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Attorneys for Plaintiff, the Class, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

ARTURO PARRA-MARQUEZ, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

PRC - DESOTO INTERNATIONAL,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: BCV-22-100704

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

- 1. VIOLATION OF LABOR CODE §§ 201-204 AND 246;**
- 2. VIOLATION OF LABOR CODE § 226; AND**
- 3. VIOLATION OF LABOR CODE § 2698, ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Arturo Parra-Marquez (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant PRC – DeSoto International,
3 Inc. (“Defendant”), and Does 1 through 50 (collectively, “Defendants”), as an individual, on
4 behalf of a class of all other similarly situated current and former employees, and all aggrieved
5 employees of Defendant for damages and/or penalties for violations of the California Labor
6 Code as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code §§
9 201-204, 246, 226, 2698, *et seq.*, and the applicable Industrial Welfare Commission (“IWC”)
10 Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code and the applicable IWC Wage Orders against individuals
13 who worked for Defendant.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to provide itemized, accurate wage statements,
17 failing to pay sick pay at the regular rate of pay, and all wages due at termination.

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 and the applicable IWC Wage Orders by creating and maintaining policies, practices and
21 customs that knowingly deny employees the above stated rights and benefits.

22 **JURISDICTION AND VENUE**

23 5. The Court has jurisdiction over the violations of the California Labor Code §§
24 201-204, 226, 246, 2698, *et seq.*, and the applicable IWC Wage Orders.

25 6. Venue is proper in Kern County because Plaintiff worked for Defendants in Kern
26 County, California.

27 **PARTIES**

28 7. Plaintiff was employed by Defendants as a Senior Lab Technician from about

November 9, 2009, to about March 18, 2022. Plaintiff worked as an hourly non-exempt employee.

8. Plaintiff was and is the victims 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 §§ 201-204, 226, 246, 2698, *et seq.*, and the applicable IWC Wage Orders.

9. Plaintiff is informed and believes, and based thereon alleges, that PRC – DeSoto International, Inc. was and is a California corporation which operates as a chemical manufacturer throughout the United States, including Kern County, California. On information and belief, Defendant maintains its corporate headquarters in California.

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

11. 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.

12. At all times herein mentioned, each defendant participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, 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.

13. Plaintiff is informed and believes, and based thereon alleges, that at all times

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

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

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

17 **CLASS ACTION ALLEGATIONS**

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

- 20 a. All non-exempt employees of Defendant in the State of California who
21 earned non-discretionary incentives and/or bonuses, including without
22 limitation, awards, and sick pay during the same work week, and whose
23 employment ended at any time between March 25, 2019, through the
24 present (the “Class” or “Class Members”).

25 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
26 that joinder of all members would be impractical, if not impossible. The identity of the members
27 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
28 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to

1 provide accurate, itemized wage statements in violation of Labor Code § 226(a); and (b) failed to
2 pay sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code
3 §§ 201-203 and 246.

4 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
5 necessary steps to represent fairly and adequately the interests of the Class defined above.
6 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and
7 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
8 actions in the past and currently have a number of wage-and-hour class actions pending in
9 California state and federal courts.

10 19. Defendants uniformly administered a corporate policy, practice of: (a) failing to
11 provide accurate, itemized wage statements in violation of Labor Code § 226(a); and (b) failing
12 to pay sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code
13 §§ 201-203 and 246.

14 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
15 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
16 Code §§ 201-204, 226, 246, and the applicable IWC Wage Orders.

17 21. **Common Question of Law and Fact:** There are predominant common questions
18 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
19 concerning Defendants' policy and practice of: (a) failing to provide accurate, itemized wage
20 statements in violation of Labor Code § 226(a); and (b) failing to pay sick pay at the regular rate
21 of pay and pay all final wages owed in violation of Labor Code §§ 201-204 and 246.

22 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
23 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
24 manner as the Class Members. As with other California employees, Plaintiff earned non-
25 discretionary remuneration, including without limitation, awards. Like other members of the
26 Class, Plaintiff was not paid sick pay at the regular rate of pay. Specifically, when Plaintiff
27 earned non-discretionary remuneration, thus increasing the regular rate of pay, sick pay was paid
28 at the base rate of pay rather than the regular rate of pay. At the termination of Plaintiff's

1 employment, he was not paid all final wages owed, including all of his sick pay wages. Finally,
2 Plaintiff received wage statements that failed to identify the accurate rate of pay, and the gross
3 and net wages earned. As such, Plaintiff is a member of the Class and has suffered the alleged
4 violations of California Labor Code §§ 201-204, 226(a), 246, and the applicable IWC Wage
5 Orders.

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

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

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

individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

26. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein of a common fund, including interest thereon, applicable penalties, including, but not limited to waiting time penalties and wage statement penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226, and Code of Civil Procedure § 1021.5.

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

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

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

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

30. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code sections 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.

31. Labor Code section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

32. Labor Code section 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

1 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.

3 33. Labor Code section 246 provides that an employee is entitled to receive sick time
4 pay. The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick
5 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
6 for the workweek in which the employee uses paid sick time, whether or not the employee
7 actually works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees
8 shall be calculated by dividing the employee's total wages, not including overtime premium pay,
9 by the employee's total hours worked in the full pay periods of the prior 90 days of
10 employment."

11 34. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to
12 California Labor Code section 246, Defendants did so at the incorrect rate of pay. Defendants
13 paid Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate
14 of pay, which would take into account all non-discretionary incentive wages and bonuses, or by
15 dividing the employees' total wages, not including overtime premium pay, by the employees'
16 total hours worked in the full pay periods of the prior 90 days of employment, as required by
17 Labor Code section 246. This resulted in the employees being underpaid for sick time and
18 resulted in violations of California Labor Code sections 201, 202, and 203, and other derivative
19 Labor Code violations, because Defendants did not pay, or timely pay, Plaintiff and the Class
20 Members all owing and unpaid wages for work performed by them during their employment and
21 at the end of their employment.

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

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1 **SECOND CAUSE OF ACTION**

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

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

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

6 37. Defendants failed in its affirmative obligation to provide accurate itemized wage
7 statements. Defendants, as a matter of policy and practice, did not provide accurate records in
8 violation of Labor Code § 226(a) by failing to provide accurate payroll records for Plaintiff and
9 the Class.

10 38. As a result of Defendants' failure to pay proper sick pay wages, in violation as
11 identified above, the wage statements issued to Plaintiff and Class Members failed to identify the
12 correct gross wages earned, net wages earned, and correct hourly rates of pay, in violation of
13 Labor Code § 226(a)(1), (5), and (9).

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

19 **THIRD CAUSE OF ACTION**

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

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

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

24 41. Plaintiff brings this cause of action as a proxy for the State of California and in
25 this capacity, seeks penalties on behalf of all Aggrieved Employees from March 23, 2021,
26 through the present, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226,
27 246, 2698, *et seq.*, for failing to pay sick pay at the regular rate of pay and failing to provide
28 accurate itemized wage statements.

42. Specifically, Defendant failed to pay Plaintiff and Aggrieved Employees sick pay at the regular rate of pay by failing to include non-discretionary incentives, including but not limited to, awards, into the regular rate of pay for sick pay wages. Additionally, as a result of Defendants' failure to pay proper sick pay wages, the wage statements issued to Plaintiff and Aggrieved Employees failed to identify the correct gross wages earned, net wages earned, and correct hourly rates of pay.

43. On or about March 23, 2022, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code sections 201, 202, 203, 204, 226, and 246, pursuant to Labor Code section 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 section 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.

44. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code sections 201, 202, 203, 204, 226, 246, and 2698, *et seq.* 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 damages and/or penalties pursuant to California Labor Code § 201-203, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to

1 California Labor Code § 226, and for costs and attorneys' fees;

2 6. Upon the Third Cause of Action, for civil penalties according to proof pursuant to
3 the PAGA, Labor Code §226.3, and for costs and attorneys' fees;

4 7. On all causes of action, for attorneys' fees and costs as provided by California
5 Labor Code §§ 218.5, 226, 2699, and Code of Civil Procedure § 1021.5; and

6 8. For such other and further relief as the Court may deem just and proper.
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8 DATED: June 1, 2022

DIVERSITY LAW GROUP, P.C.

9
10 By: 

Larry W. Lee

Shalom "Christine" Choo

11 Attorneys for Plaintiff, the Class, and the Aggrieved
12 Employees
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On June 1, 2022, I served the following document(s) described as: **FIRST AMENDED**
11 **CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this
12 action as follows:

13 Shiva Shirazi Davoudian
14 Littler Mendelson, P.C.
15 2049 Century Park East, 5th Floor
16 Los Angeles, CA 90067
17 *Attorneys for Defendant PRC – DeSoto International, Inc.*

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

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct. Executed on June 1, 2022, at Los Angeles, California.

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Olympia Tri