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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BRANDEN BAGGOT, as a private attorney
general and as an individual and on behalf
of all others similarly situated,

Plaintiffs,

vs.

FOTO-KEM INDUSTRIES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.:

20STCV31051

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE §§ 201-204,
246
- (2) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND
- (3) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

On behalf of himself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Branden Baggot, submits this Class and Representative Action Complaint against Defendant, Foto-Kem Insutries, Inc., and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code sections 201-204 and 246.¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay sick pay at the regular rate of pay by no later than the payday for the next regular payroll period after sick leave was taken or upon termination of employment. Plaintiff and other employees routinely earned non-discretionary incentive wages such as shift premium wages, thus increasing employees’ regular rate of pay. However, when sick leave was taken in workweeks that employees earned non-discretionary incentive wages, it was paid at employees’ base rate of pay rather than the regular rate of pay. Nor were Plaintiff and other employees paid their unpaid sick pay wages at the ends of their employments. Defendants thus violate Sections 201-204 and 246.

3. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

4. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

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¹ Except as otherwise noted, all “Section” references are to the Labor Code.

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6. Venue is proper. Defendants are located in Los Angeles County. Plaintiff worked for Defendants in Burbank, California.

PARTIES

8. Plaintiff is informed and believes that Foto-Kem Industries, Inc. was and is a California corporation. Plaintiff is informed and believes that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204 and 246, and the UCL.

9. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

1 10. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees
3 of each of the other Defendants, as well as the agents of all Defendants, and were acting within
4 the course and scope of said agency and employment.

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

11 12. Plaintiff is informed and believes that at all times material hereto each of the
12 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in
13 proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within
14 the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

15 **CLASS ACTION ALLEGATIONS**

16 13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
17 certification of the following class: all current and former non-exempt employees of Defendants
18 in the State of California since April 6, 2016, who earned non-discretionary incentive wages,
19 including, but not limited to, shift premium wages, in workweeks that they took paid sick leave.

20 14. **Numerosity and Ascertainability:** The members of the Class are so numerous
21 that joinder of all members would be impractical, if not impossible. The identities of the
22 members of the Class are readily ascertainable by review of Defendants' records, including
23 payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204 and
24 246 against Plaintiff and other employees who took sick leave during workweeks in which they
25 also earned non-discretionary incentive wages such as shift premium wages.

26 15. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
27 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
28 attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class.

1 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and
2 continue to litigate numerous wage-and-hour class actions currently pending in California state
3 and federal courts.

4 16. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst the claims of Plaintiff and of the Class.
6 Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and
7 practice of failing to pay sick pay at the regular rate of pay by no later than the payday for the
8 next regular payroll period after sick leave was taken or upon termination of employment, in
9 violation of Sections 201-204 and 246.

10 17. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
11 Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other
12 members of the Class suffered. As with other members of the Class, Plaintiff was paid on an
13 hourly basis and routinely earned non-discretionary incentive wages such as shift premium
14 wages. When sick leave was taken in workweeks that Plaintiff earned non-discretionary
15 incentive wages, it was paid at Plaintiff's base rate of pay rather than the regular rate of pay. Nor
16 was Plaintiff paid his unpaid sick pay wages at the end of his employment. Plaintiff thus is a
17 member of the Class and has suffered the alleged violations of the Labor Code.

18 18. The Labor Code is broadly remedial in nature. Its laws serve an important public
19 interest in establishing minimum working conditions and requirements in California. These labor
20 standards protect employees from onerous terms and conditions of employment or exploitation
21 by employers who have superior economic and bargaining power.

22 19. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class make the class action format a particularly efficient and appropriate
24 procedure to redress the wrongs alleged herein. If each employee were required to file an
25 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
26 advantage since they 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 member of the Class to pursue an individual remedy would also discourage the assertion of

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

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

12 21. Defendants' pattern, practice, and uniform administration of corporate policy in
13 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern
14 will establish the rights of Plaintiff and the Class to recover unpaid wages, including interest
15 thereon, applicable penalties, reasonable attorneys' fees, and costs of suit, pursuant to Sections
16 203, 210, 218.5, and 248.5, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure
17 section 1021.5.

18 22. This action is brought for the benefit of the Class, which is commonly entitled to a
19 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The
20 Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

21 **FIRST CAUSE OF ACTION**

22 **Violation of Lab. Code §§ 201-204 and 246**

23 **(By Plaintiff and the Class Against All Defendants)**

24 23. The preceding paragraphs are re-alleged and incorporated by this reference.

25 24. Section 246 provides that an employee is entitled to sick pay wages for use of
26 accrued sick leave. An employer must calculate paid sick leave by using one of two calculations:
27 (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the
28 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not

1 the employee actually works overtime in that workweek,” or (ii) “Paid sick time for nonexempt
2 employees shall be calculated by dividing the employee’s total wages, not including overtime
3 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
4 of employment.” Consistent with Section 204, Section 246 also provides that an employer shall
5 provide payment for sick leave taken by an employee no later than the payday for the next
6 regular payroll period after the sick leave was taken.

7 25. Upon termination of employment, Section 203 provides that if an employer
8 willfully fails to pay due and owing wages in accordance with Sections 201 and 202, then the
9 wages of the employee shall continue as a penalty from the due date, and at the same rate until
10 paid, but the wages shall not continue for more than thirty (30) days. Section 201 provides if an
11 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
12 and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid
13 wages no later than 72 hours after an employee quits his or her employment, unless the employee
14 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
15 employee is entitled to his or her wages at the time of quitting. Section 204 generally provides
16 that wages are due and payable twice during each calendar month, on days designated in advance
17 by the employer as the regular paydays.

18 26. Defendants paid Plaintiff and the Class for sick leave at the incorrect rate of pay.
19 Defendants paid Plaintiff and the Class at the base hourly rate of pay, as opposed to the regular
20 rate of pay, which would take into account all non-discretionary incentive wages such as various
21 shift differential wages, or by dividing the employees’ total wages, not including overtime
22 premium pay, by the employees’ total hours worked in the full pay periods of the prior 90 days
23 of employment, as required by Section 246. This resulted in underpayments of sick pay to
24 Plaintiff and the Class. Because Defendants did not pay, or timely pay, Plaintiff and the Class all
25 owing and unpaid sick pay wages, Defendants violate Sections 201-204, 246, and other Labor
26 Code sections.

27 27. Defendants willfully failed to timely pay Plaintiff and the Class all their wages
28 due or to timely pay Plaintiff and the Class all their wages due upon the termination of their

1 employment within the times prescribed by Sections 201-204 and are therefore subject to
2 statutory penalties. On information and belief, Defendants were advised by skilled lawyers and
3 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's
4 allegations, especially since the California Supreme Court has explained that "[c]ourts have
5 recognized that 'wages' also include those benefits to which an employee is entitled as a part of
6 his or her compensation, including money, room, board, clothing, vacation pay, *and sick pay*."
7 *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Plaintiff
8 and other members of the Class thus are entitled to recover applicable penalties, including
9 waiting-time penalties for each day, up to a thirty (30) day maximum, pursuant to Section 203.

10 28. Such a pattern, practice, and uniform administration of corporate policy regarding
11 illegal employee compensation as described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class to unpaid wages, including interest thereon, applicable
13 penalties, attorneys' fees, and costs of suit.

14 SECOND CAUSE OF ACTION

15 Violation of Business and Professions Code §§ 17200 *Et Seq.*

16 (By Plaintiff and the Class Against All Defendants)

17 29. The preceding paragraphs are re-alleged and incorporated by this reference.

18 30. Plaintiff is informed and believes that at Defendants have engaged and continue to
19 engage in unfair and unlawful business practices in California by utilizing the employment
20 policies and practices alleged herein, including the failure to pay sick pay at the regular rate of
21 pay by no later than the payday for the next regular payroll period after sick leave was taken or
22 upon termination of employment, in violation of Sections 201-204 and 246.

23 31. Defendants' utilization of such unfair and unlawful business practices constitutes
24 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors,
25 as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum
26 working condition standards and conditions due to them under the Labor Code and applicable
27 IWC Wage Orders.

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1 32. Such a pattern, practice, and uniform administration of corporate policy regarding
2 illegal employee compensation as described herein is unlawful and creates an entitlement to
3 recovery by Plaintiff and the Class to full restitution of all monies withheld, acquired, or
4 converted by Defendants by means of the unfair practices complained of herein, including
5 interest thereon, attorneys' fees, and costs of suit.

6 **THIRD CAUSE OF ACTION**

7 **Violation of Labor Code §§ 2698 *Et Seq.***

8 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

9 33. The preceding paragraphs are re-alleged and incorporated by this reference.

10 34. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
11 §§ 2698 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of
12 California. In this capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-
13 204 and 246 committed since April 6, 2019, against all aggrieved employees. Under Section
14 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was
15 committed against Plaintiff as an employee of Defendants.

16 35. As stated herein, Defendants violate Sections 201-204 and 246 by failing to pay
17 sick pay at the regular rate of pay by no later than the payday for the next regular payroll period
18 after sick leave was taken or upon termination of employment. Plaintiff and other employees
19 routinely earned non-discretionary incentive wages such as shift premium wages, thus increasing
20 employees' regular rate of pay. However, when sick leave was taken in workweeks that
21 employees earned non-discretionary incentive wages, it was paid at employees' base rate of pay
22 rather than the regular rate of pay. Nor were Plaintiff and other employees paid their unpaid sick
23 pay wages at the ends of their employments.

24 36. On or about July 22, 2020, Plaintiff sent written notice to the Labor & Workforce
25 Development Agency ("LWDA") of specific facts and theories for Defendants' violations of
26 Sections 201-204 and 246. Plaintiff simultaneously sent written notice to Defendants via
27 certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded
28 nor indicated that it intends to investigate the allegations in the written notice.

37. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 201-204 and 246 against all aggrieved employees for the time period described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself 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;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including interest thereon, and penalties pursuant to Sections 203, 210, and 248.5, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys' fees;
6. Upon the Third Cause of Action for penalties according to proof pursuant to Sections 210, 248.5, and 2698 *et seq.*, and for costs and attorneys' fees;
7. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 248.5, or 2699, and Code of Civil Procedure section 1021.5; and
8. For such other and further relief that the Court may deem just and proper.

DATED: August 17, 2020

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff, the Class, and Aggrieved Employees