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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

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

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

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

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

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

6 5. Plaintiffs are informed and believe that Defendants have engaged in, among other
7 things, a system of willful violations of the Labor Code by creating and maintaining policies, practices,
8 and customs that knowingly deny its employees the above stated rights and benefits.

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

12 JURISDICTION AND VENUE

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

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

18 PARTIES

19 9. Plaintiff Munguia began working for Defendants in or about 2014 until in or about
20 August of 2020. Plaintiff Esquivel began working for Defendants in or about September of 2019.
21 Throughout their employments as truck drivers, Plaintiffs have been paid on an hourly basis as non-
22 exempt employees. Whenever overtime wages have been paid, Defendants have consistently issued
23 Plaintiffs wage statements that identify the overtime rate as the base hourly rate of pay or one-half of
24 the hourly rate of pay. In addition, whenever overtime wages have been paid, Defendants have also
25 consistently issued Plaintiffs wage statements that show hours that, when added up, do not add up to
26 the actual total hours worked. Moreover, when Defendants calculate Plaintiffs' regular rate of pay, they
27 fail to consider all non-discretionary compensation, including, without limitation, incentives/bonuses
28 such as "XATA Pay." Plaintiffs are victims of the policies, practices, and customs of Defendants

1 complained of in this action in ways that have deprived them of the rights guaranteed by the Labor
2 Code and the UCL.

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

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

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

19 13. Plaintiffs are informed and believe that at all times material hereto, each of said
20 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
21 each of the other Defendants and was acting within the course and scope of such agency, employment,
22 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
23 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
24 omissions of the acting Defendants.

25 14. Plaintiffs are informed and believe that at all times material hereto each of the
26 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately
27 causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope
28 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 wages and non-discretionary compensation, including without limitation, incentives and bonuses, in the same workweek at any time since April 6, 2016 (the “Overtime 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 Overtime 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, 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) routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff and other non-exempt employees 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, gross wages earned, net wages earned, and total hours worked whenever non-exempt employees in California are paid overtime wages.

19. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class in that Plaintiffs suffered the alleged harms in a similar and typical manner as other members of the

1 Class suffered. As with other members of the Class, Plaintiffs were paid on an hourly basis. Whenever
2 overtime wages were paid during their employments, Defendants consistently failed to properly
3 calculate Plaintiffs' regular rate of pay by not accounting for all non-discretionary compensation,
4 including, without limitation, incentives and bonuses. Moreover, Defendants consistently issued
5 Plaintiffs wage statements that identify the overtime rate as the base hourly rate of pay or one-half of
6 the hourly rate of pay. In addition, whenever overtime wages were paid, Defendants also consistently
7 issued Plaintiffs wage statements that show hours that, when added up, do not add up to the actual total
8 hours worked. Plaintiffs thus are members of the Class and have suffered the alleged violations of the
9 Labor Code.

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

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

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

members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

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

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

FIRST CAUSE OF ACTION

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

(By Plaintiffs and the Overtime Class Against All Defendants)

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

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

27. As a matter of policy and practice, Defendants permitted Plaintiffs and the Overtime Class to work more than eight hours in a workday or 40 hours in a workweek without proper overtime pay. Defendants routinely failed to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiffs and the Overtime Class. Specifically, Defendants failed to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation, including, without limitation, incentives and bonuses. For example, Plaintiffs received non-discretionary "XATA Pay" wages that were not included in their regular rate of pay for purposes of calculating overtime.

28. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Section 510 and the applicable IWC Wage Order, and entitles Plaintiffs and the Overtime Class

1 to recover the unpaid overtime, including interest thereon, liquidated damages or penalties, attorneys'
2 fees, and costs of suit.

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

13 30. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid
14 overtime to Plaintiffs and the Overtime Class. Based on Defendants' failure to correctly calculate
15 overtime, Defendants routinely failed to timely pay Plaintiff and the Overtime Class all due wages
16 during employment or to timely pay all due wages upon separation of employment. On information and
17 belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates
18 of the Labor Code as it relates to Plaintiffs' allegations. By not timely paying Plaintiffs and the
19 Overtime Class all due wages during employment and all due wages upon the separation of
20 employment, Defendants violated Sections 201-204 and owe applicable penalties, including waiting
21 time penalties, to Plaintiffs and other employees.

22 31. Such a pattern, practice, and uniform administration of corporate policy is unlawful
23 under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Overtime
24 Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

25 **SECOND CAUSE OF ACTION**

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

27 **(By Plaintiffs, the Overtime Class, and the Wage Statement Class Against All Defendants)**

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

1 33. Section 226(a) requires employers to provide itemized wage statements to its employees
2 that show accurate information, including without limitation, all applicable hourly rates in effect during
3 the pay period, accurate overtime wage rates, gross wages earned, net wages earned, and the total hours
4 worked. Whenever Defendants pay overtime wages to Plaintiffs and the Wage Statement Class,
5 Defendants fail to provide accurate itemized wage statements to Plaintiffs, the Overtime Class, and/or
6 the Wage Statement Class in violation of Section 226(a).

7 34. As a matter of policy and practice, whenever Plaintiffs, the Overtime Class and/or the
8 Wage Statement Class are paid overtime wages, Defendants fail to provide accurate itemized wage
9 statements in violation of Section 226(a). As alleged herein, Defendants routinely underpay overtime to
10 Plaintiff and the Overtime Class. As a result, and as a matter of policy and practice, Plaintiff and the
11 Overtime Class are not provided with wage statements listing accurate overtime wage rates, gross
12 wages earned, or net wages earned. Defendants thus violate Section 226(a) and owe applicable
13 penalties to Plaintiffs and other employees.

14 35. As a matter of policy and practice, Defendants also routinely fail to provide accurate,
15 itemized wage statements that state all applicable hourly rates of pay and the total hours worked to
16 Plaintiffs and the Wage Statement Class. Specifically, whenever Defendants pay overtime wages,
17 Defendants issue wage statements that do not identify the overtime rate as 1.5 times the regular rate of
18 pay. Rather, the overtime rate appears as the base hourly rate of pay or one-half of the hourly rate of
19 pay. In addition, whenever Defendants pay overtime wages, Defendants issue wage statements that fail
20 to list the accurate total hours worked. Instead, when the hours shown on the wage statements are added
21 up, they do not add up to the actual total hours worked. Defendants thus additionally violate Section
22 226(a) and owe applicable penalties to Plaintiffs and other employees.

23 36. Such a pattern, practice, and uniform administration of corporate policy is unlawful
24 under Section 226 and entitles Plaintiffs, the Overtime Class and the Wage Statement Class to recover
25 applicable penalties, attorneys' fees, and costs of suit.
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1 **THIRD CAUSE OF ACTION**

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

3 **(By Plaintiffs and the Overtime Class Against All Defendants)**

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

22 **(By Plaintiffs and Aggrieved Employees Against All Defendants)**

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

24 42. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
25 *et seq.* ("PAGA"), Plaintiffs bring this cause of action as proxies for the State of California. In this
26 capacity, Plaintiffs seek penalties for Defendants' violations of Sections 201-204, 226(a), 510, 558, and
27 1194 committed since April 6, 2019, against all aggrieved employees.

43. 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.

44. 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, on or about August 31, 2020, Plaintiffs sent an additional written notice to the LWDA of specific facts and theories for Defendants’ violations of Sections 510, 558, and 1194. On both occasions, 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 either written notice.

45. 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), 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;
4. Upon the First Cause of Action for unpaid overtime, including interest thereon, and penalties pursuant to Sections 201-204, 510, 1194, and 1198, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;

6. Upon the Third 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;

7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections 210, 226.3, 558, and 2699, and for costs and attorneys' fees;

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

9. For such other and further relief that the Court may deem just and proper.

DATED: September 24, 2020

DIVERSITY LAW GROUP, P.C.

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