

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Class

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

SUDECIA MARTINEZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FISHER & PAYKEL APPLIANCES, INC., a
California corporation; FISHER & PAYKEL
APPLIANCES USA HOLDINGS INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 30-2020-01153471-CU-OE-CXC

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

- (1) VIOLATION OF LABOR CODE
§ 226(A);**
- (2) VIOLATION OF LABOR CODE
§ 2698 *ET SEQ* (PRIVATE
ATTORNEY GENERAL ACT)**

Plaintiff SUDECIA MARTINEZ (“Martinez” or “Plaintiff”) hereby submits this First Amended Class Action Complaint against Defendants FISHER & PAYKEL APPLIANCES, INC., a California corporation; FISHER & PAYKEL APPLIANCES USA HOLDINGS INC., and DOES 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of the State of California for penalties and/or damages for violations of the California Labor Code, including

1 without limitation, failure to pay all employees their earned wages in a timely manner and
2 failure to comply with the requirements of Labor Code § 226, as follows:

3 **INTRODUCTION**

4 1. This action is within the Court's jurisdiction under California Labor Code
5 sections 226 and 2698 *et seq.*, the Private Attorneys General Act ("PAGA").

6 2. This complaint challenges systemic illegal employment practices resulting in
7 violations of the California Labor Code against employees of Defendants.

8 3. Plaintiff is informed and believes, and based thereon alleges, Defendants, jointly
9 and severally, have acted intentionally and with deliberate indifference and conscious
10 disregard to the rights of all employees by failing to pay all employees their earned wages in a
11 timely manner.

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

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the violations of the California Labor Code and
18 the PAGA.

19 6. Venue is proper because the Defendants do business in Orange County, and
20 Plaintiff performed her work in Costa Mesa, California.

21 **PARTIES**

22 7. Plaintiff began employment with Defendants in about September 2019, as a Job
23 Management Team member.

24 8. Plaintiff was and is the victim of the policies, practices, and customs of
25 Defendants complained of in this action in ways that have deprived her of the rights
26 guaranteed to her by California Labor Code sections 204, 226, and the PAGA.

27 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 herein mentioned Defendant Fisher & Paykel Appliances, Inc. and Defendant Fisher & Paykel

1 Appliances USA Holdings Inc. was and are corporations under the laws of the State of
2 California, and doing business in the State of California.

3 10. As such, and based upon all the facts and circumstances incident to Defendants'
4 business, Defendants are subject to California Labor Code sections 204 and 226.

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

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

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

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

28 15. At all times herein mentioned, the acts and omissions of various Defendants, and

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

7 **CLASS ACTION ALLEGATIONS**

8 16. **Definition:** The named individual Plaintiff class certification, pursuant to
9 California Code of Civil Procedure section 382. Plaintiff proposes the following Class:

- 10 a. All current and former employees of Defendants in the State of California
11 who were paid wages by Defendants at any time from July 31, 2019, to
12 the present.

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

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

24 19. Defendants uniformly administered a corporate policy, practice of: (a) failing to
25 provide proper payroll records in violation of Labor Code section 226. Plaintiff could not have
26 discovered this violation until Defendant claimed as a defense to its alleged violation of Labor
27 Code Section 204, that the pay period dates on its wage statements were not accurate.

28 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants had

1 a consistent and uniform policy, practice and procedure of willfully failing to comply with
2 Labor Code section 226.

3 21. **Common Question of Law and Fact:** There are predominant common
4 questions of law and fact and a community of interest amongst Plaintiff and the claims of the
5 Class concerning Defendants' policy and practice of: (a) failing to provide proper payroll
6 records in violation of Labor Code section 226.

7 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of
8 the Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and
9 typical manner as the Class Members. Plaintiff, as well as Class members, received inaccurate
10 wage statements from Defendants. Specifically, whenever wages were paid, the pay period
11 start and end dates on the wage statements were consistently inaccurate. Such inaccuracies
12 caused actual injury to Plaintiff and putative class members, as it precluded Plaintiff and
13 putative class members from accurately calculating their wages and/or knowing for which
14 week(s) they were being paid. Therefore, Plaintiff is a member of the Class and has suffered
15 the alleged violations of California Labor Code section 226.

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

22 24. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each
28 Class Member to pursue an individual remedy would also discourage the assertion of lawful

1 claims by employees who would be disinclined to file an action against their former and/or
2 current employer for real and justifiable fear of retaliation and permanent damage to their
3 careers at subsequent employment.

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

13 26. Such a pattern, practice and uniform administration of corporate policy regarding
14 illegal employee compensation described herein is unlawful and creates an entitlement to
15 recovery by Plaintiff and the Class identified herein, in a civil action, for inaccurate wage
16 statements, applicable penalties, reasonable attorneys' fees, and costs of suit according to the
17 mandate of California Labor Code sections 226 and Code of Civil Procedure section 1021.5.

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

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

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 226**

27 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANTS)**

28 29. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though

1 fully set forth herein.

2 30. Defendants failed in their affirmative obligation to provide accurate itemized
3 wage statements. Defendants, as a matter of policy and practice, intentionally failed to provide
4 accurate records to Plaintiff and the Class, in violation of Labor Code section 226.

5 31. Plaintiff and the Class earned wages from Defendant. As such, the wage
6 statements should have reflected the accurate inclusive dates of the pay period for which the
7 employee is paid, as well as other items set forth in California Labor Code section 226. As a
8 result of the intentional violations alleged herein, the wage statements provided to Plaintiff and
9 the Class failed to identify such information, including without limitation, the accurate
10 inclusive dates of the pay period for which the employee is paid. Specifically, Defendant has
11 claimed that it did not violate Labor Code § 204 because it paid employees within seven days
12 of the close of the pay period. However, as a result, the information included on wage
13 statements provided to the Class did not include accurate inclusive dates of the pay periods for
14 which the employees were being paid. Plaintiff could not have known of the inaccurate
15 inclusive pay period dates by looking at the wage statements themselves. The issuance of
16 inaccurate wage statements caused actual injury to Plaintiff and Class Members as they were
17 not able to accurately calculate their wages or know for which pay period they were being
18 paid, and thus were confused by the inaccurate pay period dates identified on wage statements.

19 32. Such a pattern, practice and uniform administration of corporate policy as
20 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class,
21 in a civil action, for all damages or penalties pursuant to Labor Code section 226, including
22 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
23 Code section 226.

24 **SECOND CAUSE OF ACTION**

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

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

28 34. Defendants failed in their affirmative obligation to timely pay wages to their

employees. Defendants, as a matter of policy and practice, paid their employees on a bi-weekly basis and thus are subject to the timing requirements of Labor Code § 204(d).

35. Pursuant to Labor Code section 204(d), all earned wages by such employees must be paid out by the seventh (7th) day following the closing of the pay period. As a pattern and practice, Defendants had an inconsistent policy of paying the wages of its employees on the thirteenth (13th) day or beyond following the close of the respective pay period, and thus, beyond the time periods as allowed pursuant to Labor Code section 204.

36. Defendant also violated Labor Code § 226(a)(6) because it failed to list the accurate inclusive dates of the pay period on wage statements for employees, including Plaintiff. Defendant has claimed as a defense to its alleged violation of Labor Code § 204, described above, that because it identified the wrong pay period start and end dates on its employees' wage statements, it actually did not violate Labor Code § 204. However, as a result, Defendant then violated Labor Code § 226(a)(6).

37. Plaintiff provided written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violation of California Labor Code section 204 pursuant to PAGA on June 3, 2020. On February 26, 2021, pursuant to the PAGA, Plaintiff provided amended notice to the LWDA of Defendant's violation of California Labor Code Section 226. To date, the LWDA has not provided written notice as to whether the LWDA intends to investigate Plaintiff's allegations. As such, Plaintiff has therefore complied with all notice and exhaustion requirements pursuant to PAGA.

38. Pursuant to Labor Code section 2699(a), the Plaintiff seeks recovery of all applicable civil penalties, for herself and on behalf of all Aggrieved Employees, for Defendants' violation of Labor Code section 204 and 226.

PRAYER FOR RELIEF

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

1. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;

1 2. Upon the Second Cause of Action, for civil penalties according to proof pursuant
2 to Labor Code section 2698 *et seq.*, and section 226.3;

3 3. On all causes of action, for attorney's fees and costs as provided by California
4 Labor Code sections 226, 226.3, and 2698 *et seq.* and Code of Civil Procedure section 1021.5;
5 and

6 4. For such other and further relief as the Court may deem just and proper.
7

8 DATED: April 22, 2021

DIVERSITY LAW GROUP, P.C.

9
10 By: _____

Larry W. Lee

11 Max W. Gavron

12 Attorneys for Plaintiff Sudecia Martinez
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On April 22, 2021, I served the following document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the One Legal E-Filing System at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.


Erika Mejia