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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TANIS CLARK, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

NOW OPTICS, LLC, a Florida limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00044817-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (2) VIOLATION OF LABOR CODE § 226;**
- (3) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (4) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/07/2020 at 04:22:18 PM
Clerk of the Superior Court
By Yvette Mapula, Deputy Clerk

1 Plaintiff Tanis Clark (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Now Optics, LLC and Does 1 through 50 (collectively,
3 “Defendants”), on behalf of himself and a class of all other similarly situated current and former
4 employees of Defendant for penalties and/or damages for failure to properly calculate the regular
5 rate of pay for purposes of paying meal period premiums, failure to provide accurate itemized
6 wage statements, and restitution for unfair business practices in violation of Business and
7 Professions Code § 17200, *et seq.*, as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code
10 sections 201, 202, 203, 226, 226.7, 512 and 2698, *et seq.*, Business and Professions Code section
11 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California Industrial Welfare
12 Commission (“IWC”).

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code and Business and Professions Code against individuals
15 who worked for Defendant.

16 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
17 jointly and severally, have acted intentionally and with deliberate indifference and conscious
18 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
19 purposes of paying meal period premiums and failing to provide accurate itemized wage
20 statements to Plaintiff and the Class.

21 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
22 engaged in, among other things a system of willful violations of the California Labor Code and
23 the applicable IWC Wage Orders by creating and maintaining policies, practices, and customs
24 that knowingly deny employees the above stated rights and benefits.

25 5. The policies, practices and customs of Defendant described above and below have
26 resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that
27 routinely adhere to the strictures of the California Labor Code and the California Business and
28 Professions Code.

1 **JURISDICTION AND VENUE**

2 6. The Court has jurisdiction over the violations of the California Labor Code
3 California Labor Code sections 201, 202, 203, 226, 226.7, 512 and 2698, *et seq.*, the UCL and
4 the applicable Wage Orders.

5 7. Venue is proper in San Diego County because Defendant maintains operations in
6 Oceanside, California.

7 **PARTIES**

8 8. Plaintiff was hired by Defendant in or about June 2019 as a sales manager.
9 Plaintiff works as an hourly, non-exempt employee.

10 9. Plaintiff was and is the victims of the policies, practices, and customs of
11 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
12 by California Labor Code sections 201, 202, 203, 226, 226.7, 512 and 2698, *et seq.*, the UCL and
13 applicable IWC Wage Orders.

14 10. Plaintiff is informed and believes, and based thereon alleges, that Now Optics,
15 LLC was and is a Florida limited liability company that maintains operations in the State of
16 California, including in San Diego County, California.

17 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
19 and partnerships, licensed to do business and actually doing business in the State of California.
20 As such, and based upon all the facts and circumstances incident to Defendants' business,
21 Defendants are subject to the California Labor Code and the UCL.

22 12. Plaintiff does not know the true names or capacities, whether individual, partner
23 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
24 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
25 complaint when the true names and capacities are known. Plaintiff is informed and believes and
26 based thereon alleges that each of said fictitious defendants was responsible in some way for the
27 matters alleged herein and proximately caused Plaintiff and members of the general public and
28 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

1 13. At all times herein mentioned, each defendant participated in the doing of the acts
2 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
3 and each of them, were the agents, servants and employees of each of the other defendants, as
4 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
5 course and scope of said agency and employment.

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

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

16 16. At all times herein mentioned, the acts and omissions of various Defendants, and
17 each of them, concurred and contributed to the various acts and omissions of each and all of the
18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
20 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
22 damages as herein alleged.

23 **CLASS ACTION ALLEGATIONS**

24 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure section 382. Plaintiff proposes the following classes
26 (together, the “Class”):

- 27 a. All current and former non-exempt employees of Defendant in the State of
28 California, who earned non-discretionary remuneration, including but not

1 limited to incentive pay and commissions, and earned meal period
2 premium pay during the same work week, at any time from June 10, 2016,
3 through the present (the “Meal Period Class”); and

4 b. All current and former non-exempt employees of Defendant in the State of
5 California who earned any form of “Com OT” wages at any time from
6 June 10, 2019, through the present (the “Wage Statement Class”).

7 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
8 that joinder of all members would be impractical, if not impossible. The identity of the members
9 of the Class is readily ascertainable by review of Defendant’s records, including payroll records.
10 Plaintiff is informed and believes, and based thereon alleges, that Defendant: (a) failed to pay
11 meal period premiums at the correct regular rate of pay that included all non-discretionary
12 remuneration in violation of Labor Code sections 226.7 and 512; (b) failed to provide accurate,
13 itemized wage statements in violation of Labor Code section 226; and (c) engaged in Unfair
14 Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC
15 Wage Orders.

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

22 20. Defendant uniformly administered a corporate policy, practice of: (a) failing to
23 pay meal period premiums at the correct regular rate of pay that included all non-discretionary
24 remuneration in violation of Labor Code sections 226.7 and 512; (b) failing to provide accurate,
25 itemized wage statements in violation of Labor Code section 226; and (c) engaging in Unfair
26 Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC
27 Wage Orders.

28 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant had a

consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code sections 226, 226.7 and 512, the applicable IWC Wage Orders, and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendant's policy and practice of: (a) failing to pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code sections 226.7 and 512; (b) failing to provide accurate, itemized wage statements in violation of Labor Code section 226; and (c) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-discretionary remuneration, including without limitation, incentive pay and commissions. During workweeks when Plaintiff was not provided with proper meal breaks and also earned non-discretionary remuneration during the same workweek, Defendant disbursed meal period premiums at the base rate of pay and failed to include any non-discretionary remuneration earned into the calculation of the regular rate. Thus, Plaintiff is owed additional meal period pay based on the correct, higher regular rate of pay. As a result of the underpayment of meal period premiums, the corresponding wage statements issued to Plaintiff identified inaccurate rates of pay for meal period premium pay and inaccurate gross and net wages earned. Additionally, when Plaintiff earned any form of "Com Ot" wages, the wage statements he received failed to identify the correct rates of pay and applicable hours for such wages. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code sections 226, 226.7 and 512, and the UCL.

24. The California Labor Code upon which Plaintiff bases these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek

1 to take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment.

3 25. The nature of this action and the format of laws available to Plaintiff and
4 members of the Class identified herein make the class action format a particularly efficient and
5 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
6 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
7 advantage since it would be able to exploit and overwhelm the limited resources of each
8 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
9 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
10 employees who would be disinclined to file an action against their former and/or current
11 employer for real and justifiable fear of retaliation and permanent damage to their careers at
12 subsequent employment.

13 26. The prosecution of separate actions by the individual class members, even if
14 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
15 to individual Class members against the Defendants and which would establish potentially
16 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
17 individual Class members which would, as a practical matter, be dispositive of the interest of the
18 other Class members not parties to the adjudications or which would substantially impair or
19 impede the ability of the Class members to protect their interests. Further, the claims of the
20 individual members of the Class are not sufficiently large to warrant vigorous individual
21 prosecution considering all of the concomitant costs and expenses.

22 27. Such a pattern, practice and uniform administration of corporate policy regarding
23 illegal employee compensation described herein is unlawful and creates an entitlement to
24 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
25 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
26 according to the mandate of California Labor Code sections 218.5 and 226, the applicable IWC
27 Wage Orders, and Code of Civil Procedure section 1021.5.

28 28. Proof of a common business practice or factual pattern, which the named Plaintiff

1 experienced and is representative of, will establish the right of each of the members of the
2 Plaintiff Class to recovery on the causes of action alleged herein.

3 29. The Class is commonly entitled to a specific fund with respect to the
4 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
5 restitution of those funds being improperly withheld by Defendants. This action is brought for
6 the benefit of the entire class and will result in the creation of a common fund.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

9 **(BY PLAINTIFF AND THE MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)**

10 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 31. At all relevant times, Defendant failed to pay Plaintiff and the Class meal period
13 premium compensation at the regular rate of pay, as mandated by Labor Code section 226.7. For
14 each workday that a meal period is not provided, employees are entitled to one additional hour of
15 pay at the employee's regular rate of pay/compensation. Throughout their employment, Plaintiff
16 and Class Members earned non-discretionary remuneration such as incentive pay and
17 commissions. Such non-discretionary remuneration, however, was not included in the regular
18 rate of pay for the purposes of disbursing meal period premium pay. Instead, the meal period
19 premiums were paid at the base rate of pay. As such, Plaintiff and the Class are owed additional
20 meal period premium pay.

21 32. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
23 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant
24 to Labor Code section 226.7 and the applicable IWC Wage Order, including interest thereon,
25 penalties, reasonable attorneys' fees, and costs of suit.

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SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

**(BY PLAINTIFF, MEAL PERIOD CLASS MEMBERS AND THE WAGE STATEMENT
CLASS AGAINST ALL DEFENDANTS)**

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

34. Defendant failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff, Meal Period Class Members and Wage Statement Class Members, in violation of Labor Code section 226 by failing to provide accurate payroll records to employees.

35. Here, Plaintiff and the Class were paid hourly. As such, the wage statements should have reflected the applicable hourly rates of pay and gross and net wages earned, pursuant to Labor Code section 226(a). However, the wage statements provided to Plaintiff and other employees failed to identify such information.

36. As a result of the underpayment of meal period premiums, the corresponding wage statements issued to Plaintiff and Meal Period Class Members identified inaccurate rates of pay for meal period premium pay and inaccurate gross and net wages earned, in violation of Labor Code section 226(a).

37. Additionally, during pay periods when Plaintiff and the Wage Statement Class earned any form of “Com Ot” wages, the wage statements identified incorrect wage rates and hours worked, in violation of Labor Code section 226(a).

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

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

3 **(BY PLAINTIFF AND THE MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)**

4 39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 40. Defendant has engaged and continues to engage in unfair and unlawful business
7 practices in California by failing to pay meal period premiums at the correct regular rate of pay
8 that included all non-discretionary remuneration in violation of Labor Code sections 226.7 and
9 512. Defendant's utilization of such unfair and unlawful business practices constitutes unfair and
10 unlawful competition and provides an unfair advantage over Defendant's competitors.

11 41. Plaintiff seeks, individually and on behalf of other members of the Class similarly
12 situated, full restitution of monies, as necessary and according to proof, to restore any and all
13 monies withheld, acquired and/or converted by the Defendant by means of the unfair practices
14 complained of herein.

15 42. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
17 proscribed by California Business & Professions Code section 17200, *et seq.*, including those set
18 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
19 working condition standards and conditions due to them under the California laws as specifically
20 described therein.

21 **FOURTH CAUSE OF ACTION**

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

23 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
24 **AGAINST ALL DEFENDANTS)**

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

27 44. Plaintiff brings this cause of action as a proxy for the State of California and in
28 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 24, 2019, through

1 the present, for Defendant's violations of Labor Code sections 201, 202, 203, 226, 226.7 and
2 512, arising from Defendant's policy and practice of: (a) failing to pay meal period premiums at
3 the correct regular rate of pay that included all non-discretionary remuneration in violation of
4 Labor Code sections 226.7 and 512; (b) failing to pay all wages owed upon separation of
5 employment due to the unpaid missed meal period premiums, in violation of Labor Code
6 sections 201, 202 and 203; and (c) failing to provide accurate, itemized wage statements in
7 violation of Labor Code section 226.

8 45. On or about November 16, 2020, Plaintiff sent written notice to the California
9 Labor & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code
10 sections 201, 202, 203, 226, 226.7 and 512, pursuant to Labor Code section 2698, *et seq.*, the
11 Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's
12 written notice.

13 46. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
14 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203,
15 226, 226.7 and 512, for the time period described above, on behalf of himself and other
16 Aggrieved Employees.

17 **PRAYER FOR RELIEF**

18 1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
19 behalf this suit is brought against Defendants, jointly and severally, as follows:

20 2. For an order certifying the proposed Class;

21 3. For an order appointing Plaintiff as the representative of the Class as described
22 herein;

23 4. For an order appointing counsel for Plaintiff as class counsel;

24 5. Upon the First Cause of Action, for damages and/or penalties pursuant to
25 California Labor Code sections 226.7 and 512, and for costs and attorneys' fees;

26 6. Upon the Second Cause of Action, for damages or penalties pursuant to California
27 Labor Code section 226, and for costs and attorneys' fees;

28 7. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly

1 affected members of the general public of all funds unlawfully acquired by Defendants by means
2 of any acts or practices declared by this Court to be in violation of Business & Professions Code
3 section 17200, *et seq.*, and for costs and attorneys' fees;

4 8. Upon the Fourth Cause of Action, for civil penalties according to proof pursuant
5 to Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

6 9. On all causes of action for attorneys' fees and costs as provided by California
7 Labor Code sections 218.5, 226, and 2699, and Code of Civil Procedure § 1021.5; and

8 10. For such other and further relief the Court may deem just and proper.
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10 DATED: December 7, 2020

DIVERSITY LAW GROUP, P.C.

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12 By: 
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14 Kristen M. Agnew
15 Nicholas Rosenthal
16 Attorneys for Plaintiff and the Class
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