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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF KINGS** 22C-0317

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.

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

**DEMAND OVER \$25,000.00**

1 Plaintiff Christopher Dominguez (“Plaintiff”) hereby submits this representative action  
2 complaint (“Complaint”) against Defendant Leprino Foods Company (“Defendant”), and Does 1  
3 through 50 (collectively, “Defendants”), on behalf of himself and aggrieved employees of  
4 Defendants for penalties for violations of the California Labor Code as follows:

5 **INTRODUCTION**

6 1. This representative action is within the Court’s jurisdiction under California  
7 Labor Code sections 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1 and 2698 *et*  
8 *seq.*, and the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

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

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,  
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious  
13 disregard to the rights of all employees by: (a) failing to incorporate all non-discretionary  
14 incentive wages in the regular rate of pay used to calculate and pay overtime wages, in violation  
15 of Labor Code sections 201-204, 510, 558 and 1194; (b) failing to incorporate all non-  
16 discretionary incentive wages in the regular rate of pay used to calculate and pay meal/rest  
17 period premiums, in violation of Labor Code sections 201-204, 226.7 and 512; (c) failing to  
18 incorporate all non-discretionary incentive wages in the regular rate of pay used to calculate and  
19 pay sick pay wages, in violation of Labor Code sections 201-204 and 246; and (d) failing to  
20 provide accurate itemized wage statements, in violation of Labor Code section 226.

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

25 **JURISDICTION AND VENUE**

26 5. The Court has jurisdiction over the violations of the California Labor Code  
27 sections 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1 and 2698 *et seq.*, and the  
28 applicable Wage Orders.

7. Plaintiff was employed by Defendant as an HVAC Foreman from about October 2015, until about June 1, 2022. During his employment with Defendant, Plaintiff worked as an hourly, non-exempt employee.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 2201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1 and 2698 *et seq.*, and the applicable Wage Orders.

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

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned 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 the California Labor Code.

11. 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.

12. At all times herein mentioned, each defendant participated in the doing of the acts

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

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

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.

### **FIRST CAUSE OF ACTION**

#### **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

1 the present, for Defendant's policy and practice of: (a) failing to incorporate all non-discretionary  
2 incentive wages in the regular rate of pay used to calculate and pay overtime wages, in violation  
3 of Labor Code sections 201-204, 510, 558 and 1194; (b) failing to incorporate all non-  
4 discretionary incentive wages in the regular rate of pay used to calculate and pay meal/rest  
5 period premiums, in violation of Labor Code sections 201-204, 226.7 and 512; (c) failing to  
6 incorporate all non-discretionary incentive wages in the regular rate of pay used to calculate and  
7 pay sick pay wages, in violation of Labor Code sections 201-204 and 246; and (d) failing to  
8 provide accurate itemized wage statements, in violation of Labor Code section 226.

9 18. As a pattern and practice, Defendant paid Plaintiff and Aggrieved Employees  
10 overtime wages based on the incorrect regular rate of pay. During workweeks when employees  
11 worked overtime and earned non-discretionary incentive pay, Defendant failed to properly  
12 calculate the regular rate of pay for purposes of paying overtime. Specifically, Defendant failed  
13 to incorporate the non-discretionary pay, including without limitation, shift differentials, into the  
14 calculation of the regular rate of pay. As a result of such policy and practice, Defendant  
15 underpaid overtime wages to Plaintiff and Aggrieved Employees and thus owe additional  
16 overtime wages.

17 19. Defendant failed in its affirmative obligation to ensure that Plaintiff and  
18 Aggrieved Employees had the opportunity to take and were provided with off-duty meal and rest  
19 periods in accordance with the mandates of the California Labor Code and the applicable IWC  
20 Wage Order.

21 20. Pursuant to Labor Code section 226.7, for each workday that a meal or rest period  
22 is not provided, employees are entitled to one additional hour of pay at the employee's regular  
23 rate of pay. Defendant, however, paid meal and rest period premium wages at an employee's  
24 base hourly rate of pay, which did not include non-discretionary incentive pay, including without  
25 limitation, shift differentials. As such, Plaintiff and t Aggrieved Employees are owed additional  
26 meal and rest period premiums based on the correct, higher regular rate of pay.

27 21. Defendant failed in its affirmative obligation to pay sick time wages in  
28 accordance with Labor Code section 246. Labor Code section 246 provides that an employee is

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

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

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

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

24         11. On or about June 21 2022, Plaintiff sent written notice to the California Labor &  
25 Workforce Development Agency ("LWDA") of Defendant's violation of Labor Code sections  
26 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to Labor Code  
27 section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not  
28 responded to Plaintiff's written notice.

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

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

13  
14 DATED: August 25, 2022

By:

Attorneys for Plaintiff and the Aggrieved Employees