

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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Superior Court Of California,
Sacramento
08/05/2020
irono2
By _____, Deputy
Case Number:
34-2020-00285301

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

VAN WALKER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

WFS EXPRESS, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE § 226.7;
- (2) VIOLATION OF LABOR CODE §§ 226.7
AND 512;
- (3) FAILURE TO PAY WAGES;
- (4) VIOLATION OF LABOR CODE § 226(a);
- (5) VIOLATION OF LABOR CODE § 2802;
- (6) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*
AND
- (7) VIOLATION OF LABOR CODE § 2698,
ET SEQ.

DEMAND OVER \$25,000.00



Plaintiff Van Walker (“Plaintiff”) hereby submits this Class and Representative Action Complaint (“Complaint”) against Defendant WFS Express, Inc. (“Defendant”) and Does 1 through 50 (collectively, “Defendants”), as an individual and on behalf of all other similarly situated current and former employees of Defendants, for penalties and/or damages under the California Labor Code and California Business & Professions Code, for failure to provide off-duty rest breaks, failure to provide proper meal and rest period premium pay, failure to pay wages, failure to reimburse business expenses, and failure to provide accurate itemized wage statements, as follows:

INTRODUCTION

1. This Complaint is within the Court’s jurisdiction under California Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1198, 1199, 2802, and 2698, *et seq.*, the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”), and the California Unfair Competition Law (the “UCL”), Business and Professions Code § 17200, *et seq.*

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code and the UCL against Plaintiff and other individuals who worked for Defendants.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to provide off-duty rest breaks, failing to provide proper meal and rest period premium pay, failing to pay all wages owed for all hours worked, failing to reimburse business expenses, and failing to keep accurate records.

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

5. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

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7. Venue is proper in Sacramento County, because Defendant does business in this County and Plaintiff worked for Defendant in this County.

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1 13. Additionally, during his employment with Defendant, Plaintiff was also required
2 to use his personal cellular phone in connection with the discharge of his duties, including
3 downloading and using a mobile application on his personal cellular phone called “Discord” for
4 work communication purposes. However, Plaintiff did not receive any reimbursement for the
5 work-related use of his personal cellular phone.

6 14. Plaintiff was and is the victim of the policies, practices, and customs of
7 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
8 by California Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1198, 1199,
9 2802, 2698, *et seq.*, and the UCL.

10 15. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
11 Delaware corporation, doing business in the State of California. Defendant is in the business of
12 providing air and ground cargo handling services, including but not limited to cargo loading and
13 unloading, security screening, and equipment maintenance, at airports throughout the United
14 States, including in the State of California and County of Sacramento.

15 16. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
17 individuals, and partnerships, licensed to do business and actually doing business in the State of
18 California.

19 17. As such, and based upon all the facts and circumstances incident to Defendants’
20 business, Defendants are subject to California Labor Code §§ 201-204, 226(a), 226.7, 510, 512,
21 558, 1174, 1194, 1198, 1199, 2802, and 2698, *et seq.*, and the UCL.

22 18. Plaintiff does not know the true names or capacities, whether individual, partner
23 or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason,
24 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
25 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
26 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
27 matters alleged herein and proximately caused Plaintiff and members of the general public and
28 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

16 22. At all times herein mentioned, the acts and omissions of various Defendants, and
17 each of them, concurred and contributed to the various acts and omissions of each and all of the
18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
20 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
22 damages as herein alleged.

23 **CLASS ACTION ALLEGATIONS**

24 23. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes and Sub-
26 Classes:

27 a. All current and former non-exempt employees who were employed by
28 Defendants in the State of California at any time from April 6, 2016, through the present (the

1 “Class”);

2 b. All current and former non-exempt employees of Defendants in the State
3 of California who worked three and one-half (3.5) hours or more in any shift, at any time from
4 April 6, 2016, through the present (the “Rest Period Sub-Class”);

5 c. All current and former non-exempt employees of Defendants in the State
6 of California who were paid non-discretionary remuneration, including without limitation Shift
7 Premiums/Differentials, and was paid any meal period premium payments in the same workweek
8 that the non-discretionary remuneration was earned, at any time between April 6, 2016, through
9 the present (the “Meal Period Premium Regular Rate Sub-Class”);

10 d. All current and former non-exempt employees of Defendants in the State
11 of California who worked overtime and were paid non-discretionary remuneration, including
12 without limitation Shift Premiums/Differentials, during the same workweek, at any time from
13 April 6, 2016, through the present (the “Overtime Regular Rate Sub-Class”);

14 e. All current and former non-exempt employees of Defendants in the State
15 of California who were paid Shift Premiums/Differentials, at any time from April 6, 2019,
16 through the present (the “Shift Premiums/Differentials Wage Statement Sub-Class”).

17 24. Plaintiff reserves the right to propose additional classes and/or sub-classes, and or/
18 amend the above class definitions upon further discovery and investigation.

19 25. **Numerosity and Ascertainability:** The members of the Class are so numerous
20 that joinder of all members would be impractical, if not impossible. The identity of the members
21 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
22 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to
23 provide off-duty rest breaks, or provide rest period premium pay in lieu thereof, in violation of
24 Labor Code § 226.7; (b) failed to pay meal period premium pay at the regular rate of pay, in
25 violation of Labor Code §§ 226.7. and 512; (c) failed to pay all earned wages in violation of
26 Labor Code §§ 201-204, 510, 558, 1174, 1194, 1198, and 1199, and the applicable IWC Wage
27 Orders; (d) failed to provide accurate itemized wage statements, in violation of Labor Code §
28 226(a); (e) failed to reimburse business-related expenses, in violation of Labor Code § 2802; and

(f) engaged in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

26. **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.

27. Defendants uniformly administered a corporate policy, practice of: (a) failing to provide off-duty rest breaks, or provide rest period premium pay in lieu thereof, in violation of Labor Code § 226.7; (b) failing to pay meal period premium pay at the regular rate of pay, in violation of Labor Code §§ 226.7. and 512; (c) failing to pay all earned wages in violation of Labor Code §§ 201-204, 510, 558, 1174, 1194, 1198, and 1199, and the applicable IWC Wage Orders; (d) failing to provide accurate itemized wage statements, in violation of Labor Code § 226(a); (e) failing to reimburse business-related expenses, in violation of Labor Code § 2802; and (f) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

28. Plaintiff is informed and believes, and based thereon alleges, that this corporate conduct is accomplished with the advance knowledge and designed intent to willfully and intentionally fail to accurately record and identify proper rates of pay, total hours worked, and total wages earned.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, the UCL, and the applicable IWC Wage Orders.

30. **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: (a) failing to provide off-duty rest breaks, or

1 provide rest period premium pay in lieu thereof, in violation of Labor Code § 226.7; (b) failing to
2 pay meal period premium pay at the regular rate of pay, in violation of Labor Code §§ 226.7. and
3 512; (c) failing to pay all earned wages in violation of Labor Code §§ 201-204, 510, 558, 1174,
4 1194, 1198, and 1199, and the applicable IWC Wage Orders; (d) failing to provide accurate
5 itemized wage statements, in violation of Labor Code § 226(a); (e) failing to reimburse business-
6 related expenses, in violation of Labor Code § 2802; and (f) engaging in unfair business practices
7 in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

8 **31. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
9 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
10 as the Class Members. As with all other Class Members, Plaintiff was not provided with off-
11 duty rest periods as required by California law. In this regard, Plaintiff regularly worked shifts
12 of 3.5 hours or more for Defendants, but was not provided with duty-free 10-minute rest periods
13 for every 3.5 hours worked. Instead, Plaintiff was required to remain on-duty and perform
14 and/or continue work throughout his shift. As a result, Plaintiff is owed additional rest period
15 premium compensation under Labor Code § 226.7. Moreover, Plaintiff also received meal
16 period premium pay that was paid at the incorrect, base rate of pay, in violation of Labor Code
17 §§ 226.7 and 512. In particular, during his employment, Plaintiff was regularly paid non-
18 discretionary remuneration, such as Shift Premiums/Differentials. Said non-discretionary
19 remuneration should have been factored into the regular rate of pay for the purposes of paying
20 meal period premium pay. However, during pay periods in which Plaintiff received said non-
21 discretionary remuneration, Defendants improperly paid the meal period premium pay at the
22 lower base rate of pay. Moreover, during workweeks when Plaintiff worked in excess of eight
23 hours in a workday and/or forty hours in a workweek and received non-discretionary
24 compensation in that same workweek, Defendants also failed to correctly calculate Plaintiff's
25 regular rate of pay for the purposes of paying overtime. Said non-discretionary remuneration,
26 including without limitation Shift Premiums/Differentials wages, were not factored into the
27 calculation of the regular rate of pay when Defendants paid overtime wages. Thus, Plaintiff is
28 owed additional overtime pay based on the correct, higher regular rate of pay. Additionally, as

1 with other Class Members, Plaintiff frequently reported to work but was sent home within the
2 first two hours of work without being allowed to complete the entire scheduled shift. Plaintiff
3 was paid for the time he worked/clocked in for, but did not receive the requisite reporting time
4 wages as required by California law. To date, Plaintiff has yet to receive all of the wages owed
5 to him, including the unpaid rest period premiums, the underpaid meal period premiums, and the
6 underpaid overtime wages above, and thus Defendants owe waiting time penalties under Labor
7 Code § 203. Furthermore, as a result of the reporting time violations, meal and rest break
8 violations, and the overtime regular rate violations alleged above, Plaintiff received wage
9 statements that identified incorrect overtime rates of pay and gross and net wages earned in
10 violation of Labor Code § 226(a). As a separate, independent violation of Labor Code § 226(a),
11 whenever Plaintiff was paid Shift Premiums/Differentials wages, the corresponding wage
12 statements failed to list the accurate total number of hours worked. Finally, Plaintiff was
13 required to use his personal cell phone for work-related purposes, including downloading and
14 using the “Discord” app for work communication purposes. However, Plaintiff was not
15 reimbursed for said usage in violation of Labor Code § 2802. Therefore, Plaintiff is a member of
16 the Class and has suffered the alleged violations of California Labor Code §§ 201-204, 226(a),
17 226.7, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, the applicable IWC Wage Orders, and
18 the UCL.

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

25 33. The nature of this action and the format of laws available to Plaintiff and
26 members of the Class identified herein make the class action format a particularly efficient and
27 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
28 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable

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

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

16 35. Such a pattern, practice and uniform administration of corporate policy regarding
17 illegal employee compensation described herein is unlawful and creates an entitlement to
18 recovery by Plaintiff and the Class identified herein, in a civil action, for all applicable penalties
19 and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of
20 California Labor Code §§ 201-204, 218.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1198, 1199,
21 and 2802, and Code of Civil Procedure § 1021.5.

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

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

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226.7**

3 **(BY PLAINTIFF, THE CLASS, AND REST PERIOD SUB-CLASS AGAINST ALL**
4 **DEFENDANTS)**

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

7 39. This cause of action is brought pursuant to Labor Code § 226.7, which requires an
8 employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major
9 fraction thereof.

10 40. Plaintiff and other Class Members regularly worked shifts of three and one-half
11 hours (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period
12 each day. Furthermore, Plaintiff and other Class Members who worked shifts of seven and one-
13 half (7.5) hours or more per day had a right to take a second 10-minute rest period.

14 41. At all relevant times, Defendants failed in their affirmative obligation to provide
15 Plaintiff and other Class Members with the opportunity to take rest periods in accordance with
16 the mandates of the California Labor Code and the applicable IWC Wage Order. As a pattern
17 and practice, Defendants suffered and permitted Plaintiff and Class Members were to work
18 through legally required rest breaks and denied Plaintiff and Class Members the opportunity to
19 take off-duty rest breaks. Specifically, during their employment with Defendants, Plaintiff and
20 Class Members were required to remain on-duty and perform and/or continue to work during
21 their rest breaks. As such, Defendants are responsible for paying premium compensation for
22 missed rest periods pursuant to Labor Code § 226.7.

23 42. As a pattern and practice, Defendants regularly required employees to work
24 through their rest periods without proper compensation and denied Plaintiff and Class Members
25 the right to take proper rest periods as required by law.

26 43. Such a pattern, practice and uniform administration of corporate policy as
27 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
28 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation

pursuant to Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties and costs of suit.

44. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to provide all rest period premium wages due and owing to Plaintiff and Class Members upon separation of employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD PREMIUM REGULAR RATE SUB-CLASS AGAINST ALL DEFENDANTS)

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

46. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order. Specifically, Labor Code § 226.7(c) provides that "the employer shall pay the employee on additional hour of pay at the employee's regular rate of compensation for each workday the meal or rest or recovery period is not provided."

47. As a matter of corporate policy and practice, Defendants regularly failed to pay meal period premiums to Plaintiff and Class Members at the regular rate of pay. Defendants, as a matter of corporate policy and procedure, failed to correctly calculate such premium compensation for each meal period Plaintiff and the Class Members missed in accordance with the California Labor Code.

48. Specifically, Plaintiff and Class Members were regularly paid non-discretionary incentive wages, such as Shift Premiums/Differentials. However, at all relevant times herein, Defendants did not factor said non-discretionary incentive wages into the regular rate of pay for purposes of paying meal period premiums to Plaintiff and Class Members. Instead, during workweeks in which Plaintiff and Class Members earned non-discretionary incentives, Defendants improperly paid the meal period premiums at the lower, base rate of pay.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants willfully failed to include all remuneration, including non-discretionary remuneration, into the calculation of the regular rate of pay for purposes of paying meal period premiums, as required by Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff and Class Members are owed wages for the underpaid meal period premiums as set forth above.

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to provide all meal period premiums due and owing to Plaintiff and Class members 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 Class Members who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

51. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class Members identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PAY WAGES

**(BY PLAINTIFF, THE CLASS, AND THE OVERTIME REGULAR RATE SUB-CLASS
AGAINST ALL DEFENDANTS)**

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

53. This cause of action is brought pursuant to Labor Code §§ 201-204, 510, 558, 1174, 1194, 1198, and 1199, and the IWC Wage Orders, which require an employer to pay employees all earned minimum, regular, overtime, and reporting time wages.

54. Specifically, the IWC Wage Orders require an employer to pay non-exempt employees reporting time pay when employees report to a scheduled shift, but are not permitted to work, and/or when employees report to a scheduled shift, but are only permitted to work less

1 than half of their scheduled shift. This cause of action is also brought pursuant to the applicable
2 IWC Wage Order, which require an employer to pay reporting time pay to employees at their
3 regular rate of pay for at least half of the employee's scheduled day's work, with a minimum of
4 two (2) hours pay and a maximum of four (4) hours pay.

5 55. At all relevant times herein, Defendants failed to pay all earned regular,
6 minimum, overtime, and reporting time wages to Plaintiff and Class Members. Specifically,
7 Defendants had a corporate policy and practice of requiring Plaintiff and Class Members to
8 report to work for their scheduled shifts, and sending them home within the first two hours of
9 their shifts without allowing them the opportunity to complete the entire shift. However,
10 Defendants only paid Plaintiff and Class Members for the time they were clocked in for, in direct
11 violation of California law and the applicable IWC Wage Order. As a result of this policy and
12 practice, Plaintiff and Class Members who reported to work for their scheduled shifts but were
13 furnished with work that was less than half of their scheduled shifts are owed reporting time
14 wages as required by the applicable IWC Wage Order, as well as minimum, regular, and
15 overtime wages.

16 56. Labor Code § 510 requires an employer to pay employees overtime at a rate of
17 one and one-half the employee's regular rate of pay for any work in excess of eight hours in a
18 workday or 40 hours in a workweek.

19 57. At all relevant times herein, Defendants suffered and permitted employees to
20 work in excess of eight hours in a workday and/or over 40 hours in a workweek without proper
21 overtime pay. During workweeks where Plaintiff and Overtime Regular Rate Sub-Class
22 Members worked overtime and earned non-discretionary remuneration, including without
23 limitation, quarterly incentive bonuses, in the same workweek, Defendants failed to properly
24 calculate the regular rate of pay for purposes of paying overtime. In particular, Defendants failed
25 to factor any non-discretionary remuneration earned into the calculation of the regular rate of pay
26 for purposes of paying overtime wages. As a result of such policy and practice, Defendants
27 underpaid overtime wages to Plaintiff and the Overtime Regular Rate Sub-Class and thus owe
28 additional overtime wages.

1 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 willfully failed to pay employees all regular, minimum, overtime wages, and reporting time pay,
3 pursuant to the California Labor Code and the applicable IWC Wage Order, and that Plaintiff
4 and Class members are owed wages for the violations set forth above.

5 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
6 willful failure to pay Plaintiff and Class Members the wages due and owing to them upon
7 separation from employment results in a continued payment of wages up to thirty (30) days from
8 the time the wages are due. Therefore, Class members who have separated from employment are
9 entitled to compensation pursuant to Labor Code § 203.

10 60. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation as described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class in a civil action, for all damages and penalties, including
13 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
14 Code §§ 201-204, 218.5, 510, 558, 1174, 1194, 1198, and 1199, and the IWC Wage Orders.

15 **FOURTH CAUSE OF ACTION**

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

17 **(BY PLAINTIFF AND THE CLASS AND ALL SUB-CLASSES AGAINST ALL**
18 **DEFENDANTS)**

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

21 62. Labor Code § 226(a) requires employers to provide itemized wage statements to
22 its employees that identify accurate information, including without limitation, gross wages
23 earned, net wages earned, and total hours worked by the employee. *See* Cal. Lab. Code §
24 226(a)(1), (a)(2), and (a)(5). Defendants, as a matter of policy and practice, failed in their
25 affirmative obligation to provide accurate itemized wage statements to Plaintiff and Class
26 Members.

27 63. Plaintiff and the Class were paid hourly. As such, the wage statements should
28 have reflected the total number of hours worked, hourly rates of pay, and gross and net wages

1 earned, pursuant to Labor Code § 226(a)(1), (a)(2), (a)(5), and (a)(9). The wage statements
2 provided to Plaintiff and the Class failed to identify such information, including without
3 limitation, the correct total hours worked, hourly rates of pay, gross wages earned, and net wages
4 earned.

5 64. Specifically, with respect to Plaintiff and the Class, as a result of the rest period
6 violations, meal period premium violations, and the failure to pay wages as alleged above, the
7 wage statements issued to Plaintiff and Class Members failed to identify the accurate total gross
8 wages earned, net wages earned, overtime rates of pay, and the wages for meal period premium.

9 65. As a separate violation of Labor Code § 226(a), Defendants also failed to issue
10 accurate wage statements as to Plaintiff and the Shift Premiums/Differentials Wage Statement
11 Sub-Class. In this respect, whenever Shift Premiums/Differentials were paid, Defendants failed
12 to list the accurate total hours worked on the corresponding wage statements issued to Plaintiff
13 and Shift Premiums/Differentials Wage Statement Sub-Class Members. Instead, whenever Shift
14 Premiums/Differentials were paid, the wage statements display the inaccurate total hours
15 worked, in violation of Labor Code § 226(a)(2).

16 66. The issuance of inaccurate wage statements caused “injury” under Labor Code §
17 226(e) to Plaintiff and Class Members as they cannot accurately verify and/or calculate their
18 wages. Without identifying the correct overtime wage rates, gross and net wages earned, and
19 total hours worked on wage statements, Plaintiff and Class Members will have no way of
20 verifying the amount of hours they worked each particular pay period or whether they were
21 correctly paid wages for each particular pay period.

22 67. Such a pattern, practice and uniform administration of corporate policy as
23 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
24 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
25 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
26 California Labor Code § 226.

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1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 2802**

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

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

6 69. This cause of action is brought pursuant to Labor Code § 2802, which provides
7 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
8 their employers.

9 70. At all relevant times herein, Defendants regularly failed to reimburse and
10 indemnify Plaintiff and Class Members for business expenses necessary for the discharge of their
11 duties. Specifically, Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff
12 and Class Members for all business-related expenses, including without limitation, the costs
13 incurred with use of personal cellular phones for business-related purposes.

14 71. At all relevant times herein, Defendants uniformly required Plaintiff and Class
15 Members to download and use the “Discord” mobile application on their personal cellular
16 phones for work communications and to perform their jobs. However, Defendants failed to pay
17 Plaintiff and Class Members said work-related expenses including the costs associated with
18 personal cell phone use for work-related purposes.

19 72. Defendants had a uniform corporate pattern and practice and procedure regarding
20 the above practices in violation of Labor Code § 2802.

21 73. Such a pattern, practice and uniform administration of corporate policy regarding
22 illegal employee compensation as described herein is unlawful and creates an entitlement to
23 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
24 damages owed, including interest thereon, penalties, attorneys’ fees, and costs of suit according
25 to the mandate of California Labor Code § 2802.

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VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*
(BY PLAINTIFF AND THE CLASS, REST PERIOD SUB-CLASS, MEAL PERIOD
PREMIUM REGULAR RATE SUB-CLASS, AND OVERTIME REGULAR RATE SUB-
CLASS AGAINST ALL DEFENDANTS)

78. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

1 **SEVENTH CAUSE OF ACTION**

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

3 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

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

6 80. Plaintiff brings this cause of action as a proxy for the State of California and in
7 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 5, 2019, through
8 the present, for Defendant's violations of Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558,
9 1174, 1194, 1198, 1199, and 2802, arising from Defendants' following misconduct alleged
10 above: (a) failure to provide off-duty rest breaks, or pay rest period premium compensation in
11 lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; (b) failure to pay meal period
12 premium compensation at the regular rate of pay, in violation of Labor Code §§ 201-203, 226.7,
13 and 512; (c) failure to pay all earned wages in violation of Labor Code §§ 201-204, 510, 558,
14 1174, 1194, 1198, and 1199, and the applicable IWC Wage Orders; (d) failure to provide
15 accurate itemized wage statements, in violation of Labor Code § 226(a); and (e) failure to
16 reimburse business-related expenses, in violation of Labor Code § 2802.

17 81. Based on the above-stated Labor Code violations, Plaintiff is an "aggrieved
18 employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on
19 behalf of the State of California for violations committed against all similarly situated Aggrieved
20 Employees of Defendants.

21 82. On or about June 5, 2020 and August 3, 2020, Plaintiff sent written notices to the
22 California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of
23 Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1198, 1199, 2802, pursuant to
24 Labor Code § 2698, *et seq.* As of the date of the filing of this Complaint, the LWDA has yet to
25 provide notice to Plaintiff as to whether it intends to investigate the Labor code violations
26 provided for in Plaintiff's written notice. In addition to the LWDA, Plaintiff also sent his written
27 notice to Defendants via certified mail according to Labor Code § 2699.3.

28 83. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all

1 applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 226(a), 226.7,
2 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, for the time period described above, on behalf
3 of himself and other Aggrieved Employees.

4 **PRAYER FOR RELIEF**

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

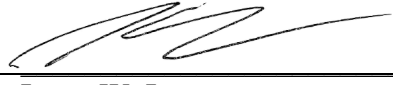
- 7 1. For an order certifying the Class and Sub-Classes;
- 8 2. For an order appointing Plaintiff as the representative of the Class as described
9 herein;
- 10 3. For an order appointing counsel for Plaintiff as Class Counsel;
- 11 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
12 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
- 13 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
14 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
- 15 6. Upon the Third Cause of Action, for damages and/or penalties, pursuant to
16 California Labor Code §§ 201-204, 218.5, 510, 558, 1174, 1194, 1198, and 1199, and for costs
17 and attorneys' fees;
- 18 7. Upon the Fourth Cause of Action, for penalties pursuant to statute as set forth in
19 California Labor Code § 226, and for costs and attorneys' fees;
- 20 8. Upon the Fifth Cause of Action, for damages and/or penalties, pursuant to
21 California Labor Code § 2802, and for costs and attorneys' fees;
- 22 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
23 affected members of the general public of all funds unlawfully acquired by Defendants by means
24 of any acts or practices declared by this Court to be in violation of the California Business and
25 Professions Code § 17200, *et seq.*, and for costs and attorneys' fees;
- 26 10. Upon the Seventh Cause of Action, for the full amount of civil penalties
27 according to the PAGA, California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and
28 attorneys' fees;

1 11. On all causes of action for attorneys' fees and costs as provided by California
2 Labor Code §§ 218.5, 226, 510, 558, 1194, 1197, 2699, 2802, and Code of Civil Procedure §
3 1021.5; and

4 12. For such other and further relief the Court may deem just and proper.
5

6 DATED: August 5, 2020

DIVERSITY LAW GROUP, P.C.

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8 By: 
9 Larry W. Lee
10 Mai Tulyathan
11 Attorneys for Plaintiff, the Class, and Aggrieved
12 Employees
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