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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KATRINA BIGGERS, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

STATER BROS. MARKETS, a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVDS2010164

[Assigned for all purposes to the Hon. David Cohn,
Dept. S-26]

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

**(1) VIOLATION OF CAL. LABOR CODE
§§ 201–203;**

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

DEMAND OVER \$25,000.00

Complaint Filed: June 2, 2020
Trial Date: None

1 Plaintiff Katrina Biggers (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against Defendant Stater Bros. Markets (“Defendant”) and
3 Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on behalf of herself and
4 a class of all other similarly situated current and former employees of Defendants for civil and
5 statutory penalties under the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code sections 201–203, 246, and 2698 et seq.

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

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 Defendants’ failure to properly calculate the rate of
14 pay for employees paid sick time and failure to pay all wages due at the time of termination
15 and/or separation from employment.

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

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of California Labor Code sections
22 201–203, 246, and 2698 et seq.

23 6. Venue is proper in San Bernardino County because Defendant operates stores in
24 San Bernardino County, and Plaintiff was employed by Defendant in San Bernardino County.

25 **PARTIES**

26 7. Plaintiff was employed by Defendant from approximately May 7, 2007, through
27 April 2019. Throughout Plaintiff’s employment with Defendant, she has been a non-exempt,
28 hourly employee.

1 8. Plaintiff was and is the victim of the policies, practices, and customs of
2 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
3 by California Labor Code sections 210–203, 246, and 2698 et seq.

4 9. Plaintiff is informed and believes, and based thereon alleges, that Stater Bros.
5 Markets is a California corporation that maintains operations in the State of California, including
6 stores in San Bernardino, California.

7 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 herein mentioned Defendants are and were business entities, individuals, and partnerships,
9 licensed to do business and actually doing business in the State of California. As such, and based
10 upon all the facts and circumstances incident to Defendants’ business, Defendants are subject to
11 the California Labor Code.

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

19 12. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

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

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

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

6 15. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
11 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
12 damages as herein alleged.

13 CLASS ACTION ALLEGATIONS

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

- 16 a. All former non-exempt employees of Defendant in the State of California who
17 were paid sick pay wages and shift differential wages in the same workweek
18 at any time between September 7, 2018, through the present (the “Class”)
- 19 b. All former non-exempt employees of Defendant in the State of California who
20 were paid sick pay wages and shift differential wages in the same workweek
21 wages at any time between September 7, 2018, through the present, and
22 whose regular hourly rate was less than 30% more than the applicable
23 California state minimum wage rate (the “Minimum Wage Sick Pay Sub-
24 Class”).

25 17. **Numerosity:** The members of the Class are so numerous that joinder of all
26 members would be impractical, if not impossible. The identity of the members of the Class is
27 readily ascertainable by review of Defendant’s records, including payroll records. Plaintiff is
28 informed and believes, and based thereon alleges, that Defendant failed to properly calculate the

proper rate of pay for sick pay for employees in violation of Labor Code section 246, and, as a result, failed to pay all wages due upon separation from employment pursuant to Labor Code sections 201–203.

18. **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 the 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 state and federal courts.

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 concerning Defendants’ policy and practice of failing to properly calculate the rate of pay for sick time earned by Plaintiff and the Class, and Defendants’ failure to pay all wages due and owing upon the separation of employment.

20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as the Class Members. As with other California employees, Plaintiff did not earn sick pay wages at the correct regular rate of pay, in violation of Labor Code section 246. Specifically, whenever Plaintiff earned shift differentials or other forms of pay in addition to her regular hourly rate of pay, Defendants did not incorporate those additional rates of pay when calculating her sick pay. As a result, when Plaintiff no longer worked for Defendants, she was not paid all wages due and owing, just like the Class. Further, beginning in January 2019, the California state minimum wage rate was \$12.00 for employers with 25 or more employees. At this time, Plaintiff, like the Minimum Wage Sick Pay Sub-Class did not earn 30% more than the California state minimum wage. As a result of Defendants’ failure to properly calculate the regular rate of pay for sick pay, Defendants did not pay Plaintiff and the Class, and Minimum Wage Sick Pay Sub-Class all wages due and owing upon separation in violation of California Labor Code §§ 201–203.

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

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

17 23. The prosecution of separate actions by the individual Class Members, even if
18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
19 to individual Class Members against the Defendants and which would establish potentially
20 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
21 individual Class Members which would, as a practical matter, be dispositive of the interest of the
22 other Class Members not parties to the adjudications or which would substantially impair or
23 impede the ability of the Class Members to protect their interests. Further, the claims of the
24 individual members of the Class are not sufficiently large to warrant vigorous individual
25 prosecution considering all of the concomitant costs and expenses.

26 24. Such a pattern, practice and uniform administration of corporate policy regarding
27 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
28 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable

attorneys' fees, and costs of suit according to the mandate of California Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

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

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201–203

**(BY PLAINTIFF, THE CLASS AND THE MINIMUM WAGE SICK PAY SUB-CLASS
AGAINST ALL DEFENDANTS)**

26. Plaintiff re-alleges and incorporates by reference all paragraphs above, as though fully set forth herein.

27. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

28. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

29. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

30. Labor Code § 246 provides that an employee is entitled to receive sick time pay. The employer shall calculate paid sick leave by using one of two calculations: 1) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek;" or 2) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

1 31. Whenever Defendants paid Plaintiff and the Class and the Minimum Wage Sick
2 Pay Sub-Class sick time pursuant to California Labor Code § 246, Defendants did so at the
3 incorrect rate of pay. Defendants paid Plaintiff and the Class and the Minimum Wage Sick Pay
4 Sub-Class at the base hourly rate of pay, as opposed to the regular rate of pay, which would take
5 into account all non-discretionary bonuses and/or shift differentials, or by dividing the
6 employees' total wages, not including overtime premium pay, by the employees' total hours
7 worked in the full pay periods of the prior 90 days of employment, as required by Labor Code
8 § 246. This resulted in the employees being underpaid for sick time, and resulted in violations of
9 California Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations,
10 because Defendants did not pay, or timely pay, Plaintiff and the Class Members all owing and
11 unpaid wages for work performed by them during their employment and at the end of their
12 employment.

13 32. Defendants willfully failed to pay Plaintiff and the Class and the Minimum Wage
14 Sick Pay Sub-Class all their wages due, as alleged hereinabove and hereinafter, upon the
15 termination of their employment within the times prescribed by Labor Code §§201 and 202 and
16 are therefore subject to a waiting time penalty. Plaintiff and the Class and the Minimum Wage
17 Sick Pay Sub-Class are entitled to recover from Defendants the statutory penalty for each day
18 they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant
19 to California Labor Code § 203.

20 **SECOND CAUSE OF ACTION**

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

22 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
23 **AGAINST ALL DEFENDANTS)**

24 33. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
25 fully set forth herein.

26 34. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through
28 the present, for Defendant's policy and practice of failing to properly compensate employees for

1 sick pay wages at the regular rate of pay as defined in Labor Code § 246.

2 35. On or about June 12, 2020, Plaintiff sent written notice to the California Labor &
3 Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code sections
4 201, 202, 203, 226, and 246, pursuant to Labor Code section 2698, *et seq.*, the Private Attorney
5 General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice.

6 36. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
7 and all applicable civil penalties for Defendants’ violation of Labor Code sections 201, 202, 203,
8 226, and 246 for the time period described above, on behalf of himself and other Aggrieved
9 Employees. As explained in detail above, Defendants failed to pay Plaintiff and aggrieved
10 employees all wages due and owing at the conclusion of their employment, and thus are subject
11 to the penalties under the PAGA for their failure to comply with Labor Code Sections 201–03
12 and 246.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
15 this suit is brought against Defendants, jointly and severally, as follows:

- 16 1. For an order certifying the proposed Classes;
17 2. For an order appointing Plaintiff as the representative of the Classes as described
18 herein;
19 3. For an order appointing Counsel for Plaintiff as Class counsel;
20 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
21 sections 201, 202, and 203, and for costs and attorneys’ fees;
22 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
23 to Labor Code section 2698, *et seq.* and for costs and attorneys’ fees;
24 6. On all causes of action for attorneys’ fees and costs as provided by California
25 Labor Code sections 218.5, and Code of Civil Procedure section 1021.5; and

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1 7. For such other and further equitable relief the Court may deem just and proper.

2
3 DATED: August 14, 2020

DIVERSITY LAW GROUP, P.C.

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5 By: 
6 Larry W. Lee
7 Max W. Gavron
8 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On August 14, 2020, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

Stater Bros. Markets
c/o Bruce D. Varner
3750 University Avenue, Suite 610
Riverside, CA 92501
Agent for Service of Process

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 14, 2020, at Los Angeles, California.



Erika Mejia