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Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

BAKIR FEJZIC, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HOMETEAM PEST DEFENSE, INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2022-00031318-CU-OE-CTL

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Bakir Fejzic (“Plaintiff”) hereby submits this Representative Action Complaint
2 (“Complaint”) against Defendant HomeTeam Pest Defense, Inc. (“Defendant”) and Does 1
3 through 50 (hereinafter collectively referred to as “Defendants”), on behalf of himself and
4 aggrieved employees of Defendants for penalties for violations of the California Labor Code as
5 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, 246, 510, 512, 1194, 1197, 1197.1, 2698 *et*.
9 *seq.* and 2802, 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 Defendant.

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: (1) failing to properly pay minimum, regular, and
16 overtime wages for all hours worked, in violation of Labor Code sections 201, 202, 203, 204,
17 510, 1194, 1197, and 1197.1; (2) failing to pay meal and rest period premium at the regular rate
18 of pay, in violation of Labor Code sections 226.7 and 512; (3) failing to pay sick pay at the
19 correct regular rate of pay, in violation of Labor Code sections 201, 202, 203, 204 and 246; (4)
20 failing to reimburse business expenses, in violation of Labor Code section 2802; and (5) failing
21 to provide accurate itemized wage statements, in violation of Labor Code section 226.

22 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
23 engaged in, among other things a system of willful violations of the California Labor Code by
24 creating and maintaining policies, practices and customs that knowingly deny employees the
25 above stated rights and benefits.

26 **JURISDICTION AND VENUE**

27 5. The Court has jurisdiction over the violations of the California Labor Code
28 sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 2698 *et. seq.* and

2802, and the applicable Wage Orders of the IWC.

6. Venue is proper because Defendant does business in San Diego County and maintains a business location in San Diego County.

PARTIES

7. Plaintiff was employed by Defendant as a non-exempt employee from in or around August 2018 to on or about July 14, 2021.

8. 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 sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 2698 *et. seq.* and 2802, and the applicable Wage Orders of the IWC.

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant HomeTeam Pest Defense, Inc. is a Delaware corporation, which maintains operations in the State of California, including the County of San Diego.

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 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 California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 2698 *et. seq.* and 2802, and the applicable Wage Orders of the IWC.

12. 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 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants and employees of each of the other
3 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
4 acting within the course and scope of said agency and employment.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

27 18. Plaintiff brings this cause of action as a proxy for the State of California, and in
28 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 22, 2021, through

the present, for Defendant's policy and practice of: (1) failing to properly pay minimum, regular, and overtime wages for all hours worked, in violation of Labor Code sections 201, 202, 203, 204, 510, 1194, 1197, and 1197.1; (2) failing to pay meal and rest period premium at the regular rate of pay, in violation of Labor Code sections 201, 202, 203, 226.7 and 512; (3) failing to pay sick pay at the correct regular rate of pay, in violation of Labor Code sections 201, 202, 203, 204 and 246; (4) failing to reimburse business expenses, in violation of Labor Code section 2802; and (5) failing to provide accurate itemized wage statements, in violation of Labor Code section 226.

19. As a pattern and practice, Defendant suffered and permitted Plaintiff and Aggrieved Employees to work without payment of minimum and/or overtime wages for all hours worked in a workday and workweek. Specifically, Defendant's policy required that employees use personal phones to complete Covid questionnaires before the start of each shift. Plaintiff and Aggrieved Employees did not receive the payment of wages for such time. Furthermore, as a matter of policy and practice, Defendant required Plaintiff and Aggrieved Employees to respond to work-related phone calls on their personal cell phone during non-work hours, without the payment of any wages. Defendant also required Plaintiff and Aggrieved Employees to watch training videos and tutorials after employees were hired, without the payment of any wages.

20. Defendant failed in its affirmative obligation to ensure that Plaintiff and 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. For each workday that a meal or rest period is not provided, employees are entitled to one additional hour of pay at the employee's regular rate of pay. Defendant, however, paid meal and rest period premium wages at an employee's base hourly rate of pay, which did not include non-discretionary incentive wages, including, but not limited to, commissions and bonuses. As such, Plaintiff and Aggrieved Employees are owed additional meal/rest period premiums based on the correct, higher regular rate of pay.

21. Whenever Defendant paid Plaintiff and Aggrieved Employees sick time pursuant to California Labor Code section 246, Defendant did so at the incorrect rate of pay. Defendant paid Plaintiff and Aggrieved Employees at the base hourly rate of pay, as opposed to the regular

1 rate of pay, which would take into account all non-discretionary wages such as incentives and/or
2 bonuses, as required by Labor Code section 246. This resulted in the underpayment of sick time,
3 and resulted in violations of California Labor Code sections 201 and 202, and other derivative
4 Labor Code violations, because Defendant did not pay, or timely pay, Plaintiff and Aggrieved
5 Employees all owing and unpaid wages for work performed by them during their employment
6 and at the end of their employment.

7 22. The wage statements provided to Plaintiff and Aggrieved Employees should have
8 reflected all applicable hourly rates in effect during the pay period, the corresponding number of
9 hours worked at each hourly rate, the total hours worked and the gross/net wages earned.
10 However, as a result of the underpayment and/or non-payment of wages and meal/rest period
11 premiums, the wage statements provided to Plaintiff and Aggrieved Employees failed to identify
12 such information, including without limitation, the number of hours worked, as well as all of the
13 wages owed for unpaid minimum/overtime wages and meal/rest period premiums.

14 23. As a pattern and practice, Defendant failed to reimburse and indemnify Plaintiff
15 and Aggrieved Employees for business expenses necessary for the discharge of their duties,
16 including without limitation, the costs incurred with the use of personal cell phones for work-
17 related purposes, in violation of Labor Code section 2802.

18 24. On or about April 22, 2022, Plaintiff sent written notice to the California Labor &
19 Workforce Development Agency ("LWDA") of Defendant's violation of Labor Code sections
20 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194, 1197, 1197.1, and 2802, pursuant to Labor
21 Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA
22 has not responded to Plaintiff's written notice.

23 25. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
24 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203, 204,
25 226, 226.7, 246, 510, 512, 1194, 1197, 1197.1, and 2802, for the time period described above, on behalf of
26 himself and other Aggrieved Employees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 1. Upon the First Cause of Action, for penalties pursuant to statute as set forth in
5 California Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

6 2. On all causes of action for attorneys' fees and costs as provided by California
7 Labor Code sections 2699, and Code of Civil Procedure section 1021.5; and

8 3. For such other and further relief the Court may deem just and proper.
9

10 DATED: August 5, 2022

DIVERSITY LAW GROUP, P.C.

11
12 By: 
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15 Nicholas Rosenthal
Attorneys for Plaintiff and the Aggrieved
Employees