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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

KELVIN JEFFERSON, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

MARIANI PACKING CO., INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2020-00279703

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

**(1) VIOLATION OF LABOR CODE § 226;
and**

**(2) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

DEMAND OVER \$25,000

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1 Plaintiff KELVIN JEFFERSON (“Plaintiff”) hereby submits this First Amended Class
2 Action Complaint against Defendants MARIANI PACKING CO., INC., a Corporation (“Defendant”
3 or the “Company”), and Does 1-50 (hereinafter collectively referred to as “Defendants”), individually
4 and on behalf of a class of all other similarly situated current and former employees of Defendants for
5 penalties and/or damages for failure to provide accurate itemized wage statements as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court’s jurisdiction under California Labor Code §226.

8 2. This Complaint challenges systemic illegal employment practices resulting in
9 violations of the California Labor Code against employees of Defendants.

10 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly and
11 severally have acted intentionally and with deliberate indifference and conscious disregard to the
12 rights of all employees by failing to provide accurate itemized wage statements to these employees.

13 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
14 engaged in, among other things a system of knowing and intentional violations of the California Labor
15 Code.

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the violations of the California Labor Code § 226 and
18 2698, *et seq.*

19 6. Venue is proper in Sacramento County because Plaintiff is a resident of the County of
20 Sacramento.

21 **PARTIES**

22 7. Plaintiff was hired by Defendants in or around 2013. On or about November 6, 2019,
23 Plaintiff’s employment ended. Plaintiff’s job title was Network Administrator. Plaintiff was and is a
24 victim of the policies, practices, and customs of Defendants complained of in this action in ways that
25 have deprived Plaintiff of the rights guaranteed by California Labor Code §§ 226 and 2698, *et seq.*

26 8. Plaintiff is informed and believes and based thereon alleges that Defendant was and is a
27 corporation doing business in the State of California. Plaintiff is informed and believes and based
28 thereon alleges Defendant manufactures and sells various food and probiotic products.

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

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

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

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

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

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

27 15. At all times herein mentioned, the acts and omissions of various Defendants, and each
28 of them, concurred and contributed to the various acts and omissions of each and all of the other

1 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
2 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
3 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
4 and omissions of each and all of the other Defendants in proximately causing the damages as herein
5 alleged.

6 **CLASS ACTION ALLEGATIONS**

7 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
8 California Code of Civil Procedure § 382, of the following class:

9 a. All of Defendant's past and present non-exempt California employees who
10 worked for Defendant and was paid any double time wages at any time from April 6, 2019,
11 through the present (the "CLASS")

12 17. **Numerosity and Ascertainability:** The members of the Class are so numerous that
13 joinder of all members would be impractical, if not impossible. The identity of the members of the
14 Class is readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
15 informed and believes and based thereon alleges that Defendants failed to provide accurate itemized
16 wage statements in violation of Labor Code § 226.

17 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
18 necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's
19 attorneys are ready, willing and able to fully and adequately represent the class and individual
20 Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and
21 currently have a number of wage-and-hour class actions pending in California courts.

22 19. Defendants uniformly administered a corporate policy, practice of failing to provide
23 accurate itemized wage statements in violation of Labor Code § 226 for Plaintiff and the Class.

24 20. **Common Question of Law and Fact:** There are predominant common questions of
25 law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
26 Defendants failing to provide accurate itemized wage statements in violation of Labor Code § 226 for
27 Plaintiff and the Class.

28 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the

1 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner
2 as the Class members. Plaintiff is a victim of Defendant's violation Labor Code § 226. Defendant's
3 wage statements issued to Plaintiff and Class Members did not identify the hourly rate for double time
4 wages. Whenever double time wages were paid, the wage statements issued to the employees did not
5 identify the double time rate of pay as 2 times the regular rate of pay. Rather, the double time rates
6 appeared as the regular hourly rate of pay. As such, Plaintiff is a member of the Class and has
7 suffered the alleged violations of California Labor Code § 226.

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

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

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

1 large to warrant vigorous individual prosecution considering all of the concomitant costs and
2 expenses.

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

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

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 226**

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

14 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as though
15 fully set forth herein.

16 28. Defendants failed in their affirmative obligation to provide accurate itemized wage
17 statements. Labor Code § 226 requires that an employer provide an itemized wage statement every
18 time wages are paid to an employee. Defendant's wage statements issued to Plaintiff and Class
19 Members did not identify the hourly rate for double time wages. Whenever double time wages were
20 paid, the wage statements issued to the employees did not identify the double time rate of pay as 2
21 times the regular rate of pay. Rather, the double time rates appeared as the regular hourly rate of pay.
22 Plaintiff is informed and believes and based thereon alleges that all class members received similarly
23 unlawful wage statements.

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

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**(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL
DEFENDANTS)**

31. Plaintiff brings this cause of action as a proxy for the State of California pursuant to the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*, and in this capacity seeks penalties on behalf of the State of California and all similarly aggrieved employees for the violations of Labor Code §226 for the time period of May 26, 2019, through the present.

33. On or about May 26, 2020, Plaintiff submitted written notice of these violations to the Labor Workforce Development Agency (the “LWDA”) and via certified mail to Defendant. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether it intends to investigate the violations of the Labor Code. As such, Plaintiff is permitted to proceed on his PAGA claims in this Court and, accordingly, seeks all applicable civil penalties pursuant to Labor Code §§ 226.3 and 2699, as well as costs and attorneys’ fees.

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set

1 forth in California Labor Code § 226, and for costs and attorneys' fees;

2 5. Upon the Second Cause of Action, for all applicable civil penalties under Labor Code
3 §§ 226.3 and 2699, as well as attorney's fees and costs;

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

6 7. For such other and further relief as the Court may deem just and proper.
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8 DATED: July 27, 2020

DIVERSITY LAW GROUP, P.C.

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10 By:  _____
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PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St., Suite 1250, Los Angeles, CA 90071.

On July 27, 2020, I served the foregoing document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

Mark Allen Mariani
C/O Mariani Packing Co., Inc.
500 Crocker Dr
Vacaville, CA 95688

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 X

BY MAIL

 X As follows: I am “readily familiar” with the practice of Choi & Associates, Attorneys at Law for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence placed in the outgoing mail tray in my office for collection would be deposited in the United States Mail that same day in the ordinary course of business.

BY PERSONAL SERVICE

I caused such envelope to be delivered by hand to the offices of the addressee.

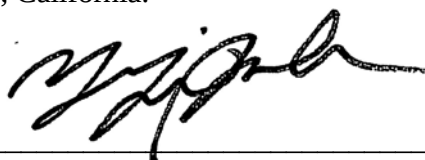
 X (State)

I declare under penalty of perjury that the foregoing is true and correct.

_____ (Federal)

I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 27, 2020, at Los Angeles, California.



Michelle Lee