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DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP LLP
William L. Marder (State Bar No. 170131)
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff, the Class, and Aggrieved Employees

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 27 2020



LaShondra Richardson

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MATTHEW CORREA, as an individual
and on behalf of all others similarly situated,
and as a private attorney general,

Plaintiff,

vs.

FEDEX SUPPLY CHAIN, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE §§ 201-204,
246;
- (2) VIOLATION OF LAB. CODE §§ 226.7,
512
- (3) VIOLATION OF LAB. CODE § 226
- (4) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND
- (5) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

201102-0426/0421

On behalf of himself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Matthew Correa, submits this Class and Representative Action Complaint against Defendant, FedEx Supply Chain, Inc., and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code sections 201-204, 226, 226.7, 246, and 512.¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay sick pay at the regular rate of pay and by failing to pay premium wages for missed rest periods and meal periods at the regular rate of compensation. Specifically, Plaintiff and other non-exempt employees regularly earn non-discretionary incentives, shift differentials, or premium payments that increase their regular rate. Defendants, however, do not consider such earnings for purposes of paying either sick pay or premium wages for missed rest periods and meal periods to Plaintiff and other non-exempt employees. Instead, Defendants pay sick pay and premium wages for missed rest periods and meal periods at employees’ base rate of pay. As a result of the above practices, Defendants routinely underpay Plaintiff and other non-exempt employees sick pay wages and premium wages for missed rest periods and meal periods, which are neither timely paid during employment nor timely paid upon termination of employment. Similarly, Defendants routinely fail to provide itemized wage statements that show accurate hourly rates of pay, gross wages earned, and net wages earned.

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

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

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

JURISDICTION AND VENUE

5. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants’ violations of Sections 201-204, 226, 226.7, 246, and 512, and of the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the “UCL”).

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

PARTIES

7. Plaintiff began working for Defendants in or about December of 2019 and worked in California for Defendants for 30 or more days within a year. Until his employment as a forklift driver ended in or about October of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee. Plaintiff regularly earned non-discretionary incentives, shift differentials, or premium payments that increased his regular rate. Such earnings were not considered for purposes of paying either sick pay or premium wages for missed rest periods and meal periods to Plaintiff, who was instead paid sick pay and premium wages for missed rest periods and meal periods at his base rate of pay. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code and the UCL.

8. Plaintiff is informed and believes that Defendant, FedEx Supply Chain, Inc., was and is a Delaware corporation. Plaintiff is informed and believes that at all times herein mentioned named defendants 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 201-204, 226, 226.7, 246, and 512, and the UCL.

9. 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.

10. 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.

11. 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.

12. 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

13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of (i) all current and former non-exempt employees of Defendants in the State of California since May 2, 2016, who were paid sick pay in workweeks in which they earned non-discretionary incentives, shift differentials, or premium payments that increased their regular rate (the “Sick Pay Class”), and (ii) all current and former non-exempt employees of Defendants in the State of California since April 6, 2016, who were paid premium wages for missed rest periods and meal periods in workweeks in which they earned non-discretionary incentives, shift

differentials, or premium payments that increased their regular rate (the “Premium Wage Class”).
The Sick Pay Class and Premium Wage Class are collectively referred to as the “Class.”

14. **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. Defendants violated Sections 201-204, 226, 226.7, 246, and 512 against Plaintiff and other non-exempt employees who were paid sick pay or premium wages for missed rest periods and meal periods in workweeks in which they earned non-discretionary incentives, shift differentials, or premium payments that increased their regular rate.

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

16. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of failing to pay sick pay at the regular rate of pay and by failing to pay premium wages for missed rest periods and meal periods at the regular rate of compensation.

17. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis and regularly earned non-discretionary incentives, shift differentials, or premium payments that increased his regular rate but were not considered for purposes of paying either sick pay or premium wages for missed rest periods and meal periods to Plaintiff, who was instead paid sick pay and premium wages for missed rest periods and meal periods at his base

1 rate of pay. Plaintiff thus is a member of the Class and has suffered the alleged violations of the
2 Labor Code.

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

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

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

25 21. Defendants' pattern, practice, and uniform administration of corporate policy in
26 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern
27 will establish the rights of Plaintiff and the Class to recover underpaid sick pay wages and
28 premium wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and

costs of suit, pursuant to 203, 210, 218, 218.5, 226, 226.7, 248.5, and 512, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5.

22. 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

Violation of Labor Code §§ 201-204 and 246 (a)

(By Plaintiff and the Sick Pay Class Against All Defendants)

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

24. Section 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. An employer must calculate paid sick leave by using one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

25. Defendants paid Plaintiff and the Sick Pay Class for sick leave at the incorrect rate of pay. Defendants paid Plaintiff and the Sick Pay Class at their base rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary incentives, shift differentials, or premium payments, or by dividing the employees' total wages, not including overtime premium pay, by the employees' total hours worked in the full pay periods of the prior 90 days of employment, as required by Section 246. This resulted in underpayments of sick pay to Plaintiff and the Sick Pay Class.

26. Moreover, Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid
2 wages no later than 72 hours after an employee quits his or her employment, unless the employee
3 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
4 employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an
5 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the
6 wages of the employee shall continue as a penalty from the due date, and at the same rate until
7 paid, but the wages shall not continue for more than thirty (30) days.

8 27. Because Defendants did not pay, or timely pay, Plaintiff and the Sick Pay Class
9 all owing and underpaid sick pay wages, Defendants violate Sections 201-204, 246, and other
10 Labor Code sections. Defendants willfully failed to timely pay Plaintiff and the Sick Pay Class
11 all their wages due during employment and failed to timely pay all their wages due upon the
12 termination of their employment within the times prescribed by the Labor Code and are therefore
13 subject to applicable penalties, including a waiting time penalty, for each day, up to a thirty (30)
14 day maximum, pursuant to Section 203. On information and belief, Defendants were advised by
15 skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates
16 to Plaintiff's allegations, especially since the California Supreme Court has explained that
17 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is
18 entitled as a part of his or her compensation, including money, room, board, clothing, vacation
19 pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)
20 (emphasis added).

21 28. Such a pattern, practice, and uniform administration of corporate policy is
22 unlawful and entitles Plaintiff and the Sick Pay Class to recover underpaid wages, including
23 interest thereon, applicable penalties, attorneys' fees, and costs of suit.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Labor Code §§ 226.7, 512**

26 **(By Plaintiff and the Premium Wage Class Against All Defendants)**

27 29. The preceding paragraphs are re-alleged and incorporated by this reference.
28

1 30. Because Plaintiff and the Premium Wage Class were non-exempt employees,
2 Defendants were required to comply with Section 226.7 and 512, and the applicable IWC Wage
3 Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest
4 period for every four hours worked, or major fraction thereof, and generally prohibit
5 employment of an individual for a work period of more than five hours per day without
6 providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes.
7 Section 226.7(b) provides that an employer shall not require an employee to work during a rest
8 period or meal period. Section 226.7(c) states that “the employer shall pay the employee one
9 additional hour of pay at the employee’s regular rate of compensation for each workday that the
10 meal or rest or recovery period is not provided.”

11 31. As a matter of policy and practice on shifts of at least 3.5 hours of work,
12 Defendants fail to permit off-duty rest periods to Plaintiff and the Premium Wage Class. As a
13 matter of policy and practice on shifts exceeding five hours of work, Defendants fail to provide
14 Plaintiffs and the Premium Wage Class with a duty-free 30-minute meal period within the first five
15 hours of work. As a matter of policy and practice, Defendants also fail to pay an additional hour
16 of pay for each rest period or meal period missed by Plaintiff and the Premium Wage Class at the
17 regular rate. Defendants thus violate Section 226.7 and the applicable IWC Wage Order. As
18 such, Plaintiff and the Premium Wage Class are owed rest period premium pay.

19 32. Such a pattern, practice, and uniform administration of corporate policy is
20 unlawful and entitles Plaintiff and the Premium Wage Class to recover unpaid rest period and
21 meal period premium pay, including interest thereon, attorneys’ fees, and costs of suit.

22 33. Moreover, based on Defendants’ failure to pay rest period and meal period
23 premium pay to Plaintiff and the Premium Wage Class at the regular rate and as a matter of
24 policy and practice, Defendants failed to timely pay Plaintiff and the Premium Wage Class all
25 due wages or timely pay all due wages upon separation of employment. On information and
26 belief, Defendants were advised by skilled lawyers and knew, or should have known, of the
27 mandates of the Labor Code as it relates to Plaintiff’s allegations. Defendants thus violated
28

Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the separation of employment.

34. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Premium Wage Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Violation of Labor Code § 226

(By Plaintiff and the Class Against All Defendants)

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

36. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

37. As a matter of policy and practice, whenever Plaintiff and the Class are paid sick pay or premium wages for missed rest periods and meal periods, Defendants fail to provide accurate itemized wage statements in violation of Section 226(a). As alleged herein, Defendants routinely underpay sick pay and premium wages for missed rest periods and meal periods to Plaintiff and the Class. As a result, and as a matter of policy and practice, Plaintiff and the Class are not provided with wage statements listing accurate hourly rates in effect during the pay period for sick pay or premium wages for missed rest periods and meal periods, gross wages earned, or net wages earned.

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

FOURTH CAUSE OF ACTION

Violation of Business and Professions Code §§ 17200 *Et Seq.*

(By Plaintiff and the Class Against All Defendants)

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

40. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including the failure to pay sick pay at the regular rate of pay or pay premium wages for missed rest periods and meal periods at the regular rate of compensation.

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

42. 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 to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION

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

(By Plaintiff and Aggrieved Employees Against All Defendants)

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

44. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 201-204, 226, 226.7, 246, and 512 committed since May 2, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

45. As stated herein, Defendants fail to pay sick pay at the regular rate of pay and fail to pay premium wages for missed rest periods and meal periods at the regular rate of compensation to Plaintiff and other aggrieved employees. As a result, Defendants underpay sick

1 pay and premium wages for missed rest periods and meal periods, which are neither timely paid
2 during employment nor timely paid upon termination of employment. As an additional result,
3 Defendants fail to provide itemized wage statements that show accurate hourly rates of pay,
4 gross wages earned, and net wages earned.

5 46. On or about October 21, 2020, Plaintiff sent written notice to the Labor &
6 Workforce Development Agency ("LWDA") of specific facts and theories for Defendants'
7 violations of Sections 201-204, 226, 226.7, 246, and 512. Plaintiff simultaneously sent written
8 notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA
9 has neither responded nor indicated that it intends to investigate the allegations in the written
10 notice.

11 47. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all
12 applicable penalties for Defendants' violations of Sections 201-204, 226, 226.7, 246, and 512
13 against all aggrieved employees for the period described above.

14 **PRAYER FOR RELIEF**

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

- 17 1. For an order certifying the proposed Class;
- 18 2. For an order appointing Plaintiff as the representative of the Class;
- 19 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 20 4. Upon the First Cause of Action for damages, including unpaid sick pay and
21 interest thereon, and penalties pursuant to Sections 203, 210, 218, and 248.5, and for costs and
22 attorneys' fees
- 23 5. Upon the Second Cause of Action for damages, including unpaid premium wages
24 for missed rest periods and meal periods and interest thereon, and penalties pursuant to Sections
25 203, 210, 218, 218.5, 226.7, and 512, and for costs and attorneys' fees
- 26 6. Upon the Third Cause of Action for penalties pursuant to Section 226, and for
27 costs and attorneys' fees;

1 7. Upon the Fourth Cause of Action for restitution of all funds unlawfully acquired
2 by Defendants by any acts or practices declared to be in violation of the UCL, including interest
3 thereon, and for costs and attorneys' fees;

4 8. Upon the Fifth Cause of Action for penalties according to proof pursuant to
5 Sections 210, 226.3, 1197.1, and 2699, and for costs and attorneys' fees;

6 9. Upon each cause of action for attorneys' fees and costs as provided by Sections
7 218.5, 226, 248.5, 1194, and 2699, and Code of Civil Procedure section 1021.5; and

8 10. For such other and further relief that the Court may deem just and proper.

9 DATED: October 27, 2020

DIVERSITY LAW GROUP, P.C.

10 By: 

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff