

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

Dennis S. Hyun (State Bar No. 224240)
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Edward W. Choi, State Bar No. 211334
LAW OFFICES OF CHOI & ASSOCIATES, APLC
515 S. Figueroa St. Suite 1250
Los Angeles, CA 90010
Telephone: (213) 381-1515
Facsimile: (213) 465-4885

Attorneys for Plaintiff and the Class

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

EMIL PETERSON, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

BP FUND A LLC, an unknown corporate
entity; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 34-2020-00288162

CLASS ACTION COMPLAINT FOR:

**(1) VIOLATION OF CAL. LABOR CODE §
226(a); AND**

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

DEMAND EXCEEDS \$25,000.00

Plaintiff Emil Peterson ("Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendant BP Fund A LLC (the "Company" or "Defendant"), an unknown corporate entity, and DOES 1-50 (hereinafter collectively referred to as "Defendants"), as an individual and the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages for violations of the California Labor Code, and more

FILED/ENDORSED

OCT 29 2020

By: K. Johnson
Deputy Clerk

specifically, failure to provide employees with accurate itemized wage statements as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 226 and 2698, *et seq.* and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against employees of 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 keep accurate records and failing to provide accurate itemized wage statements.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the violations of the California Labor Code §§ 226, and 2698, *et seq.* As alleged below, Plaintiff has met all of the jurisdictional requirements to proceed under the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*

5. Venue is proper in Sacramento County because Defendants maintain business locations in Sacramento County and Plaintiffs performed work for Defendants’ facility located in Sacramento County.

PARTIES

6. Plaintiff began working for the Company in or around October 2014. On or about March 27, 2020, Plaintiff’s employment with the Company ended. Plaintiff last worked for Defendant as a General Manager.

7. Defendant is an unknown corporate entity which operates pizza restaurants throughout the State of California, including in Sacramento County, where Plaintiff worked.

8. 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 §§ 226 and 2698, *et seq.* and the applicable IWC Wage Orders.

9. 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,

1 and partnerships, licensed to do business and actually doing business in the State of California.

2 10. As such, and based upon all the facts and circumstances incident to Defendants'
3 business in California, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*
4 and the IWC Wage Orders.

5 11. Plaintiffs do not know the true names or capacities, whether individual, partner or
6 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
7 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
8 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
9 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
10 matters alleged herein and proximately caused Plaintiffs and members of the general public and
11 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

27 15. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the
other Defendants in proximately causing the injuries and damages as herein alleged. At all times

1 herein mentioned, Defendants, and each of them, ratified each and every act or omission
2 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
4 the damages as herein alleged.

5 **CLASS ACTION ALLEGATIONS**

6 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
7 California Code of Civil Procedure § 382, of the following class:

- 8 a. All current and former non-exempt California employees who were paid
9 wages from Defendant at any time during the period of time from May 3,
10 2019, through the present.

11 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
12 that joinder of all members would be impractical, if not impossible. The identity of the members
13 of the Class is readily ascertainable by review of the Company's records, including payroll
14 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to
15 provide required itemized wage statements to employees in violation of Labor Code § 226.

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

21 19. The Company uniformly administered a corporate policy, practice of failing to
22 provide required itemized wage statements to employees in violation of Labor Code § 226.

23 20. **Common Question of Law and Fact:** There are predominant common questions
24 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
25 concerning the Company's failing to provide required itemized wage statements to employees in
26 violation of Labor Code § 226.

27 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
28 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
and typical manner as the Class members. Plaintiff was not provided proper and accurate payroll

1 records identifying all information required by Labor Code § 226(a). Specifically, the wage
2 statements issued by the Company to Plaintiff and Class Members do not itemize and show the
3 name of the legal entity that is the employer. Instead, “BP Fund A LLC”—an entity which is not
4 among the corporations, limited liability companies, and limited partnerships of record with the
5 California Secretary of State—is shown on wage statements. Thus, Plaintiff is a member of the
6 Class and has suffered the alleged violations of California Labor Code §§ 226 and 2698, *et seq.*,
7 and the applicable IWC Wage Orders.

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

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

24 24. The prosecution of separate actions by the individual class members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class members against the Company and which would establish potentially
27 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
28 individual Class members which would, as a practical matter, be dispositive of the interest of the
other Class members not parties to the adjudications or which would substantially impair or

1 impede the ability of the Class members to protect their interests. Further, the claims of the
2 individual members of the Class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses.

4 25. Such a pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation described herein is unlawful and creates an entitlement to
6 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
7 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
8 of California Labor Code §§ 226 and 2698, *et seq.*, the applicable IWC Wage Orders, and Code
9 of Civil Procedure § 1021.5.

10 26. Proof of a common business practice or factual pattern, which the named Plaintiffs
11 experienced and are representative of, will establish the right of each of the members of the Class
12 to recovery on the causes of action alleged herein. This action is brought for the benefit of the
13 entire class and will result in the creation of a common fund.

14 **FIRST CAUSE OF ACTION**

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

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

17 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as
18 though fully set for herein.

19 28. The Company failed in its affirmative obligation to keep accurate itemized wage
20 statements. The Company, as a matter of policy and practice, did not maintain accurate records in
21 violation of Labor Code § 226(a) by failing as a matter of policy and practice to keep accurate
22 payroll records for Plaintiffs and the Class. Specifically, the wage statements failed to list the
23 name of the legal entity that actually employed Plaintiffs and Class Members, pursuant to Labor
24 Code § 226(a)(8).

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

SECOND CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2698, ET SEQ.
(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AS PROXY FOR STATE
OF CALIFORNIA)

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

31. Plaintiff seeks penalties on behalf of the State of California and all similarly aggrieved employees for the aforementioned violations of Labor Code § 226(a) committed against Plaintiff and similarly aggrieved employees arising from Defendant's failure to list the actual entity which employed Plaintiff and aggrieved employees on wage statements for the time period of May 2, 2019, through the present.

32. On or about October 27, 2020, Plaintiff sent notice to the Labor Workforce Development Agency (the "LWDA") of the violations of Labor Code § 226(a). As of the date of the filing of this Complaint, the LWDA has not notified Plaintiffs whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties under the PAGA.

33. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3 and 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate of PAGA for Defendants' violations of Labor Code § 226.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

1 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
2 to Labor Code §§ 226.3, 2698, and 2699, and for costs and attorneys' fees;

3 6. On all causes of action, for attorneys' fees and costs as provided by California
4 Labor Code §§ 226, 2699, and Code of Civil Procedure § 1021.5; and

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

6 DATED: October 28, 2020

DIVERSITY LAW GROUP, P.C.

7
8 By: 
9 Larry W. Lee
Attorneys for PLAINTIFF and the CLASS