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

STEPHEN JARAMILLO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

USS-UPI, LLC, a Delaware limited
liability company formerly known as
USS POSCO Industries; and DOES 1
through 50, inclusive,

Defendants.

Case No.: C22-00641

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

(1) VIOLATION OF LABOR CODE §§ 201-203

**(2) VIOLATION OF LABOR CODE § 2698, ET
SEQ. (PRIVATE ATTORNEYS GENERAL
ACT)**

Plaintiff Stephen Jaramillo ("Jaramillo" or "Plaintiff") hereby submits this first amended
class action complaint ("Complaint") against Defendant USS-UPI, LLC, a Delaware limited

FILED
MAY - 9 2022
K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CONTRA COSTA
COUNTY OF CONTRA COSTA
By: D. WAGNER
D. Wagner Deputy Clerk

liability company formerly known as USS POSCO Industries; and DOES 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of himself and a class of all other similarly situated current and former employees of Defendants for penalties and/or damages for violations of the California Labor Code, including without limitation, failure to timely pay employees all wages owed upon separation of employment, as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-203, 204, 2698, *et seq.*

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

3. Plaintiff is informed and believes, and based thereon alleges, Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to pay all wages due at the time of separation from employment.

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

JURISDICTION AND VENUE

5. The Court has jurisdiction over the violations of California Labor Code §§ 201-203.

6. Venue is proper because the Defendants do business in Contra Costa County, and Plaintiff performed his work in Contra Costa County.

PARTIES

7. Plaintiff was employed by Defendants as an Operation Technician, from about 2006 until on or about February 24, 2022.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed to him by California Labor Code §§ 201-203, 204.

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

1 mentioned Defendant USS-UPI, LLC was and is a limited liability company under the laws of the
2 State of Delaware and doing business in the State of California.

3 10. As such, and based upon all the facts and circumstances incident to Defendants'
4 business, Defendants are subject to California Labor Code §§ 201-203, 204, 2698, *et seq.*

5 11. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
7 defendants are sued under such fictitious names. If and when they are ascertained, Plaintiff prays
8 for leave to amend this complaint. Plaintiff is informed and believes and, based thereon alleges,
9 that each of said fictitious Defendants was responsible in some way for the matters alleged herein
10 and proximately caused Plaintiff and aggrieved employees to be subject to the illegal employment
11 practices, wrongs, and injuries complained of herein.

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

17 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
19 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
20 the course and scope of such agency, employment, joint venture, or concerted activity. To the
21 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
22 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
23 Defendants.

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

27 15. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
2 herein mentioned, Defendants, and each of them, ratified each and every act or omission
3 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
4 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
5 damages as herein alleged.

6 **CLASS ACTION ALLEGATIONS**

7 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
8 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: all former non-
9 exempt employees of Defendants in the State of California who were paid wages at any time from
10 April 7, 2019, through the present (the “Class”).

11 17. **Numerosity:** The members of the Class are so numerous that joinder of all members
12 would be impractical, if not impossible. The identity of the members of the Class is readily
13 ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and
14 believes, and based thereon alleges, that Defendants failed to pay all wages due upon separation
15 from employment pursuant to Labor Code §§ 201-203.

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

22 19. **Common Question of Law and Fact:** There are predominant common questions of
23 law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
24 Defendants’ policy and practice of failing to pay all wages due and owing upon the separation of
25 employment.

26 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
27 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as
28 the Class Members. As with other former California employees, Defendants did not pay Plaintiff

all wages due and owing upon separation within the appropriate time period in violation of California Labor Code §§ 201-203. Specifically, Defendants terminated Plaintiff's employment on February 24, 2022; however, Plaintiff was not paid his final wages until March 3, 2022.

21. The California Labor Code section upon which Plaintiff bases these claims is 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 conditions of employment.

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

23. The prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to the adjudications or which would substantially impair or 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.

24. Such a pattern, practice, and uniform administration of corporate policy regarding

1 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
2 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
3 attorneys' fees, and costs of suit according to the mandate of California Labor Code § 218.5 and
4 Code of Civil Procedure § 1021.5.

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

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 201–203**

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

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

13 27. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in
14 accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a
15 penalty from the due date, and at the same rate until paid, but the wages shall not continue for more
16 than thirty (30) days.

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

19 29. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages
20 no later than 72 hours after an employee quits his or her employment, unless the employee has
21 given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
22 employee is entitled to his or her wages at the time of quitting.

23 30. Defendants failed in their affirmative obligation to pay all wages owed upon
24 separation of employment to Plaintiff and the Class. For example, Defendants terminated
25 Plaintiff's employment on February 24, 2022; however, Plaintiff was not paid his final wages until
26 March 3, 2022.

27 31. Defendants willfully failed to pay Plaintiff and the Class all their wages due, as
28 alleged hereinabove and hereinafter, upon the termination of their employment within the times

prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time penalty. Plaintiff and the Class are entitled to recover from Defendants 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.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, ET SEQ.

(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

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

33. Plaintiff brings this cause of action as a proxy for the State of California, and in this capacity, seeks penalties on behalf of all current and former employees of Defendants who were paid wages in the State of California from March 2, 2021, through the present (“Aggrieved Employees”), for Defendants’ violation of Labor Code § 204.

34. Defendants failed in their affirmative obligation to timely pay wages to Aggrieved Employees. For example, the wages earned during the pay period of August 29, 2021, through September 11, 2021, were not paid until September 21, 2021, which is ten days after the end of the pay period.

35. On or about March 2, 2022, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 204, pursuant to Labor Code § 2698, *et seq.* To date, the LWDA has not responded to Plaintiff’s written notice. As such, Plaintiff has therefore complied with all notice and exhaustion requirements pursuant to PAGA.

36. Pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code § 204, 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 §§ 201, 202, and 203, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code § 2698, et seq., Labor Code § 204, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by California Labor Code § 218.5 and Code of Civil Procedure § 1021.5; and
7. For such other and further relief the Court may deem just and proper.

DATED: May 9, 2022

DIVERSITY LAW GROUP, P.C.

By: 
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Class