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ISAIAH DE LA ROSA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS**

ISAIAH DE LA ROSA, individually, and on) Case No. 23C-0108
behalf of all aggrieved employees,)
Plaintiffs,) **COMPLAINT FOR DAMAGES FOR:**
v.) **1. RETALIATION IN VIOLATION OF**
LEPRINO FOODS COMPANY, a Colorado) **PAID SICK LEAVE LAW;**
corporation, and DOES 1-25, inclusive,) **2. WRONGFUL TERMINATION IN**
Defendants.) **VIOLATION OF PUBLIC POLICY;**
) **3. FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS; and**
) **4. VIOLATIONS OF THE PRIVATE**
) **ATTORNEYS GENERAL ACT OF 2004.**
) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff ISAIAH DE LA ROSA ("Plaintiff"), individually and on behalf of
all aggrieved employees, assert claims against Defendants LEPRINO FOODS COMPANY, a
Colorado corporation, and DOES 1 through 25 inclusive, and hereby alleges as follows:

JURISDICTION AND VENUE

1. The California Superior Court has jurisdiction over this action pursuant to California
Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
causes except those given by statute to other trial courts." The Statutes under which this action is
brought do not specify any other basis for jurisdiction.

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2. Venue and jurisdiction are proper because Defendants were doing business in Kings County; Plaintiff's employment was entered into in Kings County; Plaintiff worked for Defendants in Kings County; and the damages sought exceed the jurisdictional minimum of this Court.

THE PARTIES

3. Plaintiff ISIAH DE LA ROSA ("Plaintiff") was at all relevant times herein, an individual residing in Kings County, California and was employed by Defendants LEPRINO FOODS COMPANY and DOES 1 through 25 inclusive.

4. Plaintiff is informed, believes, and thereon alleges that Defendant LEPRINO FOODS COMPANY ("Leprino") is, and at all times mentioned herein was, registered to do business and actively doing business in the State of California, with its principal place of business in Denver, Colorado. At all times hereinafter mentioned, Defendant Leprino was an employer whose employees were engaged in this county and the State of California.

5. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of the Defendants designed herein as DOE is legally responsible in some manner for the events and happenings referred to herein, and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of the Defendants designated herein as DOES when the same have been ascertained. Whenever in this Complaint reference is made to "Defendants," such allegation shall be deemed to mean the acts of Defendants acting individually, jointly, or severally.

6. Plaintiff is informed, believes, and thereon alleges that Defendants were his "Employer" as that term is defined in the applicable Wage Order of the Industrial Welfare Commission ("IWC"). Plaintiff is informed and believes and thereon alleges that, at all relevant times mentioned herein, Defendants were Plaintiff's employer.

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1 **JOINT LIABILITY**

2 7. Except as hereinafter specially described, Defendants, and each of them, are and
3 were the agents and/or employees of the other Defendants, and in acting as described herein were
4 acting within the scope of their authority or employment as agents and/or employees thereof, and
5 with the permission and consent of the other Defendants.

6 8. As to each of the Defendants, Plaintiff is informed, believes, and thereon alleges
7 that, at all relevant times mentioned herein, each Defendant was the principal, agent, employer,
8 employee, partner, joint venture, officer, director, controlling shareholder, alter ego, subsidiary,
9 affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the
10 other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
11 for profit, and bore such other relationships to some or all of the other Defendants, so as to be liable
12 for the conduct of them.

13 9. Plaintiff is further informed, believes, and thereon alleges that each Defendant acted
14 pursuant to and within the scope of the relationships alleged above; that each Defendant knew or
15 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
16 conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and
17 agreement to do the things alleged herein.

18 **GENERAL BACKGROUND FACTS**

19 10. Plaintiff began his employment with Defendants on or about February 14, 2022 as a
20 non-exempt general laborer earning an hourly rate of \$19.00 per hour at Defendants' Lemoore, CA
21 facility.

22 11. On or about April 20, 2022, Plaintiff woke up prior to his shift and experienced
23 stroke-like symptoms, including facial paralysis. As a result, Plaintiff believed he may be having a
24 stroke and immediately admitted himself to the nearest emergency room. As soon as possible and
25 while in the emergency room, Plaintiff communicated to Defendants that he had experienced such
26 symptoms and would not be able to report to work that day as a result.

27 12. Later in the day, Plaintiff updated Defendants by communicating with Defendants'
28 Human Resources ("HR") department and letting them know that his treating physician was



1 requesting an extremely short one (1) day leave of absence to allow Plaintiff's medical condition
2 and accompanying symptoms to subside. Later that day, Plaintiff e-mailed Rafael Vazquez ("Mr.
3 Vazquez") in Defendants' HR department the physician's Work Status Report requesting the finite
4 leave of absence and notifying Defendants that Plaintiff was in fact being treated that day for Bell's
5 Palsy and unable to report to work due to his serious medical condition.

6 13. Mr. Vazquez and Defendants were well-aware of Plaintiff's medical condition and
7 need for a one (1) day medical leave. Despite this, Defendants not only failed to engage in any sort
8 of interactive process or pursue alternative reasonable accommodations whatsoever, but also
9 punished Plaintiff for his medically excused absence by giving him points which directly led to
10 Defendants terminating his employment.

11 14. Throughout Plaintiff's employment with Defendants, Defendants maintained an
12 Attendance Policy, which was provided to him at the time of his hire, among various other
13 documents.

14 15. As indicated on Defendants' Record of Absence document and Attendance
15 Disciplinary Action Form for Plaintiff, Defendants' Attendance Policy directly counted Plaintiff's
16 two (2) day medical leave as an absence from work resulting in "points" that led directly to his
17 termination. In addition to Plaintiff's serious medical condition and related leave, Defendants'
18 termination of Plaintiff's employment fell on the heels of Plaintiff taking protected sick leave just
19 days prior to suffering from stroke-like symptoms. Defendants' position was clear, they wanted
20 nothing to do with an employee taking protected leave and saw this as a hinderance. Defendants'
21 termination of Plaintiff's employment was for no reason other than Plaintiff's requesting and taking
22 protected sick and medical leave.

23 16. At all times during Plaintiff's employment with Defendants, California's 2022
24 COVID-19 Supplemental Paid Sick Leave ("SPSL") law was in effect. Defendants failed to
25 provide accurate notice, on Plaintiff's wage statements or on a separate writing, of how many SPSL
26 hours had been used by Plaintiff, including situations in which Plaintiff may have used zero (0)
27 hours.

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1 17. Plaintiff is informed and believes that Defendants failed to provide accurate notice
2 to any such covered employee of how many SPSL hours were used by them respectively, including
3 those employees who had used zero (0) hours.

4 18. Plaintiff is informed and believes that Defendants failed to post and keep updated
5 notices in the workplace regarding SPSL.

6 19. Upon information and belief, all current and/or former covered employees under the
7 SPSL law are aggrieved employees as defined under California Labor Code section 2699(c). Upon
8 information and belief, each of the employees were/are subject to similar, if not the same,
9 violations as Plaintiff. Upon information and believe, each of the covered employees were subject
10 to Defendants' failure to provide accurate notice of SPSL.

11 20. Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency
12 ("LWDA") on December 5, 2022. Therefore, Plaintiff has waited the mandatory sixty-five (65)
13 days since filing his PAGA Notice, during which the LWDA failed to intervene.

14 **FIRST CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF PAID SICK LEAVE LAW**

16 **IN VIOLATION OF LABOR CODE § 246**

17 **(Against All Defendants)**

18 21. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
19 set forth herein.

20 22. At all times mentioned herein, Defendants employed Plaintiff.

21 23. At all times mentioned herein, Plaintiff's employment by Defendants was subject to
22 the provisions of the Labor Code and the applicable IWC Wage Order.

23 24. Under Labor Code section 246, employers are required to provide sick leave to
24 employees who, on or after July 1, 2015, work in California for the same employer for 30 or more
25 days within a year from the commencement of employment. Labor Code section 246 states that
26 employers must provide employees written notice that sets forth the amount of paid sick leave
27 available on either the employee's itemized wage statement described in Labor Code section 226 or
28 in a separate writing provided on the designated pay date with the employee's payment of wages.



1 25. Further, under Labor Code section 246.5, an employee can use paid sick days for
2 Plaintiff's own care and/or the care of a family member.

3 26. Under Labor Code section 246.5, an employer shall not deny the use of the paid sick
4 leave and shall not take adverse action against the employee for taking and/or requesting paid sick
5 leave. Further, there is a rebuttable presumption of unlawful retaliation, under Labor Code section
6 246.5, if the denial of the right and/or taking of the adverse action is within 30 days of various
7 action(s), which apply in this case.

8 27. Plaintiff attempted to take, requested and/or took Paid Sick leave to care for Plaintiff
9 and/or his family members and, in doing so, had protected status under the labor code.

10 28. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiff was
11 subjected to a variety of adverse actions.

12 **SECOND CAUSE OF ACTION**

13 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

14 **(Against All Defendants)**

15 29. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
16 set forth herein.

17 30. At all times mentioned herein, Defendants employed Plaintiff.

18 31. At all times mentioned herein, the public policy of the State of California prohibits
19 employers from engaging in employment discrimination and retaliation. These public policies of
20 the State of California are designed to protect all employees and promote the welfare and well-
21 being of the community at large. Accordingly, the actions of Defendants, and each of them, in
22 retaliating against and terminating Plaintiff on the grounds stated above was wrongful and in
23 contravention and violation of the express public policy of the State of California.

24 32. Defendants' termination of Plaintiff's employment violated the aforementioned
25 fundamental principles of public policy in that there is substantial and fundamental policy against
26 interference with, and retaliation for, exercising rights under the Labor Code.

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1 33. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and
2 continues to sustain economic damages in earnings and other employment benefits in an amount
3 according to proof.

4 34. As a direct and proximate result of Defendants' retaliatory actions against him,
5 Plaintiff has suffered and continues to suffer damages, in the form of lost wages and other
6 employment benefits and opportunities, severe emotional distress, humiliation, embarrassment,
7 anger, loss of sleep, the exact amount and/or extent of which will be proven at trial.

8 35. The above-described actions were perpetuated and/or ratified by managing agents
9 and/or officers of Defendants. The aforementioned conduct of the managing agents and/or officers
10 was willful and in conscious disregard of Plaintiff's rights, and constitutes oppression, fraud, or
11 malice, justifying punitive and exemplary damages in an amount to punish Defendants.

12 36. As a result of the conduct of Defendants, as alleged herein, Plaintiff is entitled to
13 costs of suit, including reasonable attorneys' fees, in an amount according to proof at trial.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

16 **IN VIOLATION OF LABOR CODE § 226**

17 **(Against All Defendants)**

18 37. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
19 set forth herein.

20 38. At all times mentioned herein, Defendants employed Plaintiff.

21 39. At all times mentioned herein, Plaintiff's employment by Defendants was subject to
22 the provisions of the Labor Code and the applicable IWC Wage Order.

23 40. Labor Code section 226 states that every employer shall, semimonthly or at the time
24 of each payment of wages, furnish each of its employees – either as a detachable part of the check,
25 draft, or voucher paying the employee's wages, or separately when wages are paid by personal
26 check or cash – an accurate itemized statement in writing showing (1) gross wages earned, (2) total
27 hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece
28 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions



1 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and his or his social security number, (8) the name and address of the legal entity that is
4 the employer, and (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee. Section 226 also
6 provides that the deductions made from payments of wages shall be recorded in ink or other
7 indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a
8 record of the deductions shall be kept on file by the employer for at least three years at the place of
9 employment or at a central location within the State of California.

10 41. During Plaintiff's employment with Defendants, Defendants failed to provide
11 Plaintiff with proper itemized wage statements in compliance with Labor Code section 226.

12 42. Pursuant to Labor Code section 226(e), an employee suffering injury as a result of a
13 knowing and intentional failure by an employer to comply with the itemized wage statement
14 requirement is entitled to recover the greater of, all actual damages, or fifty dollars (\$50) for the
15 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
16 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
17 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

18 43. Plaintiff requests an order of monetary damages and attorneys' fees and costs in
19 favor of Plaintiff and against Defendants, in accordance with the provisions of Labor Code section
20 226(e).

21 **FOURTH CAUSE OF ACTION**

22 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

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

24 **(Against All Defendants)**

25 44. Plaintiff hereby realleges and incorporates each preceding paragraph as though fully
26 set forth herein.

27 45. Labor Code sections 2698-2699.5, in relevant part, provides, "any provision of this
28 code that provides for a civil penalty to be assessed and collected by the Labor and Workforce



1 Development Agency. . . for a violation of this code may, as an alternative, be recovered through a
2 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in section 2699.3.”

4 46. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
5 PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged
6 to have been violation, and after receiving notice from the LWDA of its intention not to investigate,
7 or after sixty-five (65) days have passed without notice.

8 47. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor
9 Code section 2699.3. Plaintiff sent notice to Leprino and the LWDA on or about December 5,
10 2022, detailing Leprino’s alleged Labor Code violations. In particular, Plaintiff’s notice alleged
11 violations of Labor Code sections 233, 246, 246.5, 247, 248.5, 247, 248.2, 226, 3550, 1102.8,
12 6404.5(c)(1), 1183(d), 207, and 6328.

13 48. LWDA did not provide notice of its intention to investigate Leprino’s alleged
14 violations within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice.

15 49. Plaintiff is an “aggrieved employee” under PAGA because he was employed by
16 Eggleston during the applicable statutory period and suffered one or more of the Labor Code
17 violations set forth in this Complaint.

18 50. Plaintiff seeks to recover, on his behalf, on behalf of the State, and on behalf of all
19 former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus
20 reasonable attorney’s fees and costs through a representative action permitted by PAGA and the
21 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.App.4th 969. Therefore, class
22 certification is not required.

23 51. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

- 24 A. Violations of Paid Sick Leave Law in violation of Labor Code sections 233, 246,
25 246.5, 247, and 248.5;
26 B. Failure to Provide COVID-19 Supplemental Paid Sick Leave in violation of
27 Labor Code sections 247 and 248.2;

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1 C. Failure to Provide Accurate Itemized Wage Statements in violation of Labor
2 Code section 226; and

3 D. Failure to Keep Requisite Notices in Workplace in violation of Labor Code
4 sections 3550, 1102.8, 6404.5(c)(1), 1183(d), 207, and 6328.

5 52. Labor Code section 2699, *et seq.* imposes a civil penalty of one hundred dollars
6 (\$100.00) per pay period, per aggrieved employee for initial violations, and two hundred dollars
7 (\$200.00) per pay period, per aggrieved employee for subsequent violations for all Labor Code
8 provisions for which a civil penalty is not specifically provided.

9 53. As a proximate result of the action and conduct described in the paragraphs above,
10 which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved
11 employees have been damaged in an amount according to proof at the time of trial and seeks civil
12 penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays, individually and on behalf of aggrieved employees,
15 judgment against Defendants, and each of them, as follows:

- 16 1. For economic damages according to proof;
- 17 2. For non-economic damages according to proof;
- 18 3. For an award of exemplary and punitive damages according to proof;
- 19 4. For penalties and premiums available under applicable law;
- 20 5. For an award of civil penalties pursuant to PAGA;
- 21 6. For declaratory and injunctive relief;
- 22 7. For an award of reasonable attorney's fees and costs;
- 23 8. For pre-judgment and post-judgment interest as provided by law; and
- 24 9. For such other and further relief as the Court deems just and proper.

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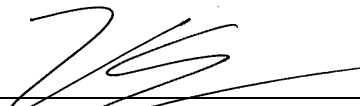
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: March 23, 2023

KRING & CHUNG, LLP

By: 
Tyler D. Krings
Attorneys for Plaintiff
ISAIAH DE LA ROSA

