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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CARLOS MUNGUIA and JOSE ESQUIVEL, as
individuals and on behalf of all others similarly
situated, and as private attorneys general,

Plaintiffs,

vs.

BLUE LINE FOODSERVICE DISTRIBUTION,
INC., a Michigan corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2020-01157719-CU-OE-CXC

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF LAB. CODE §§ 510, 558,
1194**
- (2) VIOLATION OF LAB. CODE §§ 201-204,
246**
- (3) VIOLATION OF LAB. CODE § 226(a);**
- (4) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND**
- (5) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.***

DEMAND OVER \$25,000.00

On behalf of themselves and other similarly situated current and former employees of Defendants, and as proxies for the State of California, Plaintiffs—Carlos Munguia and Jose Esquivel—submit this Second Amended Class and Representative Action Complaint against Defendant, Blue Line Foodservice Distribution, 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 and other relief for Defendants’ violations of Labor Code sections 201-204, 226(a), 246, 510, 558, and 1194.¹

2. Plaintiffs are informed and believe that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay all overtime due, failing to pay all sick pay wages due, failing to timely pay all wages due during employment or upon the separation of employment, and failing to provide accurate itemized wage statements.

3. Defendants routinely fail to correctly calculate the regular rate of pay for purposes of paying overtime wages and sick pay wages to Plaintiff and other non-exempt employees. Specifically, when Defendants calculate the regular rate of pay, they fail to consider all non-discretionary compensation, including, without limitation, incentives/bonuses such as “XATA Pay.” Moreover, as a result of underpaid overtime and sick pay wages from Defendants’ failure to correctly calculate the regular rate of pay, Defendants also routinely fail to timely pay Plaintiff and other non-exempt employees all due wages or timely pay all due wages upon separation of employment. Likewise, as a result of underpaid overtime and sick pay wages from Defendants’ failure to correctly calculate the regular rate of pay, Defendants also routinely issue wage statements that fail to show accurate overtime wage rates, gross wages earned, and net wages earned. Defendants thus violate Sections 201-204, 226(a), 246, 510, 558, and 1194.

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

4. Defendants also routinely fail to provide accurate itemized wage statements to Plaintiffs and other employees who were paid overtime. Specifically, whenever employees were paid overtime wages, Defendants issued wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay. Rather, the overtime rate appeared as the base hourly rate of pay or one-half of the hourly rate of pay. In addition, whenever employees were paid overtime wages, Defendants issued wage statements that failed to list the accurate total hours worked. Instead, when the hours shown on the wage statements are added up, they do not add up to the actual total hours worked. Defendants thus violate Section 226(a) and owe applicable penalties to Plaintiffs and other employees.

5. Plaintiffs are informed and believe 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.

6. 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.

JURISDICTION AND VENUE

7. The Complaint seeks relief in excess of \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226(a), 246, 510, 558, and 1194, and of the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").

8. Venue is proper. Defendants are in Orange County. Plaintiffs worked for Defendants in Anaheim, California.

PARTIES

9. Plaintiff Munguia began working for Defendants in or about 2014 and worked in California for Defendants for 30 or more days within a year, until in or about August of 2020. Plaintiff Esquivel began working for Defendants in or about September of 2019 and worked in California for Defendants for 30 or more days within a year. Throughout their employments as truck drivers, Plaintiffs have been paid on an hourly basis as non-exempt employees, accrued and actually used sick leave, and earned non-discretionary incentive pay. Whenever overtime wages have been paid, Defendants have consistently issued Plaintiffs wage statements that identify the overtime rate as the

1 base hourly rate of pay or one-half of the hourly rate of pay. In addition, whenever overtime wages
2 have been paid, Defendants have also consistently issued Plaintiffs wage statements that show hours
3 that, when added up, do not add up to the actual total hours worked. Moreover, when Defendants
4 calculate Plaintiffs' regular rate of pay for overtime and sick pay wages, they fail to consider all non-
5 discretionary compensation, including, without limitation, incentives/bonuses such as "XATA Pay."
6 Plaintiffs are victims of the policies, practices, and customs of Defendants complained of in this action
7 in ways that have deprived them of the rights guaranteed by the Labor Code and the UCL.

8 10. Plaintiffs are informed and believe that Blue Line Foodservice Distribution, Inc. was and
9 is a Michigan corporation. Plaintiffs are informed and believe that at all times herein mentioned
10 Defendant and Does 1 through 50, are and were corporations, business entities, individuals, or
11 partnerships that are and were licensed to do business and actually doing business in the State of
12 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
13 subject to Section 201-204, 226(a), 246, 510, 558, and 1194, and the UCL.

14 11. Plaintiffs do not know the true names or capacities of the defendants sued herein as
15 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
16 sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true
17 names and capacities are known. Plaintiffs are informed and believe that each of said fictitious
18 defendants was responsible in some way for the matters alleged herein and proximately caused the
19 illegal employment practices, wrongs, and injuries complained of herein.

20 12. At all times herein mentioned, each of said Defendants participated in the doing of the
21 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
22 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
23 scope of said agency and employment.

24 13. Plaintiffs are informed and believe that at all times material hereto, each of said
25 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
26 each of the other Defendants and was acting within the course and scope of such agency, employment,
27 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
28

certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

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

CLASS ACTION ALLEGATIONS

15. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiffs seek class certification of (i) all current and former non-exempt employees of Defendants in the State of California who earned overtime or sick pay wages and non-discretionary compensation, including without limitation, incentives and bonuses, in the same workweek at any time since April 6, 2016 (the “Regular Rate Class”), and (ii) all current and former non-exempt employees of Defendants in the State of California who were paid overtime wages at any time since April 6, 2019 (the “Wage Statement Class”). The Regular Rate Class and Wage Statement Class are collectively referred to as the “Class.”

16. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs are informed and believe that Defendants violate Sections 510, 558, and 1194 by failing to pay all overtime due, Section 246 by failing to pay all sick pay wages due, and Section 226(a) by failing to provide accurate itemized wage statements.

17. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent Plaintiffs and the Class. Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

18. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiffs and of the Class. Plaintiffs are informed and believe that Defendants uniformly administer a corporate policy and practice of (i)

1 routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime and sick
2 pay wages to Plaintiff and other non-exempt employees by not accounting for all non-discretionary
3 compensation, including, without limitation, incentives and bonuses, and (ii) routinely failing to
4 provide accurate itemized wage statements that state all applicable hourly rates of pay, gross wages
5 earned, net wages earned, and total hours worked whenever non-exempt employees in California are
6 paid overtime wages.

7 19. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class
8 in that Plaintiffs suffered the alleged harms in a similar and typical manner as other members of the
9 Class suffered. As with other members of the Class, Plaintiffs were paid on an hourly basis. Whenever
10 overtime or sick pay wages were paid during their employments, Defendants consistently failed to
11 properly calculate Plaintiffs' regular rate of pay by not accounting for all non-discretionary
12 compensation, including, without limitation, incentives and bonuses. Moreover, Defendants
13 consistently issued Plaintiffs wage statements that identify the overtime rate as the base hourly rate of
14 pay or one-half of the hourly rate of pay. In addition, whenever overtime wages were paid, Defendants
15 also consistently issued Plaintiffs wage statements that show hours that, when added up, do not add up
16 to the actual total hours worked. Plaintiffs thus are members of the Class and have suffered the alleged
17 violations of the Labor Code.

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

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

1 against their former or current employer for real and justifiable fear of retaliation and permanent
2 damage to their careers at their current or subsequent employment.

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

11 23. Defendants' pattern, practice, and uniform administration of corporate policy in
12 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
13 establish the rights of Plaintiffs and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226(a),
14 233, 246, 510, 558, and 1194 and the applicable IWC Wage Order, the UCL, and Code of Civil
15 Procedure section 1021.5 to recover unpaid overtime, including interest thereon, applicable penalties,
16 reasonable attorneys' fees, and costs of suit.

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

20 **FIRST CAUSE OF ACTION**

21 **Violation of Labor Code §§ 510, 558, and 1194**

22 **(By Plaintiffs and the Regular Rate Class Against All Defendants)**

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

24 26. Section 510 requires an employer to pay employees overtime at a rate of one and one-
25 half the employee's regular rate of pay for any work exceeding eight hours in a workday or forty hours
26 in a workweek.

27 27. As a matter of policy and practice, Defendants permitted Plaintiffs and the Regular Rate
28 Class to work more than eight hours in a workday or 40 hours in a workweek without proper overtime

1 pay. Defendants routinely failed to correctly calculate the regular rate of pay for purposes of paying
2 overtime to Plaintiffs and the Regular Rate Class. Specifically, Defendants failed to properly calculate
3 the regular rate of pay by not accounting for all non-discretionary compensation, including, without
4 limitation, incentives and bonuses. For example, Plaintiffs received non-discretionary “XATA Pay”
5 wages that were not included in their regular rate of pay for purposes of calculating overtime.

6 28. Such a pattern, practice, and uniform administration of corporate policy is unlawful
7 under Section 510 and the applicable IWC Wage Order, and entitles Plaintiffs and the Regular Rate
8 Class to recover the unpaid overtime, including interest thereon, liquidated damages or penalties,
9 attorneys’ fees, and costs of suit.

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

20 30. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid
21 overtime to Plaintiffs and the Regular Rate Class. Based on Defendants’ failure to correctly calculate
22 overtime, Defendants routinely failed to timely pay Plaintiff and the Regular Rate Class all due wages
23 during employment or to timely pay all due wages upon separation of employment. On information and
24 belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates
25 of the Labor Code as it relates to Plaintiffs’ allegations. By not timely paying Plaintiffs and the Regular
26 Rate Class all due wages during employment and all due wages upon the separation of employment,
27 Defendants violated Sections 201-204 and owe applicable penalties, including waiting time penalties,
28 to Plaintiffs and other employees.

1 31. Such a pattern, practice, and uniform administration of corporate policy is unlawful
2 under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Regular
3 Rate Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs
4 of suit.

5 **SECOND CAUSE OF ACTION**

6 **Violation of Labor Code §§ 510, 558, and 1194**

7 **(By Plaintiffs and the Regular Rate Class Against All Defendants)**

8 32. The preceding paragraphs are re-alleged and incorporated by this reference.

9 33. Section 233 provides that an employer must permit an employee to use accrued sick
10 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
11 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to
12 Section 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
13 right to sick pay wages, which an employer must calculate and compensate based on one of two
14 calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the
15 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
16 employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees
17 shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the
18 employee's total hours worked in the full pay periods of the prior 90 days of employment." Under
19 Sections 204, 218, and 233, employees may sue to recover underpaid sick pay wages as damages.

20 34. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and the
21 Regular Rate Class at the incorrect rate of pay. Plaintiffs and the Regular Rate Class regularly use
22 accrued sick leave in workweeks in which they also earn non-discretionary incentives. As a matter of
23 policy and practice, Defendants pay sick pay wages to Plaintiffs and the Regular Rate Class at the base
24 hourly rate of pay, as opposed to the regular rate of pay, which would consider all non-discretionary
25 remuneration in addition to base hourly wages, or the rate resulting from dividing the employee's total
26 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
27 periods of the prior 90 days of employment. As a result, Defendants underpay sick pay wages to
28 Plaintiffs and the Regular Rate Class.

1 35. Section 204 provides that wages generally are due and payable twice during each
2 calendar month and are to be paid no later than the payday for the next regular payroll period.
3 Consistent with Section 204, Section 246 specifically requires that, upon use of accrued sick leave,
4 vested sick pay wages are due and to be paid no later than the payday for the next regular payroll period
5 after accrued sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer
6 discharges an employee, wages earned and unpaid at the time of discharge are due and payable
7 immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than
8 72 hours after an employee quits his or her employment, unless the employee has given 72-hour notice
9 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
10 quitting. The Labor Code penalizes untimely payments. For example, Section 203 provides that if an
11 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
12 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
13 wages shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for
14 violations of Section 204 and untimely payments during employment. Under Sections 203, 210, and
15 218, employees may sue to recover applicable penalties.

16 36. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
17 sick pay wages and thus do not timely pay Plaintiffs and the Regular Rate Class all owing and
18 underpaid sick pay wages. As a result, Defendants violate Sections 201-204 and 246, among other
19 Labor Code provisions. Plaintiffs is informed and believe that Defendants were advised by skilled
20 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs'
21 allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized
22 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
23 compensation, including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v.*
24 *Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants
25 willfully fail to timely pay Plaintiffs and the Regular Rate Class all sick pay wages due, Defendants are
26 subject to applicable penalties.

1 37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiffs and the Regular Rate Class to underpaid sick pay wages, including interest thereon,
3 applicable penalties, attorneys' fees, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **Violation of Labor Code § 226(a)**

6 **(By Plaintiffs, the Regular Rate Class, and the Wage Statement Class Against All Defendants)**

7 38. The preceding paragraphs are re-alleged and incorporated by this reference.

8 39. Section 226(a) requires employers to provide itemized wage statements to its employees
9 that show accurate information, including without limitation, all applicable hourly rates in effect during
10 the pay period, accurate overtime wage rates, gross wages earned, net wages earned, and the total hours
11 worked. Whenever Defendants pay overtime wages to Plaintiffs and the Wage Statement Class,
12 Defendants fail to provide accurate itemized wage statements to Plaintiffs, the Regular Rate Class,
13 and/or the Wage Statement Class in violation of Section 226(a).

14 40. As a matter of policy and practice, whenever Plaintiffs, the Regular Rate Class and/or
15 the Wage Statement Class are paid overtime wages, Defendants fail to provide accurate itemized wage
16 statements in violation of Section 226(a). As alleged herein, Defendants routinely underpay overtime to
17 Plaintiff and the Regular Rate Class. As a result, and as a matter of policy and practice, Plaintiff and the
18 Regular Rate Class are not provided with wage statements listing accurate overtime wage rates, gross
19 wages earned, or net wages earned. Defendants thus violate Section 226(a) and owe applicable
20 penalties to Plaintiffs and other employees.

21 41. As a matter of policy and practice, Defendants also routinely fail to provide accurate,
22 itemized wage statements that state all applicable hourly rates of pay and the total hours worked to
23 Plaintiffs and the Wage Statement Class. Specifically, whenever Defendants pay overtime wages,
24 Defendants issue wage statements that do not identify the overtime rate as 1.5 times the regular rate of
25 pay. Rather, the overtime rate appears as the base hourly rate of pay or one-half of the hourly rate of
26 pay. In addition, whenever Defendants pay overtime wages, Defendants issue wage statements that fail
27 to list the accurate total hours worked. Instead, when the hours shown on the wage statements are added
28

up, they do not add up to the actual total hours worked. Defendants thus additionally violate Section 226(a) and owe applicable penalties to Plaintiffs and other employees.

42. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Section 226 and entitles Plaintiffs, the Regular Rate Class and the Wage Statement Class to recover applicable penalties, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

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

(By Plaintiffs and the Regular Rate Class Against All Defendants)

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

44. Plaintiffs are informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein in violation of Sections 246, 510, 558, and 1194.

45. As alleged herein, Defendants uniformly administer a corporate policy and practice of routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime and sick pay wages to Plaintiffs and the Regular Rate Class. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiffs and the Regular Rate Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

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

FIFTH CAUSE OF ACTION

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

(By Plaintiffs and Aggrieved Employees Against All Defendants)

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

48. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiffs bring this cause of action as proxies for the State of California. In this capacity, Plaintiffs seek penalties for Defendants’ violations of Sections 201-204, 226(a), 510, 558, and 1194 committed since April 6, 2019, against all aggrieved employees.

49. As stated herein, whenever non-exempt employees in California are paid overtime wages, Defendants violate Sections 201-204, 226(a), 510, 558, and 1194 by (i) routinely failing to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation, including without limitation, incentives and bonuses, and (ii) routinely failing to provide accurate, itemized wage statements that state all applicable hourly rates of pay and total hours worked or show accurate overtime wage rates, gross wages earned, and net wages earned. Under Section 2699(c), Plaintiffs are “aggrieved employees,” as one or more of the alleged violations has been committed against Plaintiffs as employees of Defendants.

50. On or about August 25, 2020, Plaintiffs sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 226(a). Subsequently, Plaintiffs sent additional written notices to the LWDA of specific facts and theories for Defendants’ violations of Sections 246, 510, 558, and 1194. On each occasion, Plaintiffs simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in any written notice.

51. As such, pursuant to Section 2699(a) and (f), Plaintiffs seek recovery of all applicable civil penalties for Defendants' violations of Sections 201-204, 226(a), 246, 510, 558, and 1194 against all aggrieved employees for the alleged period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment for themselves 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 Plaintiffs as the representatives of the Class;
3. For an order appointing Counsel for Plaintiffs as Class Counsel;

1 4. Upon the First Cause of Action for unpaid overtime, including interest thereon, and
2 penalties pursuant to Sections 201-204, 510, 1194, and 1198, and for costs and attorneys' fees;

3 5. Upon the Second Cause of Action for damages, including sick pay wages and interest
4 thereon, penalties, and costs and attorneys' fees, pursuant to Sections 201-204, 210, 218, 218.5, 218.6,
5 233, 246, and 248.5;

6 6. Upon the Third Cause of Action for penalties pursuant to Section 226, and for costs and
7 attorneys' fees;

8 7. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
9 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
10 and for costs and attorneys' fees;

11 8. Upon the Fourth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g), ,
12 and for costs and attorneys' fees;

13 9. Upon each cause of action for attorneys' fees and costs as provided by Sections 226,
14 1194, and 2699, and Code of Civil Procedure section 1021.5; and

15 10. For such other and further relief that the Court may deem just and proper.
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17 DATED: September 8, 2021

DIVERSITY LAW GROUP, P.C.

18 By: 
19 _____

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiffs
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On September 8, 2021, I served the following document(s) described as: **SECOND**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested
12 parties in this action as follows:

13 Gregory C. Cheng
14 Gregory.cheng@ogletree.com
15 Carolyn B. Hall
16 Carolyn.hall@ogletree.com
17 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
18 One Embarcadero Center, Suite 900
19 San Francisco, California 94111
20 *Attorneys for Defendant*
21 *Blue Line Foodservice Distribution*

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

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on September 8, 2021, at Los Angeles, California.

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