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

JOSEPH SEWELL III, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

CORE-MARK INTERNATIONAL, INC.,
a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 23CV039807

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

**(1) VIOLATION OF CAL. LABOR CODE §
226; AND**

**(2) VIOLATION OF LABOR CODE §2698,
*ET SEQ.***

DEMAND EXCEEDS \$25,000.00

ADDITIONAL COUNSEL

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Attorneys for Plaintiff and the Class

1 Plaintiff JOSEPH SEWELL III (“Plaintiff”) hereby submits this First Amended Class
2 Action Complaint against Defendant Core-Mark International, Inc. (“Defendant” or “Company”),
3 and Does 1-50 (hereinafter collectively referred to as “Defendants”), individually and on behalf
4 of a class of all other similarly situated current and former employees of Defendant for penalties
5 and/or damages for failure to provide accurate and complete wage statements as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court’s jurisdiction under California Labor Code
8 section 226 and the applicable Wage Orders of the Industrial and Welfare Commission (the
9 “IWC”).

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against Defendant’s employees.

12 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly
13 and severally have acted intentionally and with deliberate indifference and conscious disregard to
14 the rights of all employees by failing to provide accurate and complete wage statements to these
15 employees.

16 **JURISDICTION AND VENUE**

17 4. The Court has jurisdiction over the violation of California Labor Code section 226.

18 5. Venue is proper in Alameda County because Plaintiff was employed by Defendant
19 in Alameda, California.

20 **PARTIES**

21 6. On August 2, 2013, Plaintiff was hired by Defendant as a Warehouseman. On or
22 about July 28, 2023, Plaintiff’s employment with Defendant ended. Throughout Plaintiff’s
23 employment, he has been an hourly, non-exempt employee.

24 7. Plaintiff is informed and believes and based thereon alleges, that Defendant
25 CORE-MARK INTERNATIONAL, INC. is a Delaware corporation and is registered to do
26 business throughout the State of California as CORE-MARK INTERNATIONAL, INC.
27 (“Defendant” or “CORE-MARK”) and operates merchandise and food distribution centers
28 throughout the State of California.

1 8. Plaintiff is informed and believes and based thereon alleges that at all times herein
2 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
3 partnerships, licensed to do business and actually doing business in the State of California.

4 9. As such, and based upon all the facts and circumstances incident to Defendants'
5 business in California, Defendants are subject to Labor Code §§226 and 2698, *et seq.* and the
6 applicable IWC Wage Orders.

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

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

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

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

14. 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

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

- a. All current and former employees of Defendant in the State of California who were paid overtime wages at any time from August 2, 2022, through the present (the “Class” or “Class Members”).

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

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

18. Defendant uniformly administered a corporate policy, practice of failing to provide accurate and complete wage statements in violation of Labor Code section 226.

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

1 concerning Defendant failing to provide accurate and complete wage statements in violation of
2 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 has suffered the harm alleged in this Complaint in a similar and typical
5 manner as the Class Members. As with other non-exempt employees, Plaintiff received itemized
6 wage statements concurrent with the payment of wages. The wage statements provided to
7 Plaintiff and Class Members failed to list the accurate total hours worked whenever overtime
8 wages were paid in violation of Labor Code section 226. As such, Plaintiff is a member of the
9 Class and has suffered the alleged violations of California Labor Code section 226 and the
10 applicable Wage Orders.

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

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

26 23. The prosecution of separate actions by the individual class members, even if
27 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
28 to individual Class members against the Defendant and which would establish potentially

1 incompatible standards of conduct for the Defendant, and/or (b) adjudications with respect to
2 individual Class members which would, as a practical matter, be dispositive of the interest of the
3 other Class members not parties to the adjudications or which would substantially impair or
4 impede the ability of the Class members to protect their interests. Further, the claims of the
5 individual members of the Class are not sufficiently large to warrant vigorous individual
6 prosecution considering all of the concomitant costs and expenses.

7 24. Such a pattern, practice, and uniform administration of corporate policy regarding
8 illegal employee compensation described herein is unlawful and creates an entitlement to
9 recovery by the Plaintiff and the Class identified herein of a common fund, including interest
10 thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the
11 mandate of California Labor Code section 226 and Code of Civil Procedure section 1021.5.

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

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 226**

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

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

20 27. Defendant, as a matter of policy and practice, did not provide accurate wage
21 statements to Class Members, in violation of Labor Code section 226(a).

22 28. Plaintiff and Class Members were paid on an hourly basis. As such, the wage
23 statements provided to them should have reflected the accurate total hours worked whenever
24 overtime wages were paid. However, the wage statements provided to Plaintiff and the Class
25 failed to accurately identify such information.

26 29. Such a pattern, practice and uniform administration of corporate policy as
27 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
28 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code section

226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

SECOND CAUSE OF ACTION

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

(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL DEFENDANTS)

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

31. Plaintiff seeks penalties on behalf of the State of California for violations of Labor Code §§226 and 2698, *et seq.*, committed against all similarly aggrieved non-exempt employees who were paid any wages at any time from August 1, 2022, through the present.

32. On or about August 1, 2023, Plaintiff sent written notice to the California Labor & Workforce Development Agency (the "LWDA") of Defendants' violation of Labor Code §226 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (the "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.

33. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties, attorneys' fees, and costs for Defendants' violation of Labor Code §§ 226 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 individually 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;

- 1 3. For an order appointing counsel for Plaintiff as Class counsel;
- 2 4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as
- 3 set forth in California Labor Code section 226, and for costs and attorneys' fees;
- 4 5. Upon the Second Cause of Action, for civil penalties, costs and attorneys' fees
- 5 pursuant to Labor Code §§ 226.3 and 2699;
- 6 6. On all causes of action, for attorneys' fees and costs as provided by California
- 7 Labor Code section 226, 2699 and Code of Civil Procedure section 1021.5; and
- 8 7. For such other and further relief as the Court may deem just and proper.

9
10 DATED: November 21, 2023

DIVERSITY LAW GROUP, P.C.

11 By: 
12 Larry W. Lee
13 Attorneys for Plaintiff and the Class

PROOF OF SERVICE

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

On November 21, 2023, I served the foregoing document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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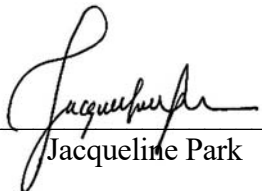
Via Online Upload
California Labor & Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

 X **BY ELECTRONIC SERVICE**

I caused such document to be served on the offices of the addressees via electronic mail.

 X **(State)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2023, at Los Angeles, California.



Jacqueline Park