

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

WILLIAM L. MARDER, ESQ. (CBN 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff and the Class

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

JOSE VASQUEZ RUIZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

PERDUE FOODS, LLC., a Maryland
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

SON 264649

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

- (1) VIOLATION OF CAL. LABOR CODE
§ 226(a);
- (2) VIOLATION OF CAL. LABOR CODE
§ 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

ENDORSED
FILED

JUN 18 2019

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

1 Plaintiff John Vasquez Ruiz ("Plaintiff") submits this Class and Representative Action
2 Complaint ("Complaint") against Perdue Foods, LLC ("Defendant"), and DOES 1 through 50
3 (collectively referred to as "Defendants"), on behalf of himself and a class of all other similarly
4 situated current and former employees of Defendants for penalties and/or damages for failure to
5 provide accurate itemized wage statements as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court's jurisdiction under
8 California Labor Code sections 226 and 2698 *et seq.*, and the applicable Wage Orders of the
9 California Industrial Welfare Commission ("IWC").

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

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees in Defendants' failure to provide accurate itemized wage
15 statements to their employees.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
17 engaged in, among other things a system of knowing and intentional violations of the California
18 Labor Code.

19 **JURISDICTION AND VENUE**

20 5. The Court has jurisdiction over the violations of the California Labor Code sections
21 226 and 2698 *et seq.*

22 6. Venue is proper in Sonoma County because Plaintiff worked for Defendant in
23 Sonoma County California.

24 **PARTIES**

25 7. Defendant has employed Plaintiff as a non-exempt employee since in or around
26 2013.

27 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
28 complained of in this action in ways that have deprived him of the rights guaranteed by California

1 Labor Code sections 226 and 2698 *et seq.*

2 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Perdue
3 Foods, LLC was and is a business doing business in the State of California and in the County of
4 Sonoma. As such, and based upon all the facts and circumstances incident to Defendant's business,
5 Defendant is subject to California Labor Code sections 226 and 2698.

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

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

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

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

28 14. At all times herein mentioned, the acts and omissions of various Defendants, and

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

7 CLASS ACTION ALLEGATIONS

8 15. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
9 California Code of Civil Procedure section 382. Plaintiff proposes the following Class:

- 10 a. All current and former non-exempt employees of Defendant in the State of
11 California who were paid overtime or double overtime wages at any time
12 from June 18, 2018, through the present.

13 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
14 joinder of all members would be impractical, if not impossible. The identity of the members of the
15 Class is readily ascertainable by review of Defendant's records, including payroll records. Plaintiff
16 is informed and believes, and based thereon alleges, that Defendant failed to provide accurate
17 itemized wage statements to employees in violation of Labor Code section 226.

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

24 18. Defendant uniformly administered a corporate policy, practice of failing to provide
25 accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code section
26 226.

27 19. **Common Question of Law and Fact:** There are predominant common questions
28 of law and fact and a community of interest amongst Plaintiff and the claims of the Class

1 concerning Defendant's policy and practice of failing to provide accurate itemized wage
2 statements to Plaintiff and the Class in violation of Labor Code section 226.

3 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
4 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
5 as the Class Members. As with other non-exempt California employees, Plaintiff was not provided
6 proper and accurate itemized wage statements. Specifically, when overtime and double overtime
7 wages were paid, the wage statements failed to identify the applicable hourly overtime rate. The
8 wage statements incorrectly identified the overtime rate as half (.5) Plaintiff's regular hourly rate
9 of pay, rather than one and one-half (1.5) times the regular hourly rate. The wage statements also
10 incorrectly identified the double overtime rate as Plaintiff's regular hourly rate of pay, rather than
11 two (2) times the regular hourly rate. Therefore, Defendant violated Labor Code section 226 by not
12 providing the requisite itemized wage statements to Plaintiff. As such, Plaintiff is a member of the
13 Class and has suffered the alleged violations of California Labor Code section 226.

14 21. The California Labor Code sections upon which Plaintiff bases these claims are
15 broadly remedial in nature. These laws and labor standards serve an important public interest in
16 establishing minimum working conditions and standards in California. These laws and labor
17 standards protect the average working employee from exploitation by employers who may seek to
18 take advantage of superior economic and bargaining power in setting onerous terms and conditions
19 of employment.

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

1 23. The prosecution of separate actions by the individual class members, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
3 individual class members against the Defendants and which would establish potentially
4 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
5 individual class members which would, as a practical matter, be dispositive of the interest of the
6 other class members not parties to the adjudications or which would substantially impair or impede
7 the ability of the Class Members to protect their interests. Further, the claims of the individual
8 members of the class are not sufficiently large to warrant vigorous individual prosecution
9 considering all of the concomitant costs and expenses.

10 24. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation described herein is unlawful and creates an entitlement to recovery
12 by Plaintiff and the Class identified herein, in a civil action, for applicable damages and/or
13 penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California
14 Labor Code sections 218.5 and 226, and Code of Civil Procedure section 1021.5.

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

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

22 **FIRST CAUSE OF ACTION**

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

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

25 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as though
26 fully set forth herein.

27 28. Defendant, as a matter of policy and practice, did not provide complete and accurate
28 wage statements to Plaintiff and the Class, in violation of Labor Code section 226(a).

1 29. Plaintiff and the Class were paid on an hourly basis. As such, the wage statements
2 should have reflected all applicable hourly rates in effect during the pay period. However, when
3 overtime and double overtime wages were paid, the wage statements failed to identify the
4 applicable hourly overtime rate. The wage statements incorrectly identified the overtime rate as
5 half (.5) an employee's regular hourly rate of pay, rather than one and one-half (1.5) times the
6 regular hourly rate. The wage statements also incorrectly identified the double overtime rate as the
7 employee's regular hourly rate of pay, rather than two (2) times the regular hourly rate.

8 30. Such a pattern, practice and uniform administration of corporate policy as described
9 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class, in a civil
10 action, for all damages or penalties pursuant to Labor Code section 226, including interest thereon,
11 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

12 **SECOND CAUSE OF ACTION**

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

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

15 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though
16 fully set forth herein.

17 32. Plaintiff brings this cause of action on behalf of, and as a proxy for, the State of
18 California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from May
19 17, 2018, through the present.

20 33. On or about May 17, 2019, Plaintiff sent written notice to the California Labor &
21 Workforce Development Agency ("LWDA") of Defendant's violation of Labor Code section
22 226(a), pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act ("PAGA").
23 To date, the LWDA has not responded to said Notice.

24 34. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
25 and all applicable civil penalties for Defendant's violation of Labor Code section 226(a), for the
26 time period described above, on behalf of himself and other Aggrieved Employees.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

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

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as the representative of the Classes as described
6 herein;
- 7 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 8 4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set
9 forth in California Labor Code section 226, and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action, for civil penalties pursuant to statute as set forth
11 in California Labor Code section 2699, and for costs and attorney's fees;
- 12 6. On all causes of action, for attorneys' fees and costs as provided by California
13 Labor Code section 226 and Code of Civil Procedure section 1021.5; and
- 14 7. For such other and further relief the Court may deem just and proper.
- 15

16 DATED: June 18, 2019

DIVERSITY LAW GROUP, P.C.

17
18 By: _____

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff and the Class

19
20
21
22
23
24
25
26
27
28