

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ERICK GARCIA, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

UNISTRUT INTERNATIONAL
CORPORATION, a Nevada corporation;
ATKORE INTERNATIONAL, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **21CV382522**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND OVER \$25,000.00

1 Plaintiff Erick Garcia (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendants Unistrut International Corporation, Atkore
3 International, Inc., and Does 1 through 50 (hereinafter collectively referred to as “Defendants”)
4 on behalf of himself and all other similarly situated current and former employees of Defendants,
5 for penalties for failure to provide accurate itemized wage statements under 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.* and the applicable Wage Orders of the California
10 Industrial Welfare Commission (“IWC”).

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 provide complete and accurate wage
16 statements to Plaintiff and Class Members.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code
19 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
20 customs that knowingly deny its 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 §§ 226 and 2698, *et seq.*

24 6. Venue is proper because Defendants do business in Santa Clara County, and
25 Plaintiff worked for Defendants in Santa Clara County.

26 **PARTIES**

27 7. Plaintiff was employed by Defendants as a framer from on or about June 4, 2020,
28 to on or about June 12, 2020. Throughout his employment with Defendants, Plaintiff worked as

1 a non-exempt employee.

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

5 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
6 Unistrut International Corporation (“Unistrut”) was and is a Nevada corporation doing business
7 in the State of California. Defendant Unistrut is in the metal fabrication business and
8 manufactures metal framing, fittings, and other parts.

9 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
10 Atkore International, Inc. (“Atkore”) was and is a Delaware corporation doing business in the
11 State of California manufacturing cables and flexible conduits.

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

17 12. 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 were 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
24 herein.

25 13. At all times herein mentioned, each of said defendants participated in the doing of
26 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants and employees of each of the other
28 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

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

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

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

19 CLASS ACTION ALLEGATIONS

20 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
21 California Code of Civil Procedure § 382. Plaintiff proposes the following class: All current
22 and former employees of Defendants in the State of California who were paid wages at any time
23 from May 27, 2020, to the present (the "Class").

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

226(a).

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 individual Plaintiff. 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 state and federal courts.

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

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

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

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

1 conditions of employment.

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

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

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

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

1 28. The Plaintiff class is commonly entitled to a specific fund with respect to the
2 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
3 entitled to restitution of those funds being improperly withheld by Defendants. This action is
4 brought for the benefit of the entire Class and will result in the creation of a common fund.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

24 **SECOND CAUSE OF ACTION**

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

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

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

34. Plaintiff brings this cause of action on behalf of the State of California and seeks penalties on behalf of all aggrieved employees from April 5, 2020, through the present, for Defendants' violation of Labor Code § 226(a).

35. 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).

36. On or about April 5, 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.

37. 91. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation 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 pursuant to California Labor Code § 226, and for 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' fees;

- 1 6. On all causes of action for attorneys' fees and costs as provided by California
2 Labor Code §§ 226 and 2699, and Code of Civil Procedure § 1021.5; and
3 7. For such other and further relief that the Court may deem just and proper.
4

5 DATED: May 27, 2021

DIVERSITY LAW GROUP, P.C.

6 By: 
7 Larry W. Lee
8 Mai Tulyathan
9 Attorneys for Plaintiff, the Class, and Aggrieved
10 Employees
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28