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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RENE G. HINOJOSA, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

SAN BERNARDINO INTERNATIONAL
AIRPORT, INC., a California corporation; SAN
BERNARDINO INTERNATIONAL AIRPORT
AUTHORITY, form unknown; and DOES 1
through 50, inclusive,

Defendants.

Case No.: **CIV SB 2025068**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Unpaid Overtime
(Lab. Code §§ 510, 1198)
- (2) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
- (3) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (4) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Rene G. Hinojosa, submits this Class and
3 Representative Action Complaint against San Bernardino International Airport, Inc., San Bernardino
4 International Airport Authority, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. The
8 Complaint addresses Defendants’ violations of Labor Code sections 201-202, 204, 226, 510, and 1198,
9 and seeks penalties, damages, and other relief pursuant to, among other provisions, Labor Code sections
10 203, 210, 218, 218.5, 218.6, 226.3, 558, 1194, and 2698 et seq., and the Unfair Competition Law,
11 codified at Business and Professions Code sections 17200 *et seq.* (the “UCL”).¹

12 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
13 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
14 failing to timely pay all wages due, pay all overtime, and provide accurate itemized wage statements.

15 3. Defendants routinely fail to pay Plaintiff and other employees their earned wages in a
16 timely manner. Specifically, Plaintiff and other employees worked biweekly pay periods but were not
17 paid their wages for nearly two weeks after the last day of each pay period. For example, during the
18 two-week pay period starting July 4, 2020, and ending July 17, 2020, Plaintiff and other employees
19 were not paid their wages until July 29, 2020, or 26 days after some wages were earned and no less than
20 12 days after wages were earned on the last day of the pay period. Defendants fail to pay Plaintiff and
21 other employees their earned wages within seven days of the last day of the pay period.

22 4. Defendants also routinely failed to pay all overtime wages to Plaintiff and other non-
23 exempt employees by incorrectly calculating the regular rate of pay for purposes of paying overtime to
24 Plaintiff and other non-exempt employees. Specifically, Plaintiff and other non-exempt employees earned
25 non-hourly compensation or flat sum bonuses, including, for example, “Cell Ph” that Defendants
26 included in their wages. But when Plaintiff and other non-exempt employees were paid overtime in
27 workweeks in which they earned such compensation, Defendants did not include such non-hourly
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 compensation as part of their remuneration when calculating their regular rates of pay for overtime
2 purposes. Defendants thus underpaid all overtime wages due. Moreover, as a result of underpaid
3 overtime from Defendants' failure to correctly calculate the regular rate of pay, Defendants also
4 routinely fail to timely pay Plaintiff and other non-exempt employees all due wages and fail to timely
5 pay all due wages upon separation of employment.

6 5. Defendants also routinely failed to provide accurate itemized wage statements to Plaintiff
7 and other employees. First, as a result of underpaid overtime from Defendants' failure to correctly
8 calculate the regular rate of pay, Defendants failed to issue wage statements that fail to show accurate
9 overtime wage rates, gross wages earned, and net wages earned. Second, and independent of any underpaid
10 overtime, Plaintiff and other non-exempt employees were provided wage statements that did not
11 accurately show gross wages earned. For example, on Plaintiff's July 29, 2020 wage statement, Plaintiff
12 earned \$3,036.00 in "Reg" wages, \$14.23 in "OT" wages, \$303.60 in "Hol" wages, and \$11.53 in "Cell
13 Ph" wages, which should total \$3,365.36 in gross wages earned. Plaintiff's wage statement, however,
14 does not show the total gross wages of \$3,365.36. Instead, it somehow shows "Total Gross Pay" of
15 \$3,811.35. Defendants thus failed to provide itemized wage statements accurately showing gross wages
16 earned. To the extent that \$3,811.35 was Plaintiff's gross wages earned, Defendants failed to consider
17 additional remuneration when calculating Plaintiff and other non-exempt employees' regular rates of
18 pay for overtime purposes.

19 6. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
20 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
21 customs that knowingly deny its employees the above stated rights and benefits.

22 7. The policies, practices, and customs of Defendants resulted in unjust enrichment of
23 Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of
24 the Labor Code.

25 JURISDICTION AND VENUE

26 8. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
27 Defendants' violations of Sections 201-202, 204, 226, 510, and 1198, and the UCL.
28

9. Venue is proper in the County of San Bernardino. Plaintiff worked for Defendants in San Bernardino, California.

PARTIES

10. Plaintiff began working for Defendants in or about 1995. Until her employment as an Airport Facility Supervisor ended in or about August of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee. Whenever Plaintiff was paid wages based on her regular rate of pay, like overtime, and in the same workweek earned non-hourly compensation or flat sum bonuses, including, for example, “Cell Ph” that Defendants included in her wages, Defendants failed to properly calculate the regular rate of pay. Plaintiff also received wage statements that failed to show accurate overtime wage rates, gross wages earned, and net wages earned. For any wages that Plaintiff was paid, Defendants failed to timely pay Plaintiff as such wages were not paid within seven days of the last day of a pay period. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code and the UCL.

11. Plaintiff is informed and believes that San Bernardino International Airport, Inc. was and is a California corporation. Plaintiff is informed and believes that at all times herein mentioned named defendants, including San Bernardino International Airport Authority, form unknown, and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-203, 204, 226, 510, and 1198, and the UCL.

12. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused 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 alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of

the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

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

15. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

16. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who any time since May 6, 2016, were paid overtime and earned non-hourly compensation or flat sum bonuses, including, for example, “Cell Ph” in the same workweek (the “Overtime Class”), and (ii) all current and former non-exempt employees of Defendants in the State of California since May 6, 2019 (the “Wage Statement Class”). The Overtime Class and Wage Statement Class are collectively referred to as the “Class.”

17. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-202, 204, 226, 510, and 1198, and the UCL against Plaintiff and the Class by failing to timely pay all wages due, pay all overtime, and provide accurate itemized wage statements.

18. **Adequacy of Representation:** 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,

1 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have
2 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
3 and-hour class actions currently pending in California state and federal courts.

4 19. **Common Question of Law and Fact:** There are predominant common questions of law
5 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
6 informed and believes that Defendants uniformly administer a corporate policy and practice of (i)
7 routinely failing to timely pay all wages due, (ii) routinely failing to pay all overtime, and (iii) routinely
8 failing to provide accurate itemized wage statements.

9 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
10 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
11 suffered. As with other members of the Class, whenever Plaintiff was paid wages based on her regular rate
12 of pay, like overtime, and in the same workweek earned non-hourly compensation or flat sum bonuses,
13 including, for example, "Cell Ph" that Defendants included in her wages, Defendants failed to properly
14 calculate the regular rate of pay. Plaintiff also received wage statements that failed to show accurate
15 overtime wage rates, gross wages earned, and net wages earned. For any wages that Plaintiff was paid,
16 Defendants failed to timely pay Plaintiff as such wages were not paid within seven days of the last day of a
17 pay period. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor
18 Code.

19 21. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
20 in establishing minimum working conditions and requirements in California. These labor standards
21 protect employees from onerous terms and conditions of employment or exploitation by employers who
22 have superior economic and bargaining power.

23 22. The nature of this action and the format of laws available to Plaintiff and members of the
24 Class make the class action format a particularly efficient and appropriate procedure to redress the
25 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
26 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
27 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
28 legal resources. Requiring each member of the Class to pursue an individual remedy would also

discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

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

24. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 510, 558, 1194, 1198, and 2698, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution, including overtime and interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

25. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Unpaid Overtime (Lab. Code §§ 510, 1198)

(By Plaintiff and the Overtime Class Against All Defendants)

26. The preceding paragraphs are re-alleged and incorporated by this reference.

27. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess

1 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
2 an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
3 IWC Wage Order.

4 28. As a matter of policy and practice, Defendants incorrectly calculate the regular rate of pay
5 and fail to pay all overtime wages to Plaintiff and the Overtime Class. As a matter of policy and
6 practice, Plaintiff and the Overtime Class earned non-hourly compensation or flat sum bonuses,
7 including, for example, “Cell Ph” that Defendants included in their wages. But when Plaintiff and the
8 Overtime Class were paid overtime in workweeks in which they earned such compensation, Defendants
9 did not include such non-hourly compensation as part of their remuneration when calculating their
10 regular rates of pay for overtime purposes. As such, Plaintiff and the Overtime Class are owed overtime
11 wages.

12 29. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
13 entitles Plaintiff and the Overtime Class to recover unpaid overtime, including interest thereon,
14 attorneys’ fees, and costs of suit.

15 30. Moreover, Section 204 provides that wages are generally due and payable no later than
16 seven days after the end of a pay period or at least twice during each calendar month, on days
17 designated in advance as the regular paydays. Section 201 provides if an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.
19 Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours
20 after an employee quits his or her employment, unless the employee has given seventy-two (72) hours
21 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages
22 at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in
23 accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from
24 the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30)
25 days.

26 31. Based on Defendants’ failure to pay all overtime to Plaintiff and the Overtime Class and
27 as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the Overtime Class all
28 due wages or timely pay all due wages upon separation of employment. On information and belief,

1 Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the
2 Labor Code as it relates to Plaintiff's allegations. Defendants thus violated Sections 201-204 by not
3 timely paying all due wages and not timely paying all due wages upon the separation of employment.

4 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
5 entitles Plaintiff and the Overtime Class to recover applicable penalties, including waiting time
6 penalties, attorneys' fees, and costs of suit.

7 **SECOND CAUSE OF ACTION**

8 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

9 **(By Plaintiff and the Class Against All Defendants)**

10 33. The preceding paragraphs are re-alleged and incorporated by this reference.

11 34. Section 226(a) requires an employer to furnish to its employees itemized wage
12 statements that show accurate information, including without limitation, all applicable hourly rates in
13 effect during the pay period, the corresponding number of hours worked at each hourly rate, gross
14 wages earned, and net wages earned.

15 35. As a matter of policy and practice, Defendants failed to provide accurate itemized wage
16 statements to Plaintiff and the Class. Specifically, because of Defendants' overtime violations,
17 Defendants failed to furnish Plaintiff and the Class with wage statements that accurately showed all
18 applicable hourly rates, gross wages earned, and net wages earned.

19 36. As a matter of policy and practice, Defendants separately failed to provide accurate
20 itemized wage statements to Plaintiff and the Class. Specifically, Plaintiff and the Wage Statement
21 Class were provided wage statements that did not accurately show gross wages earned. For example, on
22 Plaintiff's July 29, 2020 wage statement, Plaintiff earned \$3,036.00 in "Reg" wages, \$14.23 in "OT"
23 wages, \$303.60 in "Hol" wages, and \$11.53 in "Cell Ph" wages, which should total \$3,365.36 in gross
24 wages earned. Plaintiff's wage statement, however, does not show the total gross wages of \$3,365.36.
25 Instead, it somehow shows "Total Gross Pay" of \$3,811.35. Defendants thus failed to provide itemized
26 wage statements accurately showing gross wages earned. To the extent that \$3,811.35 was Plaintiff's
27 gross wages earned, Defendants failed to consider additional remuneration when calculating Plaintiff
28 and other non-exempt employees' regular rates of pay for overtime purposes.

1 37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff and the Class to recover applicable penalties, attorneys’ fees, and costs of suit.

3 **THIRD CAUSE OF ACTION**

4 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

5 **(By Plaintiff and the Overtime Class Against All Defendants)**

6 38. The preceding paragraphs are re-alleged and incorporated by this reference.

7 39. Plaintiff is informed and believes that at Defendants have engaged and continue to
8 engage in unfair and unlawful business practices in California by utilizing the employment policies and
9 practices alleged herein, including the failures to pay all overtime.

10 40. Defendants’ utilization of such unfair and unlawful business practices constitutes unfair
11 and unlawful competition and provides an unfair advantage over Defendants’ competitors, as proscribed
12 by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition
13 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

14 41. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
15 entitles Plaintiff and the Overtime Class to full restitution of all monies withheld, acquired, or converted
16 by Defendants by means of the unfair practices complained of herein, including interest thereon,
17 attorneys’ fees, and costs of suit.

18 **FOURTH CAUSE OF ACTION**

19 **Violation of Labor Code §§ 2698 *Et Seq.***

20 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

21 42. The preceding paragraphs are re-alleged and incorporated by this reference.

22 43. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
23 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this
24 capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 201-202, 204, 226, 510, and
25 1198 committed since May 6, 2019, against all aggrieved employees.

26 44. As stated herein, Defendants fail to pay all overtime and provide accurate itemized wage
27 statements. Defendants also fail to pay Plaintiff and other aggrieved employees their earned wages in a
28 timely manner. Specifically, Plaintiff and other employees worked biweekly pay periods but were not

1 paid their wages for nearly two weeks after the last day of each pay period. Defendants fail to pay
2 Plaintiff and other employees their earned wages within seven days of the last day of the pay period.
3 Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations
4 was committed against Plaintiff as an employee of Defendants.

5 45. On or about October 29, 2020, Plaintiff sent written notice to the Labor & Workforce
6 Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections
7 201-202, 204, 226, 510, and 1198. Plaintiff simultaneously sent written notice to Defendants via
8 certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor
9 indicated that it intends to investigate the allegations in the written notice.

10 46. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable
11 penalties for Defendants’ violations against all aggrieved employees for the period described above.

12 **PRAYER FOR RELIEF**

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

- 15 1. For an order certifying the proposed Class;
- 16 2. For an order appointing Plaintiff as the representative of the Class;
- 17 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 18 4. Upon the First Cause of Action for damages, including unpaid overtime and interest
19 thereon, and penalties pursuant to Sections 203, 210, 218.6, and 1194, and for costs and attorneys’ fees;
- 20 5. Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs
21 and attorneys’ fees;
- 22 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
23 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
24 and for costs and attorneys’ fees;
- 25 7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections
26 210, 226.3, 558, and 2699, and for costs and attorneys’ fees;
- 27 8. Upon each cause of action for attorneys’ fees and costs as provided by Sections 226,
28 1194, and 2699, and Code of Civil Procedure section 1021.5; and

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

2 DATED: November 3, 2020

DIVERSITY LAW GROUP, P.C.

3
4 By: 

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