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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF PLACER**

17 MICHAEL TEBBS, as an individual and
18 on behalf of all others similarly situated,

19 Plaintiffs,

20 v.

21 SUNBELT RENTALS, INC., a North
22 Carolina corporation; and DOES 1 through
23 50, inclusive,

24 Defendants.

CASE NO. SCV0044313

*Assigned to Commissioner Michael Jacques in
Department 40*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
510, 558, AND 1194;
- (2) VIOLATION OF CAL. LABOR CODE §
226(a);
- (3) VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, *ET SEQ.*; AND
- (4) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.*

DEMAND EXCEEDS \$25,000.00

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Attorneys for Plaintiff

1 Plaintiff MICHAEL TEBBS (“Plaintiff”) hereby submits this First Amended Class Action
2 Complaint (“Complaint”) against Defendant SUNBELT RENTALS, INC. (the “Company” or
3 “Defendant”), a North Carolina corporation, and DOES 1-50 (hereinafter collectively referred to
4 as “Defendants”), individually and on behalf of a Class of all other similarly situated current and
5 former employees of Defendants for wages, penalties and/or damages for violations of the
6 California Labor Code, including without limitation, failure to provide employees with accurate
7 itemized wage statements and pay all overtime wages owed as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code
10 §§201-203, 226, 510, 558, and 1194, the California Industrial Welfare Commission’s (“IWC”)
11 Wage Orders, and Business and Professions Code §§17200, *et seq.* (“UCL”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 jointly and severally have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to keep accurate records and failing to provide
17 accurate itemized wage statements identifying all required information, including without
18 limitation, the correct overtime rate, and paying overtime at the correct rate of pay.

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

23 **JURISDICTION AND VENUE**

24 5. The Court has jurisdiction over the violations of the California Labor Code §§201-
25 203, 226, 510, 558, and 1194. As further alleged below, Plaintiff has exhausted his
26 administrative remedies to proceed on his representative claim pursuant to the Private Attorneys
27 General Act (the “PAGA”).

28 6. Venue is proper in Placer County because Defendant maintains business locations
in this County and Plaintiff is a resident of this County.

PARTIES

7. On or about August 2017, Plaintiff began working for Defendant as a non-exempt, driver in Placer County. Plaintiff's employment ended on or about November 29, 2019. During Plaintiff's employment, Plaintiff earned overtime wages and non-discretionary incentive pay.

8. Defendant is a corporation which provides equipment rentals throughout the State of California.

9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by California Labor Code §§ 201-203, 226, 510, 558, and 1194, and the applicable IWC Wage Orders.

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

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 226, 510, 558, and 1194, the IWC Wage Orders and UCL.

12. 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 members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the 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.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
2 joint venturer of, or working in concert with each of the other co- Defendants and was acting
3 within the course and scope of such agency, employment, joint venture, or concerted activity. To
4 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
5 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
6 Defendants.

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

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

17 **CLASS ACTION ALLEGATIONS**

18 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure § 382, of the following classes and sub-class:

- 20 a. All current and former California non-exempt employees who earned
21 overtime wages and earned any additional non-discretionary pay, including
22 without limitation, various quarterly incentives, covering the same work
23 week at any time from January 13, 2016, through the present (the
24 “Overtime Class”); and
- 25 b. All current and former California employees who were paid overtime
26 wages by Defendant at any time during the period of time from January 13,
27 2019, through the present (the “Wage Statement Class”).

28 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
that joinder of all members would be impractical, if not impossible. The identity of the members

1 of the Class is readily ascertainable by review of the Company's records, including payroll
2 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to
3 provide accurate itemized wage statements to employees in violation of Labor Code § 226 and
4 failed to pay correct overtime wages for overtime hours worked in violation of Labor Code
5 §§201-203, 510, 558, and 1194.

6 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
7 necessary steps to represent fairly and adequately the interests of the class defined above.
8 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
9 named Plaintiffs. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
10 the past and currently have a number of wage-and-hour class actions pending in California courts.

11 20. The Company uniformly administered a corporate policy, practice of failing to
12 provide accurate itemized wage statements to employees in violation of Labor Code § 226 and
13 failing to pay correct overtime wages for overtime hours worked in violation of Labor Code §§
14 201-203, 510, 558, and 1194.

15 21. **Common Question of Law and Fact:** There are predominant common questions
16 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
17 concerning the Company's failure to provide accurate itemized wage statements to employees in
18 violation of Labor Code § 226 and failure to pay correct overtime wages for overtime hours
19 worked in violation of Labor Code §§ 201-203, 510, 558, and 1194.

20 22. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
21 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
22 and typical manner as the Class members. As with other non-exempt employees, Plaintiff was
23 not paid overtime at the correct, higher regular rate of pay because Defendant failed to include all
24 additional non-discretionary remuneration into the overtime rate. Specifically, Defendant
25 violated Labor Code §§ 510, 558, and 1194 by failing to correctly calculate the regular rate of pay
26 by not including all non-discretionary remuneration in the regular rate of pay, including without
27 limitation, various quarterly incentives. Non-exempt employees, including Plaintiff, were
28 routinely paid various quarterly incentives; however, whenever overtime was also earned during
the same periods as the quarterly incentives, the overtime rate of pay was not properly calculated

1 when including the quarterly incentives. Thus, Defendant owes Plaintiff and Class Members
2 additional overtime wages, as well as all associated waiting-time penalties to separated employees
3 under Labor Code §§ 201-203. As a further result of such violations, the overtime rates of pay, as
4 well as the gross and net wages earned as reflected on the employees' itemized wage statements
5 were inaccurately identified, in violation of Labor Code § 226(a). In addition, as a wholly
6 separate violation, the Company also violated Labor Code §226(a) by not providing accurate,
7 itemized wage statements to Plaintiff and other non-exempt employees. Specifically, the wage
8 statements issued by the Company to its employees do not show the accurate rate of overtime pay
9 whenever overtime wages were paid. Instead, the overtime was identified on different line items
10 with some line items showing the base rate of pay and other line items showing a rate of half of
11 the base rate. Further, because of this problem, the total hours worked displayed on the respective
12 wage statements were inaccurate. Specifically, whenever the applicable hours are added up in
13 each respective wage statement, it does not correlate to the correct number of total hours worked
14 during each pay period. Therefore, the Company violated Labor Code § 226 as to Plaintiff and
15 other employees as to the other enumerated requirements set forth in Section 226(a). Accordingly,
16 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
17 Code §§ 201-203, 226, 510, 558, and 1194, *et seq.*, and the applicable IWC Wage Orders.

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

24 24. The nature of this action and the format of laws available to Plaintiff and members
25 of the Class identified herein make the class action format a particularly efficient and appropriate
26 procedure to redress the wrongs alleged herein. If each employee were required to file an
27 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
28 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff

1 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
2 pursue an individual remedy would also discourage the assertion of lawful claims by employees
3 who would be disinclined to file an action against their former and/or current employer for real
4 and justifiable fear of retaliation and permanent damage to their careers at subsequent
5 employment.

6 25. The prosecution of separate actions by the individual class members, even if
7 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
8 to individual Class members against the Company and which would establish potentially
9 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
10 individual Class members which would, as a practical matter, be dispositive of the interest of the
11 other Class members not parties to the adjudications or which would substantially impair or
12 impede the ability of the Class members to protect their interests. Further, the claims of the
13 individual members of the Class are not sufficiently large to warrant vigorous individual
14 prosecution considering all of the concomitant costs and expenses.

15 26. Such a pattern, practice and uniform administration of corporate policy regarding
16 illegal employee compensation described herein is unlawful and creates an entitlement to
17 recovery by Plaintiff and the Class identified herein, in a civil action any and all applicable
18 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
19 of California Labor Code §§ 201-203, 218.5, 226, 558, and 1194 the applicable IWC Wage
20 Orders, and Code of Civil Procedure § 1021.5.

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

24 28. The Class is commonly entitled to a specific fund with respect to the compensation
25 illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of
26 those funds being improperly withheld by the Company. This action is brought for the benefit of
27 the entire class and will result in the creation of a common fund.

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FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 510, 558, AND 1194

(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)

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

30. This cause of action is brought pursuant to Labor Code §§ 510, 558, 1194, and 1197.1, which require an employer to pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any work in excess of eight hours in a workday or 40 hours in a workweek.

31. As with other non-exempt employees, Plaintiff was not paid overtime at the correct, higher regular rate of pay because Defendant failed to include all additional non-discretionary remuneration into the overtime rate. Specifically, Defendant violated Labor Code §§ 510, 558, and 1194 by failing to correctly calculate the regular rate of pay by not properly including all non-discretionary remuneration in the regular rate of pay, including without limitation, various quarterly incentives. Non-exempt employees, including Plaintiff, were routinely paid various incentives; however, whenever overtime was also earned during the same periods as the quarterly incentives, the overtime rate of pay was not properly calculated when including the quarterly incentives. Thus, Defendant owes Plaintiff and Class Members additional overtime wages.

32. Plaintiff is informed and believes and based thereon alleges that Defendant willfully failed to pay employees proper compensation for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendant's willful failure to provide all wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code §§ 201-203.

33. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of

1 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
2 the mandate of California Labor Code §§ 201-203, 218.5, 510, 558, 1194, and 1197.1.

3 **SECOND CAUSE OF ACTION**

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

5 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)**

6 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as
7 though fully set for herein.

8 35. The Company failed in its affirmative obligation to provide accurate itemized
9 wage statements in violation of Labor Code § 226(a). As set forth herein, Defendant failed to
10 correctly calculate the regular rate of pay for purposes of paying overtime wages to Plaintiff and
11 other non-exempt employees by not properly calculating all non-discretionary compensation into
12 the regular rate, including without limitation, various quarterly incentives. As a result of such
13 violations, the overtime rates of pay, as well as the gross and net wages earned as reflected on the
14 employees' itemized wage statements were inaccurately identified, in violation of Labor Code
15 §226(a).

16 36. In addition, as a wholly separate violation, the Company also violated Labor Code
17 §226(a) by not providing accurate, itemized wage statements to Plaintiff and other non-exempt
18 employees. Specifically, the wage statements issued by the Company to its employees do not
19 show the accurate rate of overtime pay whenever overtime wages were paid. Instead, the overtime
20 was identified on different line items with some line items showing the base rate of pay and other
21 line items showing a rate of half of the base rate. Further, because of this problem, the total hours
22 worked displayed on the respective wage statements were inaccurate. Specifically, whenever the
23 applicable hours are added up in each respective wage statement, it does not correlate to the
24 correct number of total hours worked during each pay period. Therefore, the Company violated
25 Labor Code § 226 as to Plaintiff and other employees as to the other enumerated requirements set
26 forth in Section 226(a). Accordingly, Plaintiff is a member of the Class and has suffered the
27 alleged violations of California Labor Code §226, and the applicable IWC Wage Orders.

28 37. Such a pattern, practice and uniform administration of corporate policy as
described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class

1 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
2 including interest thereon, attorneys' fees, and costs of suit according to the mandate of California
3 Labor Code § 226.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF CAL. BUS. & PROF. CODE § 17200**

6 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

7 38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as
8 though fully set for herein.

9 39. Defendant has engaged and continue to engage in unfair and unlawful business
10 practices in California by practicing, employing and utilizing the employment practices outlined
11 above, include, to wit, by failing to pay overtime for all hours worked and engaging in Unfair
12 Business Practices in violation of the UCL, all in violation of the California Labor Code and
13 applicable IWC Wage Orders.

14 40. Defendant's utilization of such unfair and unlawful business practices constitutes
15 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

16 41. Plaintiff seeks as an individual and on behalf of other members of the Class
17 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
18 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
19 practices complained of herein. Plaintiff also seeks injunctive relief to enjoin the unfair business
20 practices alleged herein.

21 42. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
23 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth
24 herein above thereby depriving Plaintiff and other members of the Class the minimum working
25 condition standards and conditions due to them under the California laws and the applicable IWC
26 Wage Orders as specifically described therein.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL**
4 **DEFENDANTS)**

5 43. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 as
6 though fully set for herein.

7 44. Plaintiff brings this cause of action as a proxy for the State of California on behalf
8 of all similarly aggrieved employees pursuant to the Private Attorneys General Act (the
9 “PAGA”), Labor Code § 2698, *et seq.*, and in this regard seeks civil penalties for Defendants’
10 violations of California Labor Code §§ 226, 510, 558, and 1194, as alleged herein, for the time
11 period of January 10, 2019, through the present.

12 45. On or about January 10, 2020, Plaintiff submitted his written notice to the Labor
13 Workforce Development Agency (the “LWDA”), with a copy via certified mail, return receipt
14 requested to Defendant. As of the date of this filing, the LWDA has not informed Plaintiff
15 whether it intends to investigate the claims contained in Plaintiff’s written notice. The statutory
16 timeline for the LWDA to provide written notice of its intent to investigate has expired and, thus,
17 pursuant to the PAGA, Plaintiff has exhausted her administrative remedies. Therefore, Plaintiff
18 may seek applicable PAGA penalties.

19 46. Accordingly, Plaintiff and the Aggrieved Employees identified herein are entitled
20 to seek penalties pursuant to the PAGA, Labor Code § 2699(a), including interest thereon,
21 attorney’s fees, and costs of suit according to the mandate of PAGA for Defendants’ violations of
22 Labor Code §§ 226, 226.3, 510, 558, and 1194.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
25 this suit is brought against Defendants, jointly and severally, as follows:

- 26 1. For an order certifying the proposed Class;
27 2. For an order appointing Plaintiff as the representative of the Class as described
28 herein;
3. For an order appointing counsel for Plaintiff as Class counsel;

4. Upon the First Cause of Action, for all damages and/or penalties pursuant to California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;

5. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

6. Upon the Third Cause of Action, for restitution in the form of unpaid overtime wages, any available injunctive relief to enjoin the unfair business practices, and for costs;

7. Upon the Fourth Cause of Action, for civil penalties pursuant to California Labor Code §§ 226.3 and 2699, and for costs and attorneys' fees;

8. On all causes of action, for attorneys' fees and costs as provided by California Labor Code §§ 218.5, 226 and 1194 and Code of Civil Procedure § 1021.5; and

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

DATED: March 11, 2020

DIVERSITY LAW GROUP, P.C.

By: _____
Larry W. Lee
Attorneys for PLAINTIFF and the CLASS

1 **PROOF OF SERVICE**

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

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

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

10 On April 16, 2020, I served the following document(s) described as: **FIRST**
11 **AMENDED COMPLAINT** on the interested parties in this action as follows:

12 Patrick J. Cain
13 Theodore H. Dokko
14 Smith, Gambrell & Russell, LLP
15 444 South Flower Street, Suite 1700
16 Los Angeles, California 90071
17 *Attorneys for Defendant Sunbelt Rentals, Inc.*

18 X BY MAIL: by placing _____ the original or X a true and correct
19 copy 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
27 above is true and correct. Executed on April 16, 2020, at Los Angeles, California.

28


Erika Mejia