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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

JOE BETANCUR, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

PRIDE CONVEYANCE SYSTEMS, INC.,
a California corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. CU-21-00022

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-204, 558, 1194, 1197, AND 1197.1;
- (2) VIOLATION OF LABOR CODE §§ 201-204, 510, 558, AND 1194;
- (3) VIOLATION OF LABOR CODE §§ 226.7;
- (4) VIOLATION OF LABOR CODE §§ 226.7, 512, 1174, 1198, AND 1199 AND WAGE ORDERS;
- (5) VIOLATION OF LABOR CODE §§ 201-204, 233, AND 246;
- (6) VIOLATION OF LABOR CODE § 226(a);
- (7) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*; AND
- (8) VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*

DEMAND EXCEEDS \$25,000.00

1 Plaintiff Joe Betancur (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant Pride Conveyance Systems, Inc. (the “Company” or
3 “Defendant”), a California corporation and DOES 1-50 (hereinafter collectively referred to as
4 “Defendants”), individually and on behalf of a Class of all other similarly situated current and
5 former employees of Defendants for penalties and/or damages for violations of the California
6 Labor Code as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code §§
9 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2698, *et seq.*
10 and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of 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 provide off-duty meal periods in compliance
16 with the law and failing to pay all overtime wages owed.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code and
19 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
20 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 §§
23 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2698, *et seq.*
24 As alleged below, Plaintiff has met all of the jurisdictional requirements to proceed under the
25 Private Attorney General’s Act (the “PAGA”), Labor Code § 2698, *et seq.*

26 6. Venue is proper in San Benito County because Defendants maintain business
27 locations in this County and Plaintiff worked at Defendants’ facility located in this County.
28

PARTIES

7. In or around December 2013, Plaintiff was hired by Defendant to work as a non-exempt employee in San Benito County. Plaintiff's job title was Electrician Motor Prep Specialist. On or about July 9, 2020, Plaintiff's employment with Defendant ended.

8. Defendant is a California corporation is a manufacturing company conducting business in California, including in San Benito County, California.

9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2698, *et seq.* and the applicable IWC Wage Orders.

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2698, *et seq.* and the IWC Wage Orders.

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

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

14. 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.

15. 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.

16. 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, the 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.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of the following classes:

- a. All current and former non-exempt employees who have worked for Defendant in California at any time from August 17, 2016, through the present (the “Class”);
- b. All current and former non-exempt employees who have worked for Defendant in California at any time from December 14, 2018, through the present and was paid overtime and earned non-discretionary pay covering the same pay period (the “Regular Rate Class”);
- c. All current and former non-exempt employees who worked any shifts 3.5 hours or longer for Defendant in California at any time from August 17,

2016, through the present (the “Rest Period Class”);

d. All current and former non-exempt employees who worked any shifts longer than 5 hours for Defendant in California at any time from December 14, 2018, through the present (the “Meal Period Class”);

e. All current and former non-exempt California employees who were paid sick pay in the same workweek in which they earned any non-discretionary incentive wages from Defendant at any time from August 17, 2016, through the present (the “Sick Pay Class”).

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of the Company’s records, including payroll records.

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

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning the Company: (a) failing to pay all minimum and overtime wages in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197 and 1197.1, including without limitation, for not paying wages for all work performed before clocking in and after clocking out, as well as paying overtime based on the correct, higher regular rate of pay when taking into account additional non-discretionary remuneration; (b) failing to provide off-duty rest periods in compliance with Labor Code § 226.7; (c) failing to provide proper and timely meal breaks and failing maintain accurate time records regarding said meal periods in violation of Labor Code §§ 226.7, 1174, 1198 and 1199 and §§ 7 & 11 of the applicable IWC Wage Order; (d) failing to pay sick pay at the regular rate of pay in violation of Labor Code §§ 201-204, 233, and 246; (e) failing to provide accurate itemized wage statements to employees in violation of Labor Code § 226; and (d) failing to pay

1 wages to separated employees in compliance with Labor Code §§ 201-203.

2 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
3 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
4 and typical manner as the Class members. First, Plaintiff was not paid all minimum and overtime
5 wages as a result of having to work off-the-clock as other Class Members. Specifically,
6 Defendant required Plaintiff and Class Members to perform work-related activities before
7 clocking in and after clocking out, including without limitation, loading/unloading trucks.
8 Additionally, Plaintiff and Class Members were paid non-discretionary remuneration covering
9 pay periods in which they were also paid overtime wages. Nevertheless, Defendant did not factor
10 in this additional non-discretionary remuneration into the regular rate of pay for purposes of
11 paying overtime. Rather, Plaintiff and Class Members were paid at 1.5x their base rate of pay.
12 Similarly, Plaintiff was not paid his sick pay wages based on his regular rate of pay. As with
13 overtime, Defendant did not factor the additional non-discretionary remuneration into the regular
14 rate of pay for purposes of the accrual and payment of sick pay wages. Plaintiff's sick pay was
15 paid at Plaintiff's base rate, as opposed to the higher regular rate. Plaintiff was also not provided
16 with rest periods in compliance with California law. In particular, Plaintiff and Class Members
17 were required to stay on work premises as the Company wanted to monitor their rest breaks.
18 Despite not being provided with off-duty rest breaks, Defendants did not pay any premiums for
19 such missed breaks. Plaintiff was also not provided with off-duty meal periods in compliance
20 with Labor Code §§ 226.7, 512, 1174, 1198, and 1199. Specifically, Defendant failed to provide
21 proper and timely meal breaks and failed to maintain accurate time records showing when
22 Plaintiff and Class Members began and ended each work shift. To the contrary, Defendant did not
23 allow Plaintiff and Class Members to record the exact time of when they began and ended their
24 meal breaks. Rather, the Company automatically deducted 30 minutes of wages from Plaintiff and
25 Class Members' daily work hours, whether a meal break was taken or not. Further, as a result of
26 these violations, Plaintiff was not provided with proper and accurate payroll records identifying
27 all information required by Labor Code § 226(a), including the wage rates, and net/gross wages
28 earned shown on the wage statements were inaccurate due to the violations set forth above.
Plaintiff was also not paid all of his wages owed within the deadlines set forth in Labor Code §§

1 201-204. Thus, Plaintiff is a member of the Class and has suffered the alleged violations of
2 California Labor Code §§ 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197,
3 1197.1, 1199, *et seq.*, and the applicable IWC Wage Orders.

4 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
5 remedial in nature. These laws and labor standards serve an important public interest in
6 establishing minimum working conditions and standards in California. These laws and labor
7 standards protect the average working employee from exploitation by employers who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment.

10 23. The nature of this action and the format of laws available to Plaintiff and members
11 of the Class identified herein make the class action format a particularly efficient and appropriate
12 procedure to redress the wrongs alleged herein. If each employee were required to file an
13 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
14 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
15 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
16 pursue an individual remedy would also discourage the assertion of lawful claims by employees
17 who would be disinclined to file an action against their former and/or current employer for real
18 and justifiable fear of retaliation and permanent damage to their careers at subsequent
19 employment.

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

25. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation described herein is unlawful and creates an entitlement to
2 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
3 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
4 of California Labor Code §§ 218.5, 226, 558, 1194 and 2698, *et seq.*, the applicable IWC Wage
5 Orders, and Code of Civil Procedure § 1021.5.

6 26. Proof of a common business practice or factual pattern, which the named Plaintiffs
7 experienced and are representative of, will establish the right of each of the members of the Class
8 to recovery on the causes of action alleged herein.

9 27. The Class is commonly entitled to a specific fund with respect to the compensation
10 illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of
11 those funds being improperly withheld by the Company. This action is brought for the benefit of
12 the entire class and will result in the creation of a common fund.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 201-204, 558, 1194, 1197, AND 1197.1**

15 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)**

16 28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as
17 though fully set for herein.

18 29. The Labor Code and applicable Wage Order requires employers to pay minimum
19 wages for all hours worked up to 8 hours in a workday and/or 40 hours in a workweek. As a
20 pattern and practice, Defendants suffered and permitted employees to work without payment of
21 minimum wages for all hours worked in a workday and workweek. Specifically, Defendant
22 violated these provisions by requiring Plaintiff and Class Members to perform work before
23 clocking in and after clocking out, *i.e.*, off-the-clock, including without limitation, loading and
24 unloading trucks. Defendant did not pay applicable minimum wages for these off-the-clock tasks.
25 Defendants had a uniform corporate pattern and practice and procedure regarding the above
practices in violation of Labor Code §§ 1194 and 1197.

26 30. Plaintiff is informed and believes and based thereon alleges that Defendants'
27 willful failure to provide Plaintiff and Class Members the wages due and owing them upon
28 separation from employment results in a continued payment of wages up to thirty (30) days from

1 the time the wages were due. Therefore, Plaintiff and Class Members who have separated from
2 employment are entitled to compensation pursuant to Labor Code § 203.

3 31. Such a pattern, practice and uniform administration of corporate policy regarding
4 illegal employee compensation as described herein is unlawful and creates an entitlement to
5 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
6 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
7 the mandate of California Labor Code §§ 510 and 1194.

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 201-204, 510, 558, AND 1194**

10 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS AND** 11 **THE REGULAR RATE CLASS)**

12 32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as
13 though fully set for herein.

14 33. This cause of action is brought pursuant to Labor Code §§ 510 and 1194, which
15 require an employer to pay employees overtime at a rate of one and one-half the employee's
16 regular rate of pay for any work in excess of eight hours in a workday or 40 hours in a workweek.

17 34. As a pattern and practice, Defendants suffered and permitted employees to work in
18 excess of eight hours in a workday and/or over 40 hours in a workweek without overtime pay.
19 Specifically, Defendants failed to pay overtime for time spent by employees for performing work
20 before clocking in and after clocking out. Again, Defendants required Plaintiff and Class
21 Members to work off-the-clock, including without limitation, loading and unloading trucks while
22 clocked out. Defendants had a uniform corporate pattern and practice and procedure regarding
23 the above practices in violation of Labor Code §§ 510 and 1194. Further, during their
24 employment with Defendants, including during pay periods wherein Plaintiff and the Class
25 worked overtime, Plaintiff and the Class also earned non-discretionary remuneration.
26 Defendants, as a corporate-wide practice and policy, did not calculate and/or factor such
27 remuneration into the regular rate of pay for purposes of calculating revised and increased
28 overtime pay, and as such, owe Plaintiff and the Class additional overtime pay.

35. Plaintiff is informed and believes and based thereon alleges that Defendants'

1 willful failure to provide Plaintiff and Class Members the wages due and owing them upon
2 separation from employment results in a continued payment of wages up to thirty (30) days from
3 the time the wages were due. Therefore, Plaintiff and Class Members who have separated from
4 employment are entitled to compensation pursuant to Labor Code § 203.

5 36. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation as described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
8 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
9 the mandate of California Labor Code §§ 510, 558, 1194 and 1197.1.

10 **THIRD CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE § 226.7**

12 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE REST PERIOD**
13 **CLASS)**

14 37. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 36 as
15 though fully set for herein.

16 38. At all relevant times, Defendants failed in their affirmative obligation to ensure
17 that Plaintiff and Class Members, had the opportunity to take and were provided with off-duty
18 rest periods in accordance with the mandates of the California Labor Code and the applicable
19 IWC Wage Order. At all relevant times, Plaintiff and Class Members were suffered and
20 permitted to work through legally required rest breaks and were denied the opportunity to take
21 their off-duty rest breaks. In particular, Plaintiff and Class Members were required to stay on
22 work premises as the Company wanted to monitor their rest breaks. Despite not being provided
23 with off-duty rest breaks, Defendants did not pay any premiums for such missed breaks.

24 39. Accordingly, as a pattern and practice, Defendants regularly required Plaintiff and
25 Class Members to work through their rest periods without proper compensation and denied
26 Plaintiff and Class Members the right to take proper rest periods as required by law.

27 40. Plaintiff is informed and believe and based thereon alleges that Defendants
28 willfully failed to pay employees who were not provided the opportunity to take rest breaks the
premium compensation set out in Labor Code § 226.7, and the applicable IWC Wage Order and

1 that Plaintiff and those employees similarly situated as them are owed wages for the rest period
2 violations set forth above. Plaintiff is informed and believes and based thereon alleges that
3 Defendants' willful failure to provide Plaintiff and other class members the wages due and owing
4 them upon separation from employment results in a continued payment of wages up to thirty (30)
5 days from the time the wages were due. Therefore, Plaintiff and other members of the class who
6 have separated from employment are entitled to compensation pursuant to Labor Code § 203.

7 41. Such a pattern, practice and uniform administration of corporate policy as
8 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and class
9 members identified herein, in a civil action, for the unpaid balance of the unpaid premium
10 compensation, including interest thereon, penalties, and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE §§ 226.7, 512, 1174, 1198, AND 1199 AND WAGE** 13 **ORDERS**

14 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE MEAL** 15 **PERIOD CLASS)**

16 42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 as
17 though fully set for herein.

18 43. At all relevant times, Plaintiff and Class Members were not provided with off-duty
19 meal periods in compliance with Labor Code §§ 226.7, 512, 1174, 1198, and 1199 and sections 7
20 & 11 of the applicable IWC Wage Order. Specifically, Defendant failed to provide proper and
21 timely meal breaks and failed to maintain accurate time records showing when Plaintiff and Class
22 Members began and ended each work shift. To the contrary, Defendant did not allow Plaintiff and
23 Class Members to record the exact time of when they began and ended their meal breaks. Rather,
24 the Company automatically deducted 30 minutes of wages from Plaintiff and Class Members'
25 daily work hours, whether a meal break was taken or not. Moreover, Labor Code § 226.7(c)
26 provides that "the employer shall pay the employee one additional hour of pay at the employee's
27 regular rate of compensation for each workday the meal or rest or recovery period is not
28 provided." Defendants, as a matter of corporate policy and procedure, regularly failed to pay the
meal period premium for missed meal periods.

44. Plaintiff is informed and believe and based thereon alleges that Defendants willfully failed to pay meal period premium pay, as required by Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff and those employees similarly situated are owed wages for the meal period violations set forth above.

45. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful failure to provide all meal period premium pay and/or wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

46. 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 Class Members identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-204, 233, AND 246

(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE SICK PAY CLASS)

47. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 46 as though fully set for herein.

48. Labor Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Labor Code § 246.5 at the employee's then current rate of entitlement. Labor Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. An employer must calculate paid sick leave by using one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods

1 of the prior 90 days of employment.”

2 49. As a policy and practice, Defendants unlawfully failed to pay sick pay at the
3 regular rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive
4 wages, which increased their regular rate of pay. However, when sick pay was paid, it was paid
5 at the base rate of pay for Plaintiff and Class Members, as opposed to the correct, higher regular
6 rate of pay.

7 50. Moreover, Labor Code § 204 generally provides that wages are due and payable
8 twice during each calendar month, on days designated in advance by the employer as the
9 regular paydays. Consistent with Labor Code § 204, Labor Code § 246 also provides that an
10 employer shall provide payment for sick leave taken by an employee no later than the payday
11 for the next regular payroll period after the sick leave was taken. Labor Code § 201 provides if
12 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
13 due and payable immediately. Labor Code § 202 provides that an employee is entitled to
14 receive all unpaid wages no later than 72 hours after an employee quits his or her employment,
15 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
16 quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor
17 Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with
18 Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from
19 the due date, and at the same rate until paid, but the wages shall not continue for more than
20 thirty (30) days.

21 51. Based on Defendants’ failure to pay all sick pay to Plaintiff and Class Members,
22 and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and Class
23 Members all due wages or timely pay all due wages upon separation of employment. On
24 information and belief, Defendants were advised by skilled lawyers and knew, or should have
25 known, of the mandates of the Labor Code as it relates to Plaintiff’s allegations. Defendants
26 thus violated Sections 201-204 by not timely paying all due wages and not timely paying all due
27 wages upon the separation of employment.

28 52. As a pattern and practice, Defendants regularly and willfully failed to pay
Plaintiff and other members of the Class their correct wages and accordingly owe damages,

1 restitution, and applicable penalties, including waiting time penalties.

2 **SIXTH CAUSE OF ACTION**

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

4 **(BY PLAINTIFF AND ALL CLASSES AGAINST DEFENDANT AND DOES 1-50)**

5 53. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 52 as
6 though fully set for herein.

7 54. The Company failed in its affirmative obligation to provide accurate itemized
8 wage statements in violation of Labor Code § 226(a). Specifically, the Company violated Labor
9 Code § 226(a) by, among other actions, failing to list the wage rates, and net/gross wages earned
10 shown on the wage statements, as well as premium pay for meal and rest period violations.

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

16 **SEVENTH CAUSE OF ACTION**

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

18 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AS PROXY FOR STATE**
19 **OF CALIFORNIA)**

20 56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 55 as
21 though fully set for herein.

22 57. Plaintiff brings this cause of action as a proxy for the State of California on behalf
23 of all Aggrieved Employees. Plaintiff seeks penalties on behalf of the State of California and
24 aggrieved California employees for Defendant's alleged violations of Labor Code §§ 201-204,
25 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and sections 7 and 11 of the
applicable Wage Order from the time period of August 16, 2019, through the present.

26 58. On or about February 10, 2021, Plaintiff sent notice to the Labor Workforce
27 Development Agency (the "LWDA") of the violations of Labor Code 201-204, 226, 226.7, 233,
28 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and sections 7 and 11 of the applicable

1 Wage Order.

2 59. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiff
3 whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties
4 under the PAGA.

5 60. Such a pattern, practice and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
7 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3
8 and 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate
9 of PAGA for Defendant's violations of Labor Code §§ 201-204, 226, 226.7, 233, 246, 510, 512,
10 558, 1174, 1194, 1197, 1197.1, 1199, and sections 7 and 11 of the applicable Wage Order, as well
11 as attorneys' fees and costs.

12 **EIGHTH CAUSE OF ACTION**

13 **VIOLATION OF CAL. BUS. & PROF. CODE § 17200**

14 **(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)**

15 61. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 60 as
16 though fully set for herein.

17 62. Defendant has engaged and continue to engage in unfair and unlawful business
18 practices in California by practicing, employing and utilizing the employment practices outlined
19 above, include, to wit, by: (a) failing to pay minimum and overtime for all hours worked; (b)
20 failing to provide off-duty meal and rest periods as required by law; (c) failing to pay sick pay
21 wages at the regular rate of pay; and (d) engaging in Unfair Business Practices in violation of the
22 UCL, all in violation of the California Labor Code and applicable IWC Wage Orders.

23 63. Defendant's utilization of such unfair and unlawful business practices constitutes
24 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

25 64. Plaintiff seeks as an individual and on behalf of other members of the Class
26 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
27 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
28 practices complained of herein. Plaintiff also seeks injunctive relief to enjoin the unfair business
practices alleged herein.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment individually 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 as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to Labor Code §§ 201-204, 558, 1194, 1197, AND 1197.1, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for all damages and/or penalties pursuant to Labor Code §§ 201-204, 510, 558, and 1194, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for all unpaid premium wages, damages and/or penalties pursuant to Labor Code §§ 201-203, 226, and 226.7, and for costs;
7. Upon the Fourth Cause of Action, for all unpaid premium wages, damages and/or penalties pursuant to Labor Code §§ 226.7, 512, 1174, 1198, and 1199 and sections 7 & 11 of the applicable IWC Wage Order, and for costs;
8. Upon the Fifth Cause of Action, for damages, including unpaid sick pay and interest thereon, applicable penalties, and costs and attorneys' fees pursuant to Section 203, 210, 218, 218.5, 218.6, and 248.5;
9. Upon the Sixth Cause of Action, for damages and/or penalties pursuant to Labor Code § 226, and for costs and attorneys' fees;
10. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant to Labor Code §§ 226.3 and 2698, *et seq.* and for costs and attorneys' fees;

1 11. Upon the Eighth Cause of Action, for restitution in the form of unpaid overtime
2 and minimum wages, meal and rest period premium wages, unpaid sick pay wages, and any
3 available injunctive relief to enjoin the unfair business practices, and for costs;

4 12. On all causes of action, for attorneys' fees and costs as provided by California
5 Labor Code §§ 218.5, 226, 1194, and 2698, *et seq.*, and Code of Civil Procedure § 1021.5; and

6 13. For such other and further relief as the Court may deem just and proper.

7 DATED: February 11, 2021

DIVERSITY LAW GROUP, P.C.

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9 By: 

Larry W. Lee

10 Attorneys for PLAINTIFF and the CLASS
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