking monetary relief against
24 Defendants on behalf of himself and other aggrieved employees to recover, among other things,
25 penalties, attorney's fees, costs and expenses pursuant to the Private Attorneys General Act of
26 2004, Labor Code §§ 2698, *et seq.* ("PAGA").

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JURISDICTION AND VENUE

6. The monetary relief sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. The Superior Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. The Superior Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in the Superior Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants are corporations doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders, whose employees are and were engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

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13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employers and/or joint employers of Plaintiff and other aggrieved employees.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

18. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

19. Defendants employed Plaintiff during the relevant time period.

20. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

1 21. Through this action, Plaintiff alleges that Defendants have engaged in a
2 systematic pattern of wage and hour violations under the California Labor Code and IWC
3 Wage Orders.

4 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
6 for all time worked (including minimum wages and overtime wages) and that they were not
7 receiving all wages earned for work that was required to be performed. For example,
8 Defendants required Plaintiff and similarly aggrieved employees to submit to unpaid "security"
9 checks when leaving Defendants' facility at the beginning and end of their shifts and during
10 meal breaks. Although Plaintiff and other aggrieved employees were under Defendant's
11 control while waiting in line and undergoing these security checks, Defendants did not
12 compensate Plaintiff and other aggrieved employees for this work. Defendants also failed to
13 pay overtime and doubletime wages at the regular rate of pay by failing to account for shift
14 differentials and/or premiums and other earned wages when calculating overtime and
15 doubletime wages. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other
16 aggrieved employees were not paid all wages (including minimum wages and overtime wages)
17 for all hours worked and not paid at the correct overtime rate of pay.

18 23. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to
19 pay all Reporting Time Pay when Plaintiff and other aggrieved employees would report to
20 work on the day of their scheduled shift, and Defendants failed to put Plaintiff and other
21 aggrieved employees to work or furnished less than half of their usual day's work, and did not
22 pay them Reporting Time Pay as required by the IWC Wage Orders.

23 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other aggrieved employees were entitled to receive all
25 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
26 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
27 meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other
28 aggrieved employees did not receive all meal periods or payment of one (1) additional hour of

1 pay at Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive
2 a timely, uninterrupted meal period. Defendants also required Plaintiff and other aggrieved
3 employees to be "on duty" during meal periods such that they have not been provided with
4 legally compliant meal periods under California law.

5 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Other aggrieved employees were entitled to receive all
7 rest breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved
8 employees' regular rate of pay when a rest break was missed. In violation of the Labor Code
9 and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest breaks
10 or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
11 regular rate of pay when a rest break was missed, interrupted, or on-duty. Defendants also
12 required Plaintiff and other aggrieved employees to be "on duty" during rest periods such that
13 they have not been provided with legally compliant rest periods under California law.

14 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and aggrieved employees were entitled to receive itemized
16 wage statements that accurately showed the following information pursuant to the Labor Code:
17 (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate
18 units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
19 deductions, provided that all deductions made on written orders of the employee may be
20 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
21 for which the employee is paid; (7) the name of the employee and only the last four digits of his
22 or her social security number or an employee identification number other than a social security
23 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at
25 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and aggrieved
26 employees were not provided with accurate itemized wage statements.

27 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and aggrieved employees were entitled to timely payment of

1 wages during their employment. In violation of the California Labor Code, Plaintiff and
2 aggrieved employees did not receive payment of all wages within permissible time periods.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and aggrieved employees who separated from Defendants
5 were entitled to timely payment of wages upon separation of employment. In violation of the
6 California Labor Code, Plaintiff and these aggrieved employees did not receive payment of all
7 wages including, but not limited to, unpaid minimum and overtime wages, Reporting Time
8 Pay, meal periods premiums, and rest break premiums within permissible time periods.

9 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known they had a duty to compensate Plaintiff and aggrieved employees, and
11 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
12 intentionally failed to do so in order to increase Defendants' profits.

13 **FIRST CAUSE OF ACTION**

14 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

15 30. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
18 provides for a civil penalty to be assessed and collected by the Labor and Workforce
19 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
20 agencies or employees for violation of the code may, as an alternative, be recovered through a
21 civil action brought by an aggrieved employee on behalf of himself or herself and other current
22 or former employees pursuant to the procedures specified in Labor Code § 2699.3.

23 32. For all provisions of the Labor Code except those for which a civil penalty is
24 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
25 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violations
26 and two hundred dollars (\$200.000) for each aggrieved employee per pay period for each
27 subsequent pay period in which Defendants violated these provisions of the Labor Code.

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1 33. Defendants' conduct with respect to Plaintiff and other aggrieved employees
2 violates numerous Labor Code sections including, but not limited to, the following:

- 3 a. Violation of Labor Code §§ 201-204, 210, 510, 1194, 1194.2, 1197, 1198,
4 and the IWC Wage Orders for failure to timely pay all earned wages
5 (including minimum wages, overtime wages, and Reporting Time Pay) owed
6 to Plaintiff and other aggrieved employees during employment and upon
7 separation of employment as herein alleged;
- 8 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
9 periods to Plaintiff and other aggrieved employees and failure to pay
10 premium wages for missed meal periods as herein alleged;
- 11 c. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to
12 Plaintiff and other aggrieved employees and failure to pay premium wages
13 for missed rest periods as herein alleged;
- 14 d. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
15 and complete records showing the hours worked daily by Plaintiff and other
16 aggrieved employees as herein alleged; and
- 17 e. Violation of Labor Code § 226 for failure to provide accurate itemized wage
18 statements to Plaintiff and other aggrieved employees as herein alleged.

19 34. Plaintiff is an "aggrieved employee" because he was employed by the alleged
20 violator and had one or more of the alleged violations committed against him, and therefore is
21 properly suited to represent the interests of all other aggrieved employees.

22 35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
23 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and
24 all other aggrieved employees under PAGA.

25 36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
26 recover civil penalties for violations of the Labor Code sections cited above.

27 37. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
28 herein.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for judgment against Defendants as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees.
2. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure § 1021.5; and
3. For such other relief as the Court deems just and proper.

Dated: May 5, 2020

LEBE LAW, APLC

By: _____



Jonathan M. Lebe

Attorney for Plaintiff Michael Smith

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: May 5, 2020

LEBE LAW, APLC

By: _____



Jonathan M. Lebe

Attorney for Plaintiff Michael Smith