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Attorneys for Plaintiff and the Aggrieved Employees

**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

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/26/2021 at 03:30:00 PM
Clerk of the Superior Court
By Keira McCray, Deputy Clerk

1 Plaintiff Tanis Clark (“Plaintiff”) hereby submits this First Amended Representative
2 Action Complaint (“Complaint”) against Defendant Now Optics, LLC and Does 1 through 50
3 (collectively, “Defendants”), on behalf of himself and other aggrieved employees of Defendant,
4 for penalties pursuant to the Private Attorneys General Act (“PAGA”) for Defendant’s violations
5 of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 512 and 2698, *et seq.* and the
9 applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendant.

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

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

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of the California Labor Code
23 California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 512 and 2698, *et seq.*, and
24 the applicable Wage Orders.

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

27 **PARTIES**

28 7. Plaintiff was employed by Defendant as a sales manager during the approximate

1 period of June 2019 to on or about April 24, 2021. Plaintiff worked as an hourly, non-exempt
2 employee.

3 8. Plaintiff was and is the victims of the policies, practices, and customs of
4 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
5 by California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 512 and 2698, *et seq.*,
6 and applicable IWC Wage Orders.

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

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

15 11. Plaintiff does not know the true names or capacities, whether individual, partner
16 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
17 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
18 complaint when the true names and capacities are known. Plaintiff is informed and believes and
19 based thereon alleges that each of said fictitious defendants was responsible in some way for the
20 matters alleged herein and proximately caused Plaintiff and other aggrieved employees to be
21 subject to the illegal employment practices, wrongs and injuries complained of herein.

22 12. At all times herein mentioned, each defendant participated in the doing of the acts
23 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
24 and each of them, were the agents, servants and employees of each of the other defendants, as
25 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
26 course and scope of said agency and employment.

27 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or

1 joint venturer of, or working in concert with each of the other co-Defendants and was acting
2 within the course and scope of such agency, employment, joint venture, or concerted activity. To
3 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
4 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

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

9 15. At all times herein mentioned, the acts and omissions of various Defendants, and
10 each of them, concurred and contributed to the various acts and omissions of each and all of the
11 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
12 herein mentioned, Defendants, and each of them, ratified each and every act or omission
13 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
14 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
15 damages as herein alleged.

16 **FIRST CAUSE OF ACTION**

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

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

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

22 17. Plaintiff brings this cause of action as a proxy for the State of California and in
23 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 24, 2019, through
24 the present, for Defendant's violations of Labor Code sections 201, 202, 203, 226, 226.7 and
25 512, arising from Defendant's policy and practice of: (a) failing to pay meal period premiums at
26 the correct regular rate of pay that included all non-discretionary remuneration in violation of
27 Labor Code sections 226.7 and 512; (b) failing to pay employees sick pay at the correct regular
28 rate of pay that included all non-discretionary remuneration, in violation of Labor Code sections

201-203 and 246; (c) failing to pay all wages owed upon separation of employment due to the unpaid missed meal period premiums, in violation of Labor Code sections 201, 202 and 203; and (d) failing to provide accurate, itemized wage statements in violation of Labor Code section 226.

18. At all relevant times, Defendant failed to pay Plaintiff and Aggrieved Employees meal period premium compensation at the regular rate of pay, as mandated by Labor Code section 226.7. For each workday that a meal period is not provided, employees are entitled to one additional hour of pay at the employee's regular rate of pay. Defendant, however, paid meal period premium wages at an employee's base hourly rate of pay, which did not include non-discretionary incentive wages that an employee earned during the same workweek. As such, Plaintiff and the Aggrieved Employees are owed additional meal period premiums based on the correct, higher regular rate of pay.

19. Relatedly, Defendant failed to pay Plaintiff and Aggrieved Employees sick pay wages at the regular rate of pay, as mandated by Labor Code section 246. Defendant paid sick pay wages at an employee's base hourly rate of pay, which did not include non-discretionary incentive wages that an employee earned during the same workweek. As such, Plaintiff and the Aggrieved Employees are owed additional sick pay based on the correct, higher regular rate of pay.

20. Defendant failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff and Aggrieved Employees, in violation of Labor Code section 226. As a result of the underpayment of meal period premium wages, whenever a meal period premium and non-discretionary incentive pay was earned during the same workweek, the corresponding wage statement failed to identify the accurate rates of pay for such meal period premium wages, and the accurate gross and net wages earned.

21. Additionally, during pay periods when Plaintiff and Aggrieved Employees 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).

22. On or about November 16, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code

1 sections 201, 202, 203, 226, 226.7 and 512, pursuant to Labor Code section 2698, *et seq.*, the
2 Private Attorneys General Act ("PAGA"). On or about August 10, 2021, Plaintiff sent a
3 supplemental written notice to the LWDA of Defendant's violations of Labor Code sections 201,
4 202, 203, 204, 226.7 and 246, pursuant to PAGA. To date, the LWDA has not responded to
5 Plaintiff's written notices.

6 23. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
7 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203,
8 204, 226, 226.7, 246 and 512, for the time period described above, on behalf of himself and other
9 Aggrieved Employees.

10 **PRAYER FOR RELIEF**

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

13 2. Upon the First Cause of Action, for civil penalties according to proof pursuant to
14 Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

15 3. On all causes of action for attorneys' fees and costs as provided by California
16 Labor Code section 2699, and Code of Civil Procedure section 1021.5; and

17 4. For such other and further relief the Court may deem just and proper.

18
19 DATED: August 26, 2021

DIVERSITY LAW GROUP, P.C.

20
21 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

22
23 Attorneys for Plaintiff and the Aggrieved
24 Employees
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26
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28

1 **PROOF OF SERVICE**

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

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

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

9 On August 26, 2021, I served the following document(s) described as: **FIRST**
10 **AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this
11 action as follows:

12 September Rea
13 Srea@polsinelli.com
14 Armida Derzakarian
15 aderzakarian@polsinelli.com
16 Polsinelli
17 2049 Century Park East, Suite 2900
18 Los Angeles, California 90067
19 *Attorneys for Defendant Now Optics, LLC*

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

26 I declare under penalty of perjury under the laws of the State of California that the
27 above is true and correct. Executed on August 26, 2021, at Los Angeles, California.

28 
Erika Mejia