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

MICHAEL GIBSON, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SOUTHWEST TRADERS
INCORPORATED, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-10620

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

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

DEMAND OVER \$25,000.00

1 Plaintiff Michael Gibson (“Plaintiff”) hereby submits this First Amended Representative
2 Action Complaint (“Complaint”) against Defendant Southwest Traders Incorporated and Does 1
3 through 50 (collectively, “Defendants”), on behalf of himself and aggrieved employees of
4 Defendants for penalties for failure to properly calculate the regular rate of pay for purposes of
5 paying overtime, meal and rest period premiums, and sick pay, provide off-duty meal and rest
6 breaks, pay all wages owed upon separation of employment, reimburse business expenses, and
7 provide accurate itemized wage statements under California Labor Code statutes, as follows:

8 **INTRODUCTION**

9 1. This complaint is within the Court’s jurisdiction under California Labor Code §
10 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).

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

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
16 purposes of paying overtime, meal and rest period premiums, and sick pay, provide off-duty
17 meal and rest breaks, pay all wages owed upon separation of employment, reimburse business
18 expenses, and provide accurate itemized wage statements to its employees.

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

23 **JURISDICTION AND VENUE**

24 5. The Court has jurisdiction over the violations of the California Labor Code §
25 2698, *et seq.*

26 6. Venue is proper in San Joaquin County because Plaintiff worked out of San
27 Joaquin County, California.

1 **PARTIES**

2 7. Plaintiff was employed by Defendants as a Commercial Class A Driver from on
3 or about October 2017, to on or about March 27, 2020. Plaintiff worked as an hourly, non-
4 exempt employee.

5 8. Plaintiff was and is the victims of the policies, practices, and customs of
6 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
7 by California Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198,
8 1199, 2802, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

9 9. Plaintiff is informed and believes, and based thereon alleges, that Southwest
10 Traders Incorporated was and is a California corporation that maintains operations in the State of
11 California, including in Riverside County, California.

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

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

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

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

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

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

FIRST CAUSE OF ACTION

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

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

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

17. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from December 14, 2019, through the present, for Defendants' violations of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802 arising from Defendants' policy and practice of: (a) failing to pay employees overtime wages for all hours worked, or at the correct regular

1 rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-
2 203, 226, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who
3 worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in
4 violation of Labor Code §§ 201-203, 226, 226.7, and 512; (c) failing to provide off-duty rest
5 periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period
6 premiums in lieu thereof in violation of Labor Code §§ 201-203, 226, and 226.7; (d) failing to
7 pay employees sick pay at the correct regular rate of pay that included all non-discretionary
8 remuneration in violation of Labor Code §§ 201-204 and 246; (e) failing to reimburse business
9 expenses in violation of Labor Code § 2802; (f) failing to provide accurate, itemized wage
10 statements in violation of Labor Code § 226; and (g) failing to permit employees to record the
11 exact time they began and ended a work shift.

12 18. On or about December 14, 2020, Plaintiff sent written notice to the California
13 Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code
14 §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, pursuant to
15 Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the LWDA
16 has not responded to Plaintiff’s written notice.

17 19. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
18 and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 204, 226,
19 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, for the time period described
20 above, on behalf of himself and other Aggrieved Employees.

21 **PRAYER FOR RELIEF**

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

24 2. Upon the First Cause of Action, for civil penalties according to proof pursuant to
25 Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys’ fees;

26 3. On all causes of action for attorneys’ fees and costs as provided by California
27 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

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

DATED: February 25, 2021

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and Aggrieved Employees

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 February 25, 2021, I served the following document(s) described as: **FIRST**
11 **AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action as
12 follows:

13 Jennifer P. Suberlak
14 Christopher W. Olmsted
15 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
16 4370 La Jolla Village Drive, Suite 990
17 San Diego, CA 92122

18 *Attorneys for Defendant Southwest Traders Incorporated*

19 X BY MAIL: by placing _____ the original or X a true and correct
20 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
21 attached mailing list. I am readily familiar with the firm's practice for collection and processing
22 of correspondence and other materials for mailing with the United States Postal Service. On this
23 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
24 collection and mailing on this date at the address above following our office's ordinary business
25 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
26 in the ordinary course of business.

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 February 25, 2021, at Los Angeles, California.

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