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

ALLEN JOHNSON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FS PALO ALTO EMPLOYMENT, INC.,
a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 21CV389927

REPRESENTATIVE ACTION COMPLAINT

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

DEMAND OVER \$25,000.00

1 Plaintiff Allen Johnson (“Plaintiff”) hereby submits this Representative Action
2 Complaint (“Complaint”) against Defendant FS Palo Alto Employment, Inc. (“Defendant”) and
3 Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on behalf of himself
4 and all other aggrieved employees of Defendants, for penalties for violations of the California
5 Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 2698
9 *et. seq.*, and the applicable Wage Orders of the California Industrial Welfare Commission
10 (“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 in receiving minimum wages and overtime wages for all
16 hours worked, off-duty meal and rest periods, accurate itemized wage statements, and all earned
17 wages upon separation of employment.

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

22 **JURISDICTION AND VENUE**

23 5. The Court has jurisdiction over the violations of the California Labor Code
24 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 2698 *et seq.*

25 6. Venue is proper because Defendant does business in Santa Clara County and
26 maintains a business location in Santa Clara County.

27 **PARTIES**

28 7. Plaintiff was employed by Defendant as a non-exempt employee from in or

1 around May 17, 2017 to on or about March 1, 2021.

2 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
3 complained of in this action in ways that have deprived him of the rights guaranteed by
4 California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and
5 1197.1 and 2698 *et seq.*

6 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant FS
7 Palo Alto Employment, Inc. is a Delaware corporation, which maintains operations in the State
8 of California, including the County of Santa Clara.

9 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
11 individuals, and partnerships, licensed to do business and actually doing business in the State of
12 California. As such, and based upon all the facts and circumstances incident to Defendants'
13 business, Defendants are subject to California Labor Code sections 201, 202, 203, 204, 226,
14 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 2698 *et seq.*

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

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

27 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or

1 joint venturer of, or working in concert with each of the other co-Defendants and was acting
2 within the course and scope of such agency, employment, joint venture, or concerted activity.
3 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
4 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

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

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

16 **FIRST CAUSE OF ACTION**

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

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

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

22 18. Plaintiff brings this cause of action as a proxy for the State of California, and in
23 this capacity, seeks penalties on behalf of all Aggrieved Employees from August 31, 2020,
24 through the present, for Defendant's policy and practice of: (a) failing to pay employees
25 minimum and/or overtime wages for time spent undergoing check in/out procedures, including
26 COVID temperature checks and screenings, in violation of Labor Code sections 510, 558, 1194,
27 1197 and 1197.1; (b) failing to provide off-duty 10-minute rest breaks to employees who worked 3.5
28 hours or more in one shift, in violation of Labor Code section 226.7; (c) failing to provide off-duty

30-minute meal periods to employees who worked more than five hours in one shift, in violation of Labor Code sections 226.7 and 512; (d) failing to provide accurate wage statements to employees, in violation of Labor Code section 226(a); and (e) failing to pay all earned wages upon termination to separating employees, in violation of Labor Code sections 201, 202 and 203.

11. As a pattern and practice, Defendant suffered and permitted Plaintiff and other Aggrieved Employees to work without payment of minimum and/or overtime wages for all hours worked in a workday and workweek. Specifically, Defendant required Aggrieved Employees to submit to daily check in/out procedures off-the-clock, including, but not limited to, COVID temperature checks and screenings. Aggrieved Employees did not receive the payment of wages for such time.

12. Defendant failed in its affirmative obligation to ensure that Plaintiff and other Aggrieved Employees had the opportunity to take and were provided with off-duty meal and rest periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Specifically, Defendant required Aggrieved Employees to remain on work premises during meal and rest periods. Defendant further required Aggrieved Employees to keep their employer-issued radios on and with them throughout the workday and respond to work-related calls, regardless of whether they were taking a break. Consequently, Aggrieved Employees were denied the opportunity to take their full off-duty meal and rest period because they remained under Defendant's control by virtue of having to remain on premises and/or keep their employer-issued radios on and with them. Defendant, as a matter of corporate policy and procedure, failed to pay premium compensation in lieu of the missed and/or interrupted meal and rest periods.

13. Defendant failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff and other Aggrieved Employees. Aggrieved Employees were paid hourly. As such, the wage statements provided to these employees should have reflected all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, the total hours worked and the gross/net wages earned. However, as a result of the underpayment and/or non-payment of wages and meal/rest period premiums, the wage statements provided to Aggrieved Employees failed to identify such information, including

1 without limitation, the number of hours worked, as well as all of the wages owed for unpaid
2 minimum/overtime wages and meal/rest period premium pay. Separately, during pay periods
3 where Aggrieved Employees earned shift premium wages and/or double time wages, the
4 corresponding wage statement did not identify the accurate total hours worked.

5 14. On or about August 31, 2021, Plaintiff sent written notice to the California Labor
6 & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code
7 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to
8 Labor Code section 2698, *et seq.*, the Private Attorney General Act ("PAGA"). More than sixty-
9 five days has elapsed since Plaintiff sent written notice.

10 15. To date, the LWDA has not responded to Plaintiff's written notice. bAs such,
11 pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil
12 penalties for Defendant's violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
13 512, 558, 1194, 1197, and 1197.1 for the time period described above, on behalf of himself and
14 other Aggrieved Employees

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
17 this suit is brought against Defendants, jointly and severally, as follows:

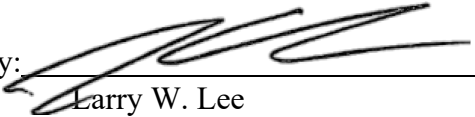
18 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
19 Labor Code section 2698 *et seq.*, and for costs and attorneys' fees;

20 2. For attorneys' fees and costs as provided by California Labor Code section 2699,
21 and Code of Civil Procedure section 1021.5; and

22 3. For such other and further relief the Court may deem just and proper.

23 DATED: November 4, 2021

DIVERSITY LAW GROUP, P.C.

24
25 By: 

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Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
26 Employees
27
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