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

MARK WARD, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SEAGATE US LLC, a Delaware limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **20CV368917**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226(a);**
- (2) VIOLATION OF CAL. LABOR CODE §§ 201-203; AND**
- (3) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Mark Ward (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant Seagate US LLC (“Defendant”), and Does 1
3 through 50 (collectively, “Defendants”), as an individual and on behalf of all other similarly
4 situated current and former employees of Defendants for penalties and/or damages under the
5 California Labor Code for failure to pay sick pay at the regular rate of pay and failure to provide
6 accurate itemized wage statements, as follows:

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
9 201-203, 226(a), 246, and 2698 *et seq.*, and the California Industrial Welfare Commission’s
10 (“IWC”) Wage Orders.

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

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees failing to pay sick pay at the regular rate of pay and by
16 failing to keep accurate records as to Plaintiff and other employees.

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

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of California Labor Code §§ 201-
23 203, 226(a), 246, and 2698 *et seq.*

24 6. Venue is proper in Santa Clara County because Defendant operates a business
25 location and is headquartered in this County.

26 **PARTIES**

27 7. Plaintiff is a former employee of Defendant. From in or about January 2015 until
28 on or about May 18, 2020, Plaintiff worked for Defendant as an engineer. Throughout his

1 employment with Defendant, Plaintiff was a non-exempt employee, and was paid hourly.

2 8. During his employment with Defendant, Plaintiff was routinely paid Shift OT
3 wages.

4 9. Additionally, during his employment with Defendant, Plaintiff was routinely paid
5 various non-discretionary incentive wages, including without limitation, Shift Premium wages.
6 Plaintiff was also paid wages for sick time during his employment with Defendant.

7 10. Plaintiff was and is the victim of the policies, practices, and customs of
8 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
9 by California Labor Code §§ 201-203, 226(a), 246, and 2698 *et seq.*, and the applicable IWC
10 Wage Orders.

11 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant was
12 and is a Delaware limited liability company doing business in the State of California, and in the
13 County of Santa Clara. Defendant is in the business of manufacturing and distributing hard
14 drives and storage solutions.

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

18 13. As such, and based upon all the facts and circumstances incident to Defendants'
19 business in California, Defendants are subject to California Labor Code §§ 201-203, 226(a), 246,
20 and 2698, *et seq.*, and the IWC Wage Orders.

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

28 15. At all times herein mentioned, each of said Defendants participated in the doing

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants and employees of each of the other
3 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
4 acting within the course and scope of said agency and employment.

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

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

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

22 CLASS ACTION ALLEGATIONS

23 19. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
24 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes:

25 a. All current and former non-exempt employees of Defendants in the State
26 of California who were paid Shift OT wages, at any time during April 6, 2019, to the present (the
27 “Shift OT Wage Statement Class”);

28 b. All current and former non-exempt employees of Defendants in the State

1 of California who were paid Shift Premium wages, at any time during April 6, 2019, to the
2 present (the “Shift Premium Wage Statement Class”); and

3 c. All non-exempt employees of Defendants in the State of California who
4 were paid non-discretionary incentive remuneration, including without limitation, Shift Premium
5 wages, and sick pay in the same workweek, and whose employment ended (either voluntarily or
6 involuntarily) at any time from April 6, 2017, through the present (the “Sick Pay Class”).

7 20. Plaintiff reserves the right to propose additional classes and/or subclasses, and/or
8 amend the above class definitions upon further discovery and investigation.

9 21. **Numerosity:** The members of the Classes are so numerous that joinder of all
10 members would be impractical, if not impossible. The identity of the class members is readily
11 ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed
12 and believes, and based thereon alleges, that Defendant: (a) failed to pay employees sick pay at
13 the regular rate of pay in violation of Labor Code §§ 201-203 and 246; and (b) failed to provide
14 accurate itemized wage statements in violation of Labor Code § 226(a).

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

21 23. Defendants uniformly administered a corporate policy and practice of: (a) failing
22 to pay employees sick pay at the regular rate of pay in violation of Labor Code §§ 201-203 and
23 246; and (b) failing to provide accurate itemized wage statements in violation of Labor Code §
24 226(a).

25 24. Plaintiff is informed and believes, and based thereon alleges, that this corporate
26 conduct is accomplished with the advance knowledge and designed intent to willfully and
27 intentionally fail to accurately record and identify proper hourly rates of pay and number of
28 hours worked.

1 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
3 Labor Code §§ 201-203, 226(a), and 246, and the applicable IWC Wage Orders.

4 26. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst Plaintiff and the claims of the Classes
6 concerning Defendants' policy and practice of: (a) failing to pay employees sick pay at the
7 regular rate of pay in violation of Labor Code §§ 201-203 and 246; and (b) failing to provide
8 accurate itemized wage statements in violation of Labor Code § 226(a).

9 27. **Typicality:** The claims of Plaintiff are typical of the claims of all class members
10 in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as
11 class members. As with other Sick Pay Class Members, Plaintiff routinely earned non-
12 discretionary incentive wages, such as Shift Premium wages, that increased Plaintiff's regular
13 rate of pay. However, whenever sick pay was paid to Plaintiff, it was paid at Plaintiff's base rate
14 of pay rather than the correct, higher regular rate of pay that included any non-discretionary
15 incentive wages. To date, Plaintiff has yet to receive the underpaid wages owed to him. Further,
16 as with other Shift OT and Shift Premium Wage Statement Class Members, whenever Shift OT
17 and/or Shift Premium wages were paid, the corresponding wage statements issued to Plaintiff
18 and Class Members violated Labor Code § 226(a). In this regard, whenever Shift OT and/or
19 Shift Premium wages were paid to Plaintiff, Defendants failed to identify both the applicable
20 hourly rate of pay and the number of hours used to calculate such wages on Plaintiff's
21 corresponding wage statements. As such, Plaintiff is a member of the Classes and has suffered
22 the alleged violations of California Labor Code §§ 201-203, 226(a), and 246.

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

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

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

20 31. Such a pattern, practice and uniform administration of corporate policy regarding
21 illegal employee compensation described herein is unlawful and creates an entitlement to
22 recovery by Plaintiff and the Classes identified herein, in a civil action, for applicable penalties
23 and/or damages, reasonable attorneys' fees, and costs of suit according to California Labor Code
24 §§ 201-203, 218.5, 226(a), and 1194, and California Code of Civil Procedure § 1021.5.

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

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226(a)**

3 **(BY PLAINTIFF AND THE SHIFT OT AND SHIFT PREMIUM WAGE STATEMENT**
4 **CLASSES AGAINST ALL DEFENDANTS)**

5 33. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 34. Labor Code § 226(a) requires employers to provide itemized wage statements to
8 its employees that identify accurate information, including without limitation, all applicable
9 hourly rates of pay in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate. *See* Cal. Lab. Code § 226(a)(9). Defendants, as a matter of policy
11 and practice, failed in its affirmative obligation to provide accurate itemized wage statements to
12 Plaintiff and Class Members, in violation of Labor Code § 226(a).

13 35. Specifically, Defendants violated Labor Code § 226(a)(9) by failing to identify
14 the applicable hourly rate of pay and corresponding hours worked whenever Shift OT and/or
15 Shift Premium wages were paid. Instead, whenever said Shift OT and/or Shift Premium wages
16 were paid to Plaintiff and Class Members, Defendants blatantly omit both the applicable hourly
17 rates of pay and hours worked used to calculate those wages on the corresponding wage
18 statements.

19 36. The issuance of inaccurate wage statements caused “injury” under Labor Code §
20 226(e) to Plaintiff and Class Members as they cannot accurately verify and/or calculate their
21 wages. Without identifying the hourly rates of pay and hours worked for Shift OT and Shift
22 Premium wages on the wage statements, Plaintiff and Class Members are unable to determine
23 whether they were accurately paid those wages during each particular pay period based on
24 information provided in the four corners of the wage statements alone.

25 37. Such a pattern, practice and uniform administration of corporate policy as
26 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
27 Members identified herein, in a civil action, for all damages or penalties pursuant to Labor Code
28 § 226, including interest thereon, attorneys’ fees, and costs of suit according to the mandate of

1 California Labor Code § 226.

2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE §§ 201-203**

4 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

5 38. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 39. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
8 “calculated in the same manner as the regular rate of pay for the workweek in which the
9 employee uses paid sick time, whether or not the employee actually works overtime in that
10 workweek.”

11 40. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
12 employees be “calculated by dividing the employee’s total wages, not including overtime
13 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
14 of employment.”

15 41. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
16 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages,
17 including without limitation, Shift Premium wages, thereby increasing their regular rates of pay
18 to amounts that were higher than their base rates of pay. However, whenever sick pay was paid
19 to Plaintiff and Class Members, it was paid at their base rates of pay rather than the correct,
20 higher regular rates of pay, as required under Labor Code § 246.

21 42. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
22 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
23 Code § 203. Further, Plaintiff is informed and believes, and based thereon alleges, that such
24 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
25 Members whose employment has separated are entitled to waiting time penalties pursuant to
26 Labor Code §§ 201-203.

27 43. Such a pattern, practice and uniform administration of corporate policy regarding
28 illegal employee compensation as described herein is unlawful and creates an entitlement to

1 recovery by Plaintiff and Class Members identified herein, in a civil action, for the unpaid
2 balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according
3 to the mandate of California Labor Code §§ 201-203, 218.5, and 1194.

4 **THIRD CAUSE OF ACTION**

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

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

8 44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set forth herein.

10 45. Plaintiff brings this cause of action as a proxy for the State of California and in
11 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 10, 2019, through
12 the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), and 246, arising from
13 Defendants' following misconduct as alleged above: (a) failure to provide accurate itemized
14 wage statements to Plaintiff and Aggrieved Employees, in violation of Labor Code § 226(a); and
15 (b) failure to pay Plaintiff and Aggrieved Employees sick pay at the regular rate of pay, in
16 violation of Labor Code §§ 201-203 and 246.

17 46. Based on the above-stated Labor Code violations, Plaintiff is an "aggrieved
18 employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on
19 behalf of the State of California for violations committed against all similarly situated Aggrieved
20 Employees of Defendants.

21 47. On or about June 10, 2020, Plaintiff sent written notice to the California Labor &
22 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
23 203, 226(a), and 246, pursuant to Labor Code § 2698, *et seq.* As of the date of the filing of this
24 Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate
25 the Labor Code violations provided for in Plaintiff's written notice. In addition to the LWDA,
26 Plaintiff also sent his written notice to Defendants via certified mail according to Labor Code §
27 2699.3.

28 48. 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 §§ 201-203, 226(a), and 246,
2 for the time period 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 Classes;
 - 7 2. For an order appointing Plaintiff as the representative of the Classes as described
8 herein;
 - 9 3. For an order appointing Counsel for Plaintiff as Class counsel;
 - 10 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
11 California Labor Code § 226(a), and for costs and attorneys' fees;
 - 12 5. Upon the Second Cause of Action, for unpaid wages and/or penalties pursuant to
13 California Labor Code §§ 201-203, and for costs and attorneys' fees;
 - 14 6. Upon the Third Cause of Action, for the full amount of civil penalties according
15 to the PAGA, California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys'
16 fees;
 - 17 7. On all causes of action, for attorneys' fees and costs as provided by California
18 Labor Code §§ 218.5, 1194, and 2699, and California Code of Civil Procedure § 1021.5; and
 - 19 8. For such other and further relief the Court may deem just and proper.
- 20

21 DATED: August 5, 2020

DIVERSITY LAW GROUP, P.C.

22
23 By: 

Larry W. Lee

Mai Tulyathan

24 Attorneys for Plaintiff, the Class, and Aggrieved
25 Employees
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