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FILED

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

TONY CATELLI, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

INNOVATIVE CONSTRUCTION
SOLUTIONS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **C21 - 01257**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND OVER \$25,000.00

FILED
JUN - 1 2021

K. BEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: *[Signature]* Deputy Clerk

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 39, FOR ALL
PURPOSES

SUMMONS ISSUED

1 Plaintiff Tony Catelli (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant Innovative Construction Solutions (“Defendant”)
3 and Does 1 through 50 (collectively, “Defendants”) on behalf of himself and all other similarly
4 situated current and former employees of Defendants, for penalties and/or damages for failure to
5 provide complete and accurate itemized wage statements in violation of the California Labor
6 Code as follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code §§ 226 and 2698, *et seq.*

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

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 provide complete and accurate itemized
15 wage statements to Plaintiff and Class Members.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 by creating and maintaining policies, practices, and customs that knowingly deny its employees
19 the above stated rights and benefits.

20 **JURISDICTION AND VENUE**

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

23 6. Venue is proper because Defendants do business in Contra Costa County and
24 Plaintiff worked for Defendants in Contra Costa County, specifically in Martinez, California.

25 **PARTIES**

26 7. Plaintiff was employed by Defendants as a Technician 2 from in or about
27 December 2020, until on or about February 12, 2021. Throughout his employment with
28 Defendants, Plaintiff was employed as an hourly, non-exempt employee.

1 8. Plaintiff was and is the victim of the policies, practices, and customs of
2 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
3 by California Labor Code §§ 226 and 2698, *et seq.*

4 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
5 Innovative Construction Solutions was and is a California corporation, conducting business
6 across the State of California providing environmental construction services.

7 10. Plaintiff is informed and believes and thereon alleges that at all times herein
8 mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
9 individuals, and partnerships, licensed to do business and actually doing business in the State of
10 California. As such, and based upon all the facts and circumstances incident to Defendants'
11 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

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

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

25 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
26 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
27 joint venturer of, or working in concert with each of the other co-Defendants and was acting
28 within the course and scope of such agency, employment, joint venture, or concerted activity.

1 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
2 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
3 Defendants.

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

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

14 **CLASS ACTION ALLEGATIONS**

15 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
16 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: All current
17 and former employees of Defendants in the State of California who were paid wages at any time
18 from June 1, 2020, through the present (the “Class”).

19 17. Plaintiff further reserves the right to amend such Class definition based upon
20 further discovery.

21 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
22 that joinder of all members would be impractical, if not impossible. The identities of the
23 members of the Class are readily ascertainable by review of Defendants’ records, including
24 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendant
25 failed to provide accurate itemized wage statements to employees in violation of Labor Code §
26 226(a).

27 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
28 necessary steps to represent fairly and adequately the interests of the Class defined above.

1 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
2 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
3 actions in the past and currently have a number of wage-and-hour class actions pending in
4 California state and federal courts.

5 20. Defendants uniformly administered a corporate policy and practice of failing to
6 provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code §
7 226(a) by failing to identify the pay period start date on wage statements issued to Plaintiff and
8 Class members.

9 21. Plaintiff is informed and believes, and based thereon alleges, that this corporate
10 conduct is accomplished with the advance knowledge and designed intent to willfully and
11 intentionally fail to accurately record proper rates of pay and hours worked.

12 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
13 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
14 Labor Code § 226(a).

15 23. **Common Question of Law and Fact:** There are predominant common questions
16 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
17 concerning Defendants' policy and practice of failing to provide accurate itemized wage
18 statements that identified the pay period start date, in violation of Labor Code § 226(a).

19 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
20 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
21 as the Class Members. As with other employees of Defendants in California, Plaintiff was not
22 provided proper and accurate itemized wage statements. Specifically, during Plaintiff's
23 employment with Defendants, the wage statements issued to Plaintiff failed to identify the
24 inclusive dates of the payroll period, in violation of Labor Code § 226(a)(6). Rather, the wage
25 statements only identified a "Check Date" and a "Period Ending" date. Therefore, Plaintiff is a
26 member of the Class and has suffered the alleged violations of California Labor Code § 226(a).

27 25. The California Labor Code upon which Plaintiff bases these claims are broadly
28 remedial in nature. These laws and labor standards serve an important public interest in

1 establishing minimum working conditions and standards in California. These laws and labor
2 standards protect the average working employee from exploitation by employers who may seek
3 to take advantage of superior economic and bargaining power in setting onerous terms and
4 conditions of employment.

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

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

24 28. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
27 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
28 §§ 226 and 226.3, and Code of Civil Procedure § 1021.5.

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

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226(A)**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 30. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
8 fully set forth herein.

9 31. California Labor Code § 226(a) places an affirmative obligation on employers to
10 provide accurate itemized wage statements. Defendant, as a matter of policy and practice, did
11 not provide complete and accurate wage statements to Plaintiff and the Class, in violation of
12 Labor Code § 226(a).

13 32. Labor Code § 226(a)(6) requires Defendants to list on wage statements “the
14 inclusive dates of the period for which the employee is paid.” Here, Defendants are in direct
15 violation of Labor Code § 226(a)(6) as the wage statements issued to Plaintiff and Class
16 members did not identify the pay period start date. Instead, the wage statements issued to
17 Plaintiff and Class members only identified a “Check Date” and “Period Ending” date.

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

23 **SECOND CAUSE OF ACTION**

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

25 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

26 34. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
27 fully set forth herein.

28 35. Plaintiff brings this cause of action on behalf of the State of California and seeks

penalties on behalf of all aggrieved employees from April 16, 2020, through the present, for Defendants' violation of Labor Code § 226(a).

36. As alleged above, Defendants failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and Aggrieved Employees in violation of Labor Code § 226(a). Specifically, the wage statements provided to Plaintiff and Aggrieved Employees did not identify the pay period start date and thus failed to list the inclusive dates of the payroll period as required under Labor Code § 226(a)(6).

37. Plaintiff is an "aggrieved employee" pursuant to Labor Code § 2699, as Plaintiff has suffered the violations of Labor Code § 226(a) alleged above.

38. On or about April 16, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 226(a), pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to said Notice. Pursuant to the PAGA, Plaintiff also sent written notice of the above-referenced Labor Code violations to Defendants via certified mail.

39. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code § 226(a) for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself 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 penalties and/or damages pursuant to California Labor Code § 226, *et seq.*, and for interest, costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to the PAGA, Labor Code § 2698, *et seq.*, and Labor Code § 226.3, and for costs and attorneys'

1 fees;

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

4 7. For such other and further relief that the Court may deem just and proper.
5

6 DATED: June 1, 2021

DIVERSITY LAW GROUP, P.C.

7
8 By: 

Larry W. Lee

Mai Tulyathan

9 Attorneys for Plaintiff, the Class, and Aggrieved
10 Employees
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