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20CV371353
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

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

Plaintiffs,

vs.

HCL AMERICA, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: **20CV371353**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Jordan McDonald, submits this Class and
3 Representative Action Complaint against HCL America, Inc., and Does 1 through 50 (collectively,
4 “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 201-
9 203 and 226(a).¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to provide accurate itemized wage statements and by failing to timely pay all wages due upon
13 the separation of employment.

14 3. Defendants routinely failed to provide complete and accurate itemized wage statements
15 to Plaintiff and other non-exempt employees. Specifically, Defendants did not furnish accurate itemized
16 wage statements showing either (i) the total hours worked by the employee or (ii) the applicable hourly
17 rates and the corresponding number of hours worked at each hourly rate by the employee. Instead, the
18 wage statements showed “86.67” hours, regardless of how many hours were worked, and showed the
19 gross wages earned, without any hourly rates or corresponding number of hours worked at the rates.
20 Defendants thus violate Section 226(a).

21 4. Defendants also routinely failed to pay all earned wages in a timely manner to Plaintiff
22 and other employees. Specifically, Defendants do not pay final wages immediately upon, or within
23 three days of, the termination of employment. For example, Plaintiff’s employment was involuntarily
24 terminated on September 24, 2020, but Plaintiff was not paid his final wages (including accrued but
25 unused vacation) until September 29, 2020. Moreover, Defendants subsequently reversed the direct
26 deposit, and Plaintiff still has not been paid his final wages. Defendants thus violate Sections 201-203.

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28

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

5. 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.

JURISDICTION AND VENUE

6. The Complaint seeks more than \$25,000.00 in relief. The Court has jurisdiction of Defendants' violations of Sections 201-203 and 226(a).

7. Venue is proper as HCL America, Inc. is in Sunnyvale, California.

PARTIES

8. Plaintiff began working for Defendants in or about October of 2018. Plaintiff was employed as an IT Analyst as a non-exempt employee. Throughout his employment, Defendants failed to provide Plaintiff with complete and accurate itemized wage statements. Instead, Plaintiff was provided with wage statements that showed “86.67” hours, regardless of how many hours he actually worked. The wage statements also showed gross wages earned, without any hourly rates or corresponding number of hours worked at the rates. Moreover, when Plaintiff was informed his employment was terminated on September 24, 2020, Defendants did not pay Plaintiff his final wages immediately upon, or within three days of, the termination of employment. In fact, Plaintiff still has not been paid his final wages (including accrued but unused vacation). While Defendants purportedly paid Plaintiff his final wages late on September 29, 2020, Defendants subsequently reversed the direct deposit, and Plaintiff still has not been paid his final wages. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code.

9. Plaintiff is informed and believes that HCL America, Inc., was and is a California corporation and that at all times herein mentioned it and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that were and are 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 201-203 and 226(a).

10. 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.

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

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

13. Plaintiff is informed and believes 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

14. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California since April 12, 2019 (the "Wage Statement Class"), and (ii) all employees of Defendants in the State of California whose employment with Defendants ended at any time since April 12, 2017 (the "Late Pay Class"). The Wage Statement Class and the Late Pay Class are collectively referred to as the "Class."

15. **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. Plaintiff is

1 informed and believes that Defendants violated Section 226(a) by failing to provide accurate itemized
2 wage statements and Sections 201-203 by failing to timely pay all wages due upon the separation of
3 employment.

4 16. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
5 represent fairly and adequately the interests of the Class. Plaintiff's attorneys are ready, willing, and
6 able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and
7 settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class
8 actions currently pending in California state and federal courts.

9 17. **Common Question of Law and Fact:** There are predominant common questions of law
10 and fact and a community of interest among the claims of Plaintiff and of the Class. Plaintiff is
11 informed and believes that Defendants uniformly administer a corporate policy and practice of
12 routinely failing to furnish accurate itemized wage statements showing either (i) the total hours worked
13 by the employee or (ii) the applicable hourly rates and the corresponding number of hours worked at
14 each hourly rate by the employee, and by routinely failing to pay final wages immediately upon, or
15 within three days of, the termination of employment

16 18. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
17 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
18 Class suffered. As with other members of the Wage Statement Class, Plaintiff was provided with wage
19 statements that failed to show how many hours he actually worked or the hourly rates he was paid for
20 any hours worked. As with other members of the Late Pay Class, Plaintiff was not paid his final wages
21 immediately upon, or within three days of, the termination of employment. Plaintiff thus is a member
22 of the Class and has suffered the alleged violations of the Labor Code.

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

27 20. The nature of this action and the format of laws available to Plaintiff and members of the
28 Class make the class action format a particularly efficient and appropriate procedure to redress the

wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

21. The prosecution of separate actions by individual members of the Class, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests 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.

22. 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 Plaintiff and the Class under Sections 201-203 and 226(a), applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

FIRST CAUSE OF ACTION

Violation of Labor Code § 226(a)

(By Plaintiff and the Wage Statement Class Against All Defendants)

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

24. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, (i) the total hours worked by the employee and (ii) the applicable hourly rates and the corresponding number of hours worked at each hourly rate by the employee.

1 25. As a matter of policy and practice, whenever Defendants issued wage statements to
2 Plaintiff and the Wage Statement Class, Defendants failed to provide complete and accurate itemized
3 wage statements that show the total hours worked by the employee, in violation of Section 226(a).
4 Specifically, the wage statements showed “86.67” hours, regardless of how many hours were worked.
5 Defendants thus violate Section 226(a).

6 26. Also as a matter of policy and practice, whenever Defendants issued wage statements to
7 Plaintiff and the Wage Statement Class, Defendants failed to provide complete and accurate itemized
8 wage statements that show the applicable hourly rates and the corresponding number of hours worked
9 at each hourly rate by the employee, in violation of Section 226(a). Specifically, the wage statements
10 showed the gross wages earned, without any hourly rates or corresponding number of hours worked at
11 the rates.

12 27. Such a pattern, practice, and uniform administration of corporate policy is unlawful
13 under Section 226 and entitles Plaintiff and the Wage Statement Class to recover applicable penalties,
14 attorneys’ fees, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **Violation of Labor Code §§ 201-203**

17 **(By Plaintiff and the Late Pay Class Against All Defendants)**

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

19 29. Upon termination of employment, Section 203 provides that if an employer willfully
20 fails to pay due and owing wages in accordance with Sections 201 and 202, then the wages of the
21 employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages
22 shall not continue for more than thirty (30) days. Section 201 provides if an employer discharges an
23 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.
24 Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours
25 after an employee quits his or her employment, unless the employee has given seventy-two (72) hours
26 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages
27 at the time of quitting.

1 30. On September 24, 2020, Defendants terminated Plaintiff's employment. Plaintiff,
2 however, still has not been paid his final wages. Defendants did not even purport to pay Plaintiff his
3 final wages until September 29, 2020.

4 31. As a matter of policy and practice, Defendants willfully failed to timely pay Plaintiff and
5 the Late Pay Class all of their due wages upon the termination of their employment within the times
6 prescribed by Sections 201-203 and are therefore subject to applicable penalties. Plaintiff is informed
7 and believes that Defendants were advised by skilled lawyers and knew, or should have known, of the
8 mandates of the Labor Code as it relates to Plaintiff's allegations. Plaintiff and other members of the
9 Late Pay Class thus are entitled to recover applicable penalties, including waiting-time penalties for up
10 to 30 days, pursuant to Section 203.

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

14 **THIRD CAUSE OF ACTION**

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

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

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

18 34. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
19 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
20 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-203 and 226(a) committed
21 since April 12, 2019, against all aggrieved employees.

22 35. As alleged herein, Defendants violate Sections 201-203 and 226(a) by routinely failing
23 to furnish accurate itemized wage statements showing either (i) the total hours worked by the employee
24 or (ii) the applicable hourly rates and the corresponding number of hours worked at each hourly rate by
25 the employee, and by routinely failing to pay final wages immediately upon, or within three days of, the
26 termination of employment. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or
27 more of the alleged violations was committed against Plaintiff as an employee of Defendants.
28

36. On or about October 2, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-203 and 226(a). Plaintiff 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 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 201-203 and 226(a) against all aggrieved employees for the alleged period.

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 penalties pursuant to Section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties pursuant to Sections 201-203, and for costs and attorneys' fees;
6. Upon the Third Cause of Action for penalties according to proof pursuant to Sections 226.3 and 2699, and for costs and attorneys' fees;
7. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 226, and 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: October 7, 2020

DIVERSITY LAW GROUP, P.C.

By:

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