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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

Attorneys for Plaintiff and the Class

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

SAMUEL RICHARDSON, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

AVATARA LLC; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2021-00009159-CU-OE-CTL

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

- (1) VIOLATION OF CAL. LABOR CODE
§ 226(a); AND
(2) VIOLATION OF CAL. LABOR CODE §
2698 *ET. SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Samuel Richardson (“Plaintiff”) submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant Avatara LLC (“Defendant”)
3 and DOES 1 through 50 (collectively referred to as “Defendants”), on behalf of himself and a class
4 of all other similarly situated current and former employees of Defendants for penalties and/or
5 damages for failure to provide accurate itemized wage statements as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code sections 204, 226 and 2698 *et seq.*, and the applicable Wage Orders of the
9 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 in Defendants’ failure to provide accurate itemized wage
15 statements to their employees.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
17 engaged in, among other things a system of knowing and intentional violations of the California
18 Labor Code.

19 **JURISDICTION AND VENUE**

20 5. The Court has jurisdiction over the violations of California Labor Code sections
21 204, 226 and 2698 *et seq.*

22 6. Venue is proper in San Diego County because Plaintiff worked for Defendant in La
23 Jolla, California.

24 **PARTIES**

25 7. Plaintiff was employed by Defendant from in or around July 2020 to on or about
26 January 11, 2021.

27 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
28 complained of in this action in ways that have deprived him of the rights guaranteed by California

1 Labor Code sections 204, 226 and 2698 *et seq.*

2 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 Avatara LLC was and is an entity doing business in the State of California and in the County of
4 San Diego.

5 10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
6 mentioned Defendants, are and were corporations, business entities, individuals, and partnerships,
7 licensed to do business and actually doing business in the State of California. As such, and based
8 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
9 the California Labor Code.

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

17 12. At all times herein mentioned, each of said Defendants participated in the doing of
18 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
21 within the course and scope of said agency and employment.

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

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

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

11 **CLASS ACTION ALLEGATIONS**

12 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure section 382. Plaintiff proposes the following Class and sub-
14 class:

- 15 a. All current and former employees of Defendant in the State of California at
16 any time from September 6, 2019, through the present (the “Class” or “Class
17 Members”).
- 18 b. All current and former non-exempt employees of Defendant in the State of
19 California at any time from September 6, 2019, through the present (the
20 “Sub-Class” or “Sub-Class Members”).

21 17. **Numerosity and Ascertainability:** The members of the Class are so numerous that
22 joinder of all members would be impractical, if not impossible. The identity of the members of the
23 Class is readily ascertainable by review of Defendant’s records, including payroll records. Plaintiff
24 is informed and believes, and based thereon alleges, that Defendant failed to provide accurate
25 itemized wage statements to employees in violation of Labor Code section 226.

26 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
27 necessary steps to represent fairly and adequately the interests of the class defined above.
28 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the class and the

1 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions
2 in the past and currently have a number of wage-and-hour class actions pending in California state
3 and federal courts.

4 19. Defendant uniformly administered a corporate policy, practice of failing to provide
5 accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code section
6 226.

7 20. **Common Question of Law and Fact:** There are predominant common questions
8 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
9 concerning Defendant's policy and practice of failing to provide accurate itemized wage
10 statements to Plaintiff and the Class in violation of Labor Code section 226.

11 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
12 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
13 as the Class Members. As with other California employees, Plaintiff was not provided proper and
14 accurate itemized wage statements. Specifically, the wage statements issued by Defendant failed to
15 include the accurate total hours worked, as required by Labor Code section 226(a)(2).
16 Additionally, the wage statements did not identify the legal name of Defendant, in violation of
17 Labor Code section 226(a)(8). The wage statements identified "Avatara LLC" as the employer, but
18 no such entity is registered to do business in the State of California. As such, Plaintiff is a member
19 of the Class and has suffered the alleged violations of California Labor Code section 226.

20 22. The California Labor Code sections upon which Plaintiff bases these claims are
21 broadly remedial in nature. These laws and labor standards serve an important public interest in
22 establishing minimum working conditions and standards in California. These laws and labor
23 standards protect the average working employee from exploitation by employers who may seek to
24 take advantage of superior economic and bargaining power in setting onerous terms and conditions
25 of employment.

26 23. The nature of this action and the format of laws available to Plaintiff and members
27 of the Class identified herein make the class action format a particularly efficient and appropriate
28 procedure to redress the wrongs alleged herein. If each employee were required to file an

1 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
2 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff
3 with their vastly superior financial and legal resources. Requiring each class member to pursue and
4 individual remedy would also discourage the assertion of lawful claims by employees who would
5 be disinclined to file an action against their former and/or current employer for real and justifiable
6 fear of retaliation and permanent damage to their careers at subsequent employment.

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

16 25. Such a pattern, practice and uniform administration of corporate policy regarding
17 illegal employee compensation described herein is unlawful and creates an entitlement to recovery
18 by Plaintiff and the Class identified herein, in a civil action, for applicable damages and/or
19 penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California
20 Labor Code section 226, and Code of Civil Procedure section 1021.5.

21 26. Proof of a common business practice or factual pattern, which the named Plaintiff
22 experienced and is representative of, will establish the right of each of the members of the Plaintiff
23 Class to recovery on the causes of action alleged herein.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 226(a)**

26 **(BY PLAINTIFF, THE CLASS and SUB-CLASS AGAINST ALL DEFENDANTS)**

27 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as though
28 fully set forth herein.

1 28. Defendant, as a matter of policy and practice, did not provide accurate records in
2 violation of Labor Code section 226. Labor Code section 226(a)(8) requires that an employer
3 provide employees with wage statements that show the name of the legal entity that is the
4 employer. Here, the wage statements issued by Defendant to Plaintiff and Class Members did not
5 identify the legal name of Defendant. Rather, the wage statements identified “Avatara LLC” as the
6 employer, but no such entity is registered to do business in the State of California.

7 29. Additionally, the wage statements provided to Plaintiff and the Sub-Class failed to
8 identify the accurate total hours worked, as required by Labor Code section 226(a)(2). The hours
9 displayed on the wage statement do not correspond to the actual number of hours worked during
10 the applicable pay period.

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

16 **SECOND 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 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though
21 fully set forth herein.

22 32. Plaintiff brings this cause of action as a proxy for the State of California and in this
23 capacity, seeks penalties on behalf of all Aggrieved Employees from September 1, 2019, through
24 the present, for Defendant’s policy and practice of failing to: 1) provide accurate, itemized wage
25 statements, in violation of Labor Code section 226(a); and 2) pay earned wages within seven days
26 of the close of the pay period, in violation of Labor Code section 204.

27 33. Defendant, as a matter of policy and practice, did not provide accurate records, in
28 violation of Labor Code section 226. Labor Code section 226(a)(8) requires that an employer

1 provide employees with wage statements that show the name of the legal entity that is the
2 employer. Here, the wage statements issued by Defendant to Plaintiff and Aggrieved Employees
3 did not identify the legal name of Defendant. Rather, the wage statements identified “Avatara
4 LLC” as the employer, but no such entity is registered to do business in the State of California.
5 Additionally, the wage statements provided to Plaintiff and non-exempt Aggrieved Employees
6 failed to identify the accurate total hours worked, as required by Labor Code section 226(a)(2).
7 The hours displayed on the wage statement do not correspond to the actual number of hours
8 worked during the applicable pay period.

9 34. Defendant, as a matter of policy and practice, failed to pay all wages in a timely
10 manner to Plaintiff and Aggrieved Employees. The wages were paid more than seven days after
11 the close of the payroll period. For example, for the pay period of August 16, 2020 through August
12 31, 2020, the wages earned during such pay period were not paid until September 15, 2020, which
13 is more than 10 days after the end of the pay period. As another example, for the pay period of
14 October 1, 2020 through October 15, 2020, the wages earned during such pay period were not paid
15 until November 2, 2020.

16 35. On or about February 26, 2021, Plaintiff sent written notice to the California Labor
17 & Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections
18 204 and 226 pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act
19 (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice.

20 36. On or about March 5, 2021, Plaintiff sent a supplemental written notice to the
21 LWDA of Defendant’s violations of Labor Code section 226 pursuant to Labor Code section 2698.
22 To date, the LWDA has not responded to Plaintiff’s supplemental written notice.

23 37. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
24 and all applicable civil penalties for Defendant’s violation of Labor Code sections 204 and 226, for
25 the time period described above, on behalf of himself and other Aggrieved Employees.

26 **PRAYER FOR RELIEF**

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

1. For an order certifying the proposed Class and Sub-Class;
2. For an order appointing Plaintiff as the representative of the Class and Sub-Class as described herein;
3. For an order appointing Counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code section 2698, et seq., and for costs and attorneys' fees;
6. On all causes of action, for attorneys' fees and costs as provided by California Labor Code section 226 and Code of Civil Procedure section 1021.5; and
7. For such other and further relief the Court may deem just and proper.

DATED: March 30, 2021

DIVERSITY LAW GROUP, P.C.

By: 

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Attorneys for Plaintiff and the Class