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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SARAH RODRIGUEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MANPOWER, INC./CALIFORNIA
PENINSULA, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.:

16CV294904

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226;
- (2) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.*

DEMAND FOR JURY TRIAL

DEMAND OVER \$25,000.00

Plaintiff Sarah Rodriguez ("Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendants Manpower, Inc./California Peninsula and Does 1 through 50 (hereinafter collectively referred to as "Defendants") on behalf of herself and a class of all other similarly situated current and former employees of Defendants for penalties and/or damages for

ENDORSED

2016 MAY -9 P 1:30

David H. Yarnes, Clerk of the Superior Court
County of Santa Clara, California

ACKARD

1 failure to provide accurate wage statements as follows:

2 **INTRODUCTION**

3 1. This class action is within the Court's jurisdiction under California Labor Code §§
4 226 and 2698, *et seq.* and the applicable Wage Orders of the California Industrial Welfare
5 Commission ("IWC").

6 2. This complaint challenges systemic illegal employment practices resulting in
7 violations of the California Labor Code against individuals who worked for Defendants.

8 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
9 jointly and severally, have acted intentionally and with deliberate indifference and conscious
10 disregard to the rights of all employees in Defendants' failure to provide all proper payroll
11 records of Plaintiff and class members.

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

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the violations of the California Labor Code §§
18 226 and 2698 *et seq.*

19 6. Venue is proper because Defendants do business in Santa Clara County as
20 Defendants are located in Santa Clara County.

21 **PARTIES**

22 7. Plaintiff began working for Defendants on or about May 2012, until on or about
23 April 13, 2016. Plaintiff was paid on an hourly basis.

24 8. Plaintiff was and is the victim of the policies, practices, and customs of
25 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
26 by California Labor Code §§ 226 and 2698, *et seq.*

27 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 herein mentioned Defendant Manpower, Inc. / California Peninsula was and is a California

1 corporation doing business in the State of California, and is engaged in the business of providing
2 staffing services.

3 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 herein mentioned Defendants and Does 1 through 50, are and were corporations, business
5 entities, individuals, and partnerships, licensed to do business and actually doing business in the
6 State of California.

7 11. As such, and based upon all the facts and circumstances incident to Defendants'
8 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

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

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

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

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

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

11 **CLASS ACTION ALLEGATIONS**

12 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure § 382. Plaintiff proposes the following class:

- 14 a. All current and former non-temporary employees who worked for Defendants in
15 the State of California that were paid overtime wages at any time from May 9,
16 2015, through the present.

17 18. **Numerosity and Ascertainability:** The members of the class are so numerous
18 that joinder of all members would be impractical, if not impossible. The identities of the
19 members of the class are readily ascertainable by review of Defendants' records, including
20 payroll records.

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

27 20. Defendants uniformly administered a corporate policy, practice of failing to
28 provide accurate itemized wage statements identifying the hourly rate of overtime pay violation

1 of the Labor Code.

2 21. **Common Question of Law and Fact:** There are predominant common questions
3 of law and fact and a community of interest amongst Plaintiff and the claims of the class
4 concerning Defendants' failure to provide accurate wage statements identifying the hourly rate of
5 overtime pay in violation of the Labor Code.

6 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
7 class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
8 as the class members. Plaintiff was not provided accurate wage statements identifying the hourly
9 rate of pay for overtime work. Thus, Plaintiff is a member of the class and has suffered the
10 alleged violations of California Labor Code § 226.

11 23. The California Labor Code 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
15 to take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment.

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

27 25. The prosecution of separate actions by the individual class members, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect

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

8 26. Such a pattern, practice and uniform administration of corporate policy regarding
9 illegal employee compensation described herein is unlawful and creates an entitlement to
10 recovery by Plaintiff and the class identified herein, in a civil action, for any and all applicable
11 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
12 of California Labor Code §§ 226 and 2698, and Code of Civil Procedure § 1021.5.

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

16 28. The Plaintiff class is commonly entitled to a specific fund with respect to the
17 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
18 entitled to restitution of those funds being improperly withheld by Defendants. This action is
19 brought for the benefit of the entire class and will result in the creation of a common fund.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

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

23 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as
24 though fully set forth herein.

25 30. Defendants, as a matter of policy and practice, did not provide accurate records in
26 violation of Labor Code § 226(a) by failing as a matter of policy and practice to provide the
27 hourly rate of pay for overtime hours worked by Plaintiff and class members.

28 31. Such a pattern, practice and uniform administration of corporate policy as

1 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class
2 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
3 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
4 California Labor Code § 226.

5 **SECOND CAUSE OF ACTION**

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

7 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

8 32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as
9 though fully set forth herein.

10 33. As identified above, Defendants have violated Labor Code § 226(a) by failing to
11 provide accurate itemized wage statements to their employees.

12 34. Because of Defendants' violation of the Labor Code sections identified, Plaintiff
13 is an "aggrieved employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this
14 cause of action on behalf of the State of California for violations committed against the
15 following employees: All current and former non-temporary employees who worked for
16 Defendants in the State of California that were paid overtime wages at any time between April
17 13, 2015 to the present.

18 35. On or about April 13, 2016, Plaintiff sent written notice to the California Labor &
19 Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 226(a),
20 pursuant to Labor Code § 2699, *et seq.*, the Private Attorney General Act ("PAGA").

21 36. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiff
22 whether it intends to investigate Plaintiff's allegations. As such, pursuant to Labor Code §
23 2699(a), Plaintiff and the Aggrieved Employees may seek recovery of all applicable civil
24 penalties for Defendants' violation of Labor Code § 226(a).

25 **PRAYER FOR RELIEF**

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

- 28 1. For an order certifying the proposed class;

1 2. For an order appointing Plaintiff as the representatives of the class as described
2 herein;

3 3. For an order appointing counsel for Plaintiff as class counsel;

4 4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute
5 as set forth in Labor Code § 226, and for costs and attorneys' fees;

6 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
7 to Labor Code § 2698, *et seq.*, and for costs and attorneys' fees; and

8 6. For such other and further relief the Court may deem just and proper.
9

10 DATED: May 9, 2016

DIVERSITY LAW GROUP, P.C.


11
12 By: 
13 Larry W. Lee
Attorneys for Plaintiffs and the Class
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15 **DEMAND FOR JURY TRIAL**

16 Plaintiff Sarah Rodriguez, for herself and on behalf of the class, hereby demands a jury
17 trial as provided by California law.
18

19 DATED: May 9, 2016

DIVERSITY LAW GROUP, P.C.

20
21 By: 
22 Larry W. Lee
Attorneys for Plaintiffs and the Class
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