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Superior Court of the State of California
County of Kings

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

CHRISTOPHER DOMINGUEZ, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

LEPRINO FOODS COMPANY, a
Colorado corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 22C-0317

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

DEMAND OVER \$25,000.00

1 Plaintiff Christopher Dominguez ("Plaintiff") hereby submits this First Amended
2 Representative Action Complaint ("Complaint") against Defendant Leprino Foods Company
3 ("Defendant"), and Does 1 through 50 (collectively, "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 201-204, 226, 246, 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 Defendant.

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 by: (a) failing to incorporate all non-discretionary
15 incentive wages in the regular rate of pay used to calculate and pay sick pay wages, in violation
16 of Labor Code sections 201-204 and 246; and (b) failing to provide accurate itemized wage
17 statements, in violation of Labor Code section 226.

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

22 **JURISDICTION AND VENUE**

23 5. The Court has jurisdiction over the violations of the California Labor Code
24 sections 201-204, 226, 246, and 2698 *et seq.*, and the applicable Wage Orders.

25 6. Venue is proper in Kings County because Plaintiff worked for Defendants in
26 Lemoore, California.

27 **PARTIES**

28 7. Plaintiff was employed by Defendant as an HVAC Foreman from about October

1 2015, until about June 1, 2022. During his employment with Defendant, Plaintiff worked as an
2 hourly, non-exempt employee.

3 8. Plaintiff was and is the victim of the policies, practices, and customs of
4 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
5 by California Labor Code sections 201-204, 226, 246, and 2698 *et seq.*, and the applicable Wage
6 Orders.

7 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 Leprino Foods Company was and is a Colorado corporation that maintains operations in the State
9 of California, including in Kings County, California. Plaintiff is informed and believes, and
10 based thereon alleges, that Defendant produces cheese and other dairy products to companies
11 across the United States and in the State of California.

12 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
13 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
14 and partnerships, licensed to do business and actually doing business in the State of California.
15 As such, and based upon all the facts and circumstances incident to Defendants' business,
16 Defendants are subject to the California Labor Code.

17 11. Plaintiff does not know the true names or capacities, whether individual, partner,
18 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
19 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges that each of said fictitious defendants was responsible in some way for the
22 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
23 the illegal employment practices, wrongs and injuries complained of herein.

24 12. At all times herein mentioned, each defendant participated in the doing of the acts
25 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
26 and each of them, were the agents, servants, and employees of each of the other defendants, as
27 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
28 course and scope of said agency and employment.

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

15. 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, 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.

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

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

17. Plaintiff brings this cause of action as a proxy for the State of California, and in this capacity, seeks penalties on behalf of all Aggrieved Employees from June 21, 2021, through the present, for Defendant's policy and practice of: (a) failing to incorporate all non-discretionary incentive wages in the regular rate of pay used to calculate and pay sick pay wages, in violation of Labor Code sections 201-204 and 246; and (b) failing to provide accurate itemized wage statements, in violation of Labor Code section 226.

1 18. Defendant failed in its affirmative obligation to pay sick time wages in
2 accordance with Labor Code section 246. Labor Code section 246 provides that an employee is
3 entitled to receive sick time pay. The employer shall calculate paid sick leave by using one of
4 two calculations: (1) "Paid sick time for nonexempt employees shall be calculated in the same
5 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
6 whether or not the employee actually works overtime in that workweek;" or (2) "Paid sick time
7 for nonexempt employees shall be calculated by dividing the employee's total wages, not
8 including overtime premium pay, by the employee's total hours worked in the full pay periods of
9 the prior 90 days of employment."

10 19. Whenever Defendant paid Plaintiff and Aggrieved Employees sick pay pursuant
11 to California Labor Code section 246, Defendant did so at the incorrect rate of pay. Plaintiff and
12 Aggrieved Employees routinely earned non-discretionary incentive remuneration, including
13 without limitation, shift differentials, thereby increasing their regular rates of pay to amounts that
14 were higher than their base rates of pay. However, whenever sick pay was paid to Plaintiff and
15 Aggrieved Employees, it was paid only at their base rates of pay, rather than the higher regular
16 rates of pay, as required under Labor Code section 246.

17 20. Defendant failed in its affirmative obligation to provide accurate itemized wage
18 statements, in violation of Labor Code section 226. As a result of the underpayment of sick pay
19 wages, Defendant issued inaccurate wage statements to Plaintiff and Aggrieved Employees. In
20 this regard, the wage statements failed to accurately identify the hourly rates of pay, gross wages
21 earned, and net wages earned.

22 21. Separately, whenever overtime and/or shift differential wages were paid, the wage
23 statements issued to Aggrieved Employees did not identify the accurate total hours worked. In
24 particular, when the hours shown on the wage statements are added up, they do not appear to add
25 up to the actual total hours worked.

26 11. On or about June 21 2022, Plaintiff sent written notice to the California Labor &
27 Workforce Development Agency ("LWDA") of Defendant's violation of Labor Code sections
28 201-204, 226, and 246, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys

1 General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice.

2 12. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
3 and all applicable civil penalties for Defendant's violation of Labor Code sections 201-204, 226,
4 and 246, for the time period described above, on behalf of himself and other Aggrieved
5 Employees.

6 **PRAYER FOR RELIEF**

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

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

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

13 3. For such other and further relief the Court may deem just and proper.
14

15 DATED: October 27, 2022

DIVERSITY LAW GROUP, P.C.

16
17 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
Employees
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

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

10 On October 27, 2022, I served the following document(s) described as: **FIRST**
11 **AMENDED REPRESENTATIVE ACTION COMPLAINT FOR VIOLATION OF**
12 **LABOR CODE § 2698, ET SEQ.** on the interested parties in this action as follows:

13 Leprino Foods Company
14 CSC - Lawyers Incorporating Service
15 2710 Gateway Oaks Dr, Ste. 150N
16 Sacramento, CA 95833
17 *Agent for Service of Process*

18 X BY MAIL: by placing _____ the original or X a true and correct copy
19 thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
20 attached mailing list. I am readily familiar with the firm's practice for collection and processing
21 of correspondence and other materials for mailing with the United States Postal Service. On this
22 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
23 collection and mailing on this date at the address above following our office's ordinary business
24 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
25 in the ordinary course of business.

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct. Executed on October 27, 2022, at Los Angeles, California.

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Erika Mejia