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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Sonia Krohn, Deputy

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

ERIC ROMAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SUNOPTA GRAINS AND FOODS INC.,
a Minnesota corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CV-21-005589

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

- (1) VIOLATION OF LABOR CODE § 226.7;**
- (2) VIOLATION OF LABOR CODE §§ 201,
202, 203;**
- (3) VIOLATION OF LABOR CODE § 226;**
- (4) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;**
- (5) VIOLATION OF CAL. LABOR CODE §§
2698, *ET SEQ.***

DEMAND OVER \$25,000

Plaintiff Eric Roman ("Plaintiff") hereby submits this First Amended Class and Representative Action Complaint against Defendant SunOpta Grains and Foods Inc. ("Defendant") and Does 1-50 (hereinafter collectively referred to as "Defendants"), on behalf of himself and the class of all other similarly situated current and former employees of Defendant for all damages and penalties arising from Defendant's violations of the California Labor Code as follows:

1 **INTRODUCTION**

2 1. This complaint is within the Court’s jurisdiction under California Labor Code §§
3 201, 202, 203, 204, 212, 213, 226, 226.7, 246, 512, and 2698, *et seq.*, Business and Professions
4 Code § 17200, *et seq.* (the “UCL”), and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

6 2. This complaint challenges systemic illegal employment practices resulting in
7 violations of the California Labor Code against employees of Defendant.

8 3. Plaintiff is informed and believes and based thereon alleges that Defendants
9 jointly and severally have acted intentionally and with deliberate indifference and conscious
10 disregard to the rights of all employees by: (a) failing to provide off-duty rest breaks and/or pay
11 rest period premium wages; (b) failing to properly calculate the regular rate of pay for purposes
12 of paying sick pay; (c) failing to provide accurate itemized wage statements; (d) failing to pay all
13 wages owed upon separation of employment; and (e) issuing payment of wages to employees in
14 the form of a pay card without written authorization or consent.

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

19 5. The policies, practices and customs of Defendants described above and below
20 have resulted in unjust enrichment of Defendants and an unfair business advantage over
21 businesses that routinely adhere to the strictures of the California Labor Code and the California
22 Business and Professions Code.

23 **JURISDICTION AND VENUE**

24 6. The Court has jurisdiction over the violations of the California Labor Code §§
25 201, 202, 203, 204, 212, 213, 226, 226.7, 246, 512, 2698, *et seq.*, and the UCL.

26 7. Venue is proper in Stanislaus County because Plaintiff worked for Defendants at
27 their facility in Modesto, California.

PARTIES

8. Plaintiff was employed by Defendants as an hourly, non-exempt employee from about May 14, 2018, until about October 13, 2020. Plaintiff worked as an aseptic mixer. Plaintiff's job duties included, among other tasks, gathering ingredients and making various food products at Defendants' facility in Modesto, California.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 201, 202, 203, 204, 212, 213, 226, 226.7, 246, 512, and 2698, *et seq.*, the UCL, and the applicable IWC Wage Orders.

10. Plaintiff is informed and believes and based thereon alleges that Defendant SunOpta Grains and Foods Inc. was and is a Minnesota corporation that does business in the State of California, including in Stanislaus County.

11. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendant 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.

12. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201, 202, 203, 204, 212, 213, 226, 226.7, 246, and 512, the UCL, and the applicable IWC Wage Orders.

13. 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 were responsible in some way for the matters alleged herein and proximately caused Plaintiff and the class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14. 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 Defendant; 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.

15. 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.

16. 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.

17. 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

18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of the following class and subclasses (collectively, “Class” or “Class Members”):

- a. All current and former non-exempt employees of Defendant in the State of California who worked shifts of three and one-half hours or more, at any time from October 12, 2017, through the present (the “Rest Period Class”);
- b. All former non-exempt employees of Defendant in the State of California

1 who earned non-discretionary remuneration and sick pay during the same
2 work week, and whose employment ended, at any time from October 12,
3 2018, through the present (the “Sick Pay Class”); and

4 c. All former employees of Defendant in the State of California whose
5 employment was separated for any reason (voluntary or involuntary), and
6 who were paid wages via a pay card without their written authorization or
7 consent, at any time from October 12, 2018, through the present (the “Pay
8 Card Class”).

9 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
10 that joinder of all members would be impractical, if not impossible. The identities of the
11 members of the Class are readily ascertainable by review of Defendant’s records, including
12 payroll records. Plaintiff alleges that Defendant: (a) failed to provide off-duty rest breaks and/or
13 pay rest period premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and
14 512; (b) failed to pay employees sick pay at the correct regular rate of pay that included all non-
15 discretionary remuneration, in violation of Labor Code §§ 201, 202, 203, 204, and 246; (c) failed
16 to provide accurate itemized wage statements, in violation of Labor Code § 226; (d) issued
17 payment of final wages to employees in the form of a pay card without written authorization,
18 which required employees to incur fees to use, was not fully cashable, and was not usable at all
19 financial institutions, in violation of Labor Code §§ 201, 202, 203, 212 and 213; and (e) failed to
20 pay final wages in a timely manner to separated employees as a result of the issuance of pay
21 cards and underpayment and/or nonpayment of sick pay wages and rest period premiums, in
22 violation of Labor Code §§ 201, 202, and 203.

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

1 21. Defendant uniformly administered a corporate policy, practice of: (a) failing to
2 provide off-duty rest breaks and/or pay rest period premium compensation in lieu thereof, in
3 violation of Labor Code §§ 226.7 and 512; (b) failing to pay employees sick pay at the correct
4 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
5 §§ 201, 202, 203, 204, and 246; (c) failing to provide accurate itemized wage statements, in
6 violation of Labor Code § 226; (d) issuing payment of final wages to employees in the form of a
7 pay card without written authorization, which required employees to incur fees to use, was not
8 fully cashable, and was not usable at all financial institutions, in violation of Labor Code §§ 201,
9 202, 203, 212 and 213; and (e) failing to pay final wages in a timely manner to separated
10 employees as a result of the issuance of pay cards and underpayment and/or nonpayment of sick
11 pay wages and meal and rest period premiums, in violation of Labor Code §§ 201, 202, and 203.

12 22. **Common Question of Law and Fact:** There are predominant common questions
13 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
14 concerning Defendant's policy and practice of: (a) failing to provide off-duty rest breaks and/or
15 pay rest period premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and
16 512; (b) failing to pay employees sick pay at the correct regular rate of pay that included all non-
17 discretionary remuneration, in violation of Labor Code §§ 201, 202, 203, 204, and 246; (c)
18 failing to provide accurate itemized wage statements, in violation of Labor Code § 226; (d)
19 issuing payment of final wages to employees in the form of a pay card without written
20 authorization, which required employees to incur fees to use, was not fully cashable, and was not
21 usable at all financial institutions, in violation of Labor Code §§ 212 and 213; and (e) failing to
22 pay final wages in a timely manner to separated employees as a result of the issuance of pay
23 cards and underpayment and/or nonpayment of sick pay wages and rest period premiums, in
24 violation of Labor Code §§ 201, 202, and 203.

25 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
26 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
27 manner as the Class members. As with other non-exempt employees, Plaintiff did not receive
28 duty-free rest periods. Rather, Plaintiff and other employees were required to remain on work

1 premises and keep company-issued radios on during their rest breaks. Plaintiff and other
2 employees were also required to respond to radio calls during their rest breaks. Plaintiff was
3 subject to Defendants' control and did not receive complete, off-duty rest breaks as required by
4 law. Plaintiff was not paid any applicable rest period premium compensation for said non-
5 compliant breaks.

6 24. In addition, like other employees Plaintiff regularly received non-discretionary
7 remuneration such as shift premium pay. However, the non-discretionary wages were not
8 factored into the regular rate of pay for the purposes of paying sick pay. Rather, sick pay wages
9 were paid at the employee's base rate of pay. As such, Plaintiff is owed additional sick pay based
10 on the correct, higher regular rate of pay.

11 25. As a result of the nonpayment of rest period premium wages and underpayment of
12 sick pay wages, the corresponding wage statements issued to Plaintiff failed to identify the
13 accurate hourly rates of pay, and accurate gross and net wages earned.

14 26. Finally, upon his separation of employment, Plaintiff was issued a pay card
15 containing his final wages. Plaintiff did not give written authorization to accept his wages via
16 pay card. Moreover, the pay card given to Plaintiff was not fully cashable, was not usable at all
17 financial institutions, and was laden with fees with use. As such, Plaintiff has been unable to
18 access all the monies contained on the pay card.

19 27. To date, Plaintiff has yet to receive all wages owed to him, including the unpaid
20 meal and rest break premium compensation, underpaid sick pay, and incomplete wage payment
21 due to pay card use. Thus, Defendants owe waiting time penalties under Labor Code § 203.
22 Accordingly, Plaintiff is a member of the Class and has suffered the alleged violations of
23 California Labor Code §§ 201, 202, 203, 204, 212, 213, 226, 226.7, 246, and 512.

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

1 conditions of employment.

2 29. 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 Defendant 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 Defendant's vastly superior financial and legal resources. Requiring
8 each Class member to pursue an individual remedy would also discourage the assertion of lawful
9 claims by employees who would be disinclined to file an action against their former and/or
10 current employer for real and justifiable fear of retaliation and permanent damage to their careers
11 at subsequent employment.

12 30. 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 Defendant and which would establish potentially
15 incompatible standards of conduct for Defendant, 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 31. 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 the Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
24 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
25 according to the mandate of California Labor Code §§ 201, 202, 203, 204, 212, 213, 218.5, 226,
26 226.7, 246, and 512, the applicable IWC Wage Orders and Code of Civil Procedure § 1021.5.

27 32. Proof of a common business practice or factual pattern, which the named Plaintiff
28 experienced and is representative of, will establish the right of each of the members of the Class

1 to recovery on the causes of action alleged herein.

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

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 226.7**

8 **(BY PLAINTIFF, THE CLASS, AND THE REST PERIOD CLASS AGAINST ALL**
9 **DEFENDANTS)**

10 34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 35. This cause of action is brought pursuant to Labor Code § 226.7, which requires an
13 employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major
14 fraction thereof. Plaintiff and Class Members regularly worked shifts of three and one-half (3.5)
15 hours or more per day, and accordingly had a right to take a 10-minute rest period each day.

16 36. At all relevant times, Defendants failed in their affirmative obligation to provide
17 Plaintiff and Class Members with the opportunity to take rest periods in accordance with the
18 mandate of the California Labor Code and the applicable IWC Wage Order. At all relevant
19 times, Plaintiff and Class Members were suffered and permitted to work through legally required
20 rest breaks and were denied the opportunity to take their off-duty rest breaks. This included,
21 without limitation, Defendants requiring Plaintiff and Class Members to remain on work
22 premises and respond to calls on company-issued radios. Thus, Plaintiff and Class Members
23 were denied their right to take complete, duty-free 10-minute rest breaks for any and all shifts in
24 which they worked three and one-half (3.5) hours or more.

25 37. As a pattern and practice, Defendants regularly required Plaintiff and Class
26 Members to remain on work premises and respond to radio calls during their breaks. Plaintiff and
27 Class Members were denied the right to take proper rest periods as required by law.

28 38. Such a pattern, practice, and uniform administration of corporate policy as

described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to California Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

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

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201, 202, 203

(BY PLAINTIFF, THE CLASS, THE SICK PAY CLASS, AND THE PAY CARD CLASS AGAINST ALL DEFENDANTS)

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

41. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

42. Labor Code § 246 provides that an employee is entitled to receive sick time pay. The employer shall calculate paid sick leave by using one of two calculations: (1) "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 (2) “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 of the prior 90 days of employment.”

43. Whenever Defendant paid Plaintiff and Class Members sick time pursuant to California Labor Code § 246, Defendant did so at the incorrect rate of pay. Defendant paid Plaintiff and Class Members at the base hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary wages such as shift premium wages, as required by Labor Code § 246. This resulted in the underpayment of sick time wages; and the violation of California Labor Code §§ 201, 202 and 203, and other derivative Labor Code violations, because Defendant did not pay, or timely pay, Plaintiff and Class Members all owing and unpaid wages for work performed by them during their employment and at the end of their employment.

44. Moreover, Defendant paid wages to Plaintiff and Class Members in the form of a pay card. Plaintiff and Class Members did not give authorization or consent to receive wages in the form of a pay card. As alleged herein, the pay card required Plaintiff and Class Members to incur fees to use, was not fully cashable, and not usable at all financial institutions. Thus, the pay card did not actually compensate separated employees for all wages owed at the time of separation. As such, Plaintiff and Class Members have not been paid all final wages due upon separation of employment.

45. Defendant willfully failed to pay Plaintiff and Class Members all their wages due, as alleged hereinabove and hereinafter, upon the separation of their employment within the times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time penalty. Plaintiff and Class Members are entitled to recover from Defendant the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(BY PLAINTIFF, THE CLASS, THE REST PERIOD CLASS, THE SICK PAY CLASS,

1 **AND THE PAY CARD CLASS AGAINST ALL DEFENDANTS)**

2 46. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
3 though fully set forth herein.

4 47. Defendant failed in its affirmative obligation to provide accurate itemized wage
5 statements, in violation of Labor Code § 226.

6 48. Plaintiff and the Class were paid hourly. As such, the wage statements should
7 have reflected all applicable hourly rates in effect during the pay period and gross and net wages
8 earned. However, the wage statements provided to Plaintiff and the Class failed to identify such
9 information.

10 49. Plaintiff and Class Members earned non-discretionary remuneration. During
11 workweeks when the employees earned non-discretionary pay and sick pay wages, the sick pay
12 wages were paid at the base hourly rate of pay. As such, the corresponding wage statements
13 issued to Plaintiff and the Class identified incorrect hourly rates of pay and wages earned during
14 the pay period. In addition, as a result of the nonpayment of meal and rest period premium pay
15 for non-complaint breaks, the wage statements issued to Plaintiff and Class Members failed to
16 identify the correct gross and net wages earned and hourly rates of pay.

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

22 **FOURTH CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

24 **(BY PLAINTIFF, THE CLASS, AND THE REST PERIOD CLASS AGAINST ALL**
25 **DEFENDANTS)**

26 51. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 52. Defendant has engaged and continues to engage in unfair and unlawful business

practices in California by practicing, employing, and utilizing the employment practices outlined above, including by (a) failing to provide off-duty rest breaks and/or pay rest period premium wages; (b) failing to properly calculate the regular rate of pay for purposes of paying sick pay; (c) failing to pay all wages owed upon separation of employment; and (d) issuing payment of wages to employees in the form of a pay card without written authorization or consent.

53. Defendant's utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendant's competitors.

54. Plaintiffs seek, individually and on behalf of other members of the Class, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendant by means of the unfair practices complained of herein.

FIFTH CAUSE OF ACTION

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

(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

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

56. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from September 24, 2020, through the present, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 212, 213, 226.7, 246, 512, and 2698, and the applicable IWC Wage Orders, as identified above for: (a) failing to provide off-duty rest breaks and/or pay rest period premium wages; (b) failing to properly calculate the regular rate of pay for purposes of paying sick pay; (c) failing to provide accurate itemized wage statements; (d) failing to pay all wages owed upon separation of employment; and (e) issuing payment of wages to employees in the form of a pay card without written authorization or consent.

57. On or about September 24, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code

§§ 201, 202, 203, 204, 212, 213, 226.7, 246, 512, and 2698, and the applicable IWC Wage Orders, pursuant to Labor Code § 2698, et seq., the Private Attorneys General Act (“PAGA”). Plaintiff also sent written notice of said Labor Code violations to Defendant via certified mail pursuant to Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has not provided written notice regarding whether it intends to investigate the Labor Code violations set forth in Plaintiff’s written notice.

58. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201, 202, 203, 204, 212, 213, 226.7, 246, 512, and 2698, and the applicable IWC Wage Orders, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes 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 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys’ fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201, 202, and 203, and for costs and attorneys’ fees pursuant to Labor Code § 218.5;
6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys’ fees;
7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendant by means of any acts or practices declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*, and for costs and attorneys’ fees;

1 8. Upon the Fifth Cause of Action, for civil penalties, attorneys' fees, and costs as
2 provided for by statute and the PAGA, Cal. Labor Code Section 2698, *et seq.*, 226.3;

3 9. On all causes of action, for attorneys' fees and costs as provided by California
4 Labor Code §§ 218.5, 226, 2698, and Code of Civil Procedure § 1021.5; and

5 10. For such other and further relief as the Court may deem just and proper.
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7 DATED: December 22, 2021

DIVERSITY LAW GROUP, P.C.

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9 By: _____



Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On December 22, 2021, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 22, 2021, at Los Angeles, California.


Linda Lee

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