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Superior Court of California
County of Los Angeles

OCT 27 2020

Sherri K. Chae, CLERK OF COURT
By Steven Drew, Deputy

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiff,

vs.

SAN FRANCISCO C&C/MEL'S DRIVE IN,
form unknown; and DOES 1 through 50, inclusive,

Defendants.

Case No.: **20STCV41738**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Unpaid Sick Pay
(Lab. Code § 246);
- (2) Unpaid Overtime
(Lab. Code §§ 510, 1198);
- (3) Rest Period Violations
(Lab. Code § 226.7);
- (4) Meal Period Violations
(Lab. Code §§ 226.7, 512);
- (5) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
- (6) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (7) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Mario Romero, submits this Class and
3 Representative Action Complaint against San Francisco C&C/Mel's Drive In, and Does 1 through 50
4 (collectively, "Defendants").

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks damages, restitution, penalties, and other relief for Defendants' violations of
9 Labor Code sections 201-202, 204, 226, 226.7, 246, 510, 512, 1182.12, 1197, and 1198, and seeks
10 penalties, damages, and other relief pursuant to, among other provisions, Labor Code sections 203, 210,
11 218, 218.5, 218.6, 248.5, 558, 1194, 1194.2. and 2698 et seq., and the Unfair Competition Law,
12 codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").¹

13 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
14 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
15 failing to pay sick pay at the regular rate of pay, failing to pay overtime wages at one and one-half
16 times (or double-time wages at two times) the regular rate of pay, failing to authorize and permit duty-
17 free rest periods, failing to provide duty-free meal periods, and failing to provide accurate itemized
18 wage statements.

19 3. Defendants routinely fail to pay sick pay at the regular rate of pay and routinely fail to
20 pay all overtime at one-and-one-half times (and double-time wages at two times) the regular rate of
21 pay. Specifically, Defendants fail to consider all non-discretionary compensation when calculating
22 Plaintiff and other non-exempt employees' regular rates of pay. For example, Defendants regularly collect
23 mandatory service charges from customers but fail to include such service charges in Plaintiff and other
24 non-exempt employees' regular rates of pay. Rather than pay sick pay at the regular rate of pay,
25 Defendants underpay sick pay to Plaintiff and other non-exempt employees at their base rates of pay.
26 Likewise, because Defendants fail to consider all non-discretionary compensation, including mandatory
27
28

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

1 service charges, when calculating Plaintiff and other non-exempt employees' regular rates of pay,
2 Defendants underpay overtime and double-time wages to Plaintiff and other non-exempt employees.

3 4. Defendants also routinely fail to authorize and permit Plaintiff and other non-exempt
4 employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof,
5 and fail to provide Plaintiff and other non-exempt employees with a duty-free 30-minute meal period within
6 the first five hours of work. Specifically, due to staffing issues, Plaintiff and other non-exempt employees
7 were regularly provided meal periods after the fifth hour of work and regularly were not provided rest
8 breaks at all. Moreover, when meal periods and rest periods were provided, Plaintiff and other non-
9 exempt employees were regularly required to take their meal periods and rest periods on work premises
10 and respond to any work issues that arose. Despite not permitting duty-free rest periods and not
11 providing duty-free meal periods, Defendants also routinely failed to pay Plaintiff and other non-exempt
12 employees the requisite rest period and meal period premium pay of an additional hour of wages at the
13 regular rate.

14 5. As a result of the above practices, Defendants also routinely fail to timely pay Plaintiff
15 and other non-exempt employees all of their sick pay, overtime, and double-time wages, which are
16 neither timely paid during employment nor timely paid upon termination of employment. Likewise,
17 Defendants also routinely fail to provide itemized wage statements that show accurate hourly rates of
18 pay, hours worked, gross wages earned, and net wages earned.

19 6. Finally, Defendants also routinely fail to provide accurate itemized wage statements to
20 Plaintiff and other employees. Specifically, Defendants issue wage statements to Plaintiff and all other
21 employees that do not show the name of the legal entity that is the employer. Instead, "San Francisco
22 C&C" and "Mels Drive In"—entities which are not among the corporations, limited liability
23 companies, and limited partnerships of record with the California Secretary of State—are shown on
24 wage statements.

25 7. Plaintiff is informed and believes that Defendants have engaged in, among other things,
26 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and
27 customs that knowingly deny its employees the above stated rights and benefits.
28

8. 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

9. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-202, 204, 226, 226.7, 246, 510, 512, 1182.12, 1197, and 1198, and the UCL.

10. Venue is proper as Defendants employed Plaintiff in Los Angeles, California.

PARTIES

11. Plaintiff was employed as a server and bartender by Defendants for about five years until his employment ended in or about December of 2019. He worked in California for Defendants for 30 or more days within a year. During his employment, Plaintiff was paid on an hourly basis as a non-exempt employee who regularly worked more than eight hours in a workday and 40 hours in a workweek. Plaintiff regularly earned non-discretionary incentives, including mandatory service charges, which Defendants regularly collected from customers. When Plaintiff earned such compensation during weeks in which he also was paid sick pay, his sick pay was paid at his base rate of pay. When Plaintiff earned such compensation during weeks in which he worked overtime or double-time hours, Defendants did not consider such compensation when calculating the regular rate of pay for overtime and double-time purposes. Plaintiff was thus not timely paid or ever paid all sick pay, overtime, and double-time wages due. Moreover, Plaintiff was not permitted to take duty-free rest periods when working shifts of at least 3.5 hours, and he was not provided duty-free meal periods when working shifts of more than 5.0 hours. Finally, Plaintiff also did not receive itemized wage statements that showed all accurate hourly rates of pay, hours worked, gross wages earned, net wages earned, or name of the legal entity that was the employer. 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.

12. Plaintiff is informed and believes that San Francisco C&C/Mel's Drive In was and is a California limited liability partnership and that at all times herein mentioned it and Does 1 through 50,

1 were and are business entities, individuals, or partnerships that were and are licensed to do business and
2 actually doing business in the State of California. Based upon all the facts and circumstances incident
3 to Defendants' business, Defendants are subject to Sections 201-202, 204, 226, 226.7, 246, 510, 512,
4 1182.12, 1197, and 1198.

5 13. Plaintiff does not know the true names or capacities of the defendants sued herein as
6 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
7 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true
8 names and capacities are known. Plaintiff is informed and believes that each of said fictitious
9 defendants was responsible in some way for the matters alleged herein and proximately caused the
10 illegal employment practices, wrongs, and injuries complained of herein.

11 14. At all times herein mentioned, each of said Defendants participated in the doing of the
12 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
13 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
14 scope of said agency and employment.

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

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

25 CLASS ACTION ALLEGATIONS

26 17. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
27 certification of the following classes: (i) all current and former non-exempt employees of Defendants in
28 the State of California who were paid sick pay in workweeks in which they earned non-discretionary

incentives, including mandatory service charges since May 2, 2016 (the “Sick Pay Class”); (ii) all current and former non-exempt employees of Defendants in the State of California who were paid overtime or double-time wages in workweeks in which they earned non-discretionary incentives, including mandatory service charges since May 2, 2016 (the “Overtime Class”); (iii) all current and former non-exempt employees of Defendants in the State of California who worked at least 3.5 hours in a work shift since May 2, 2016 (the “Rest Break Class”); (iv) all current and former non-exempt employees of Defendants in the State of California who worked more than 5.0 hours in a work shift since May 2, 2016 (the “Meal Break Class”); (v) all current and former employees of Defendants in the State of California since May 2, 2019 (the “Wage Statement Class”); and (vi) all current and former non-exempt employees of Defendants in the State of California since May 2, 2019, who were paid sick pay, overtime, or double-time wages in workweeks in which they earned non-discretionary incentives, including mandatory service charges or worked at least 3.5 hours in a work shift (the “Wage Statement Sub-Class”). The Sick Pay Class, Overtime Class, Rest Break Class, Meal Break Class, and Wage Statement Class and Sub-Class are collectively referred to as the “Class.”

18. **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, 226.7, 246, 510, 512, 1182.12, 1197, and 1198, and the UCL against Plaintiff and other employees.

19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class. 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.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest among 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, failing to pay overtime wages at one and one-half times (or

double-time wages at two times) the regular rate of pay, failing to authorize and permit duty-free rest periods, failing to provide duty-free meal periods, and failing to provide accurate itemized wage statements.

21. **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 regularly earned non-discretionary incentives, including mandatory service charges, which Defendants regularly collected from customers. When Plaintiff earned such compensation during weeks in which he also was paid sick pay, his sick pay was paid at his base rate of pay. When Plaintiff earned such compensation during weeks in which he worked overtime or double-time hours, Defendants did not consider such compensation when calculating the regular rate of pay for overtime and double-time purposes. Plaintiff was thus not timely paid or ever paid all sick pay, overtime, and double-time wages due. Moreover, Plaintiff was not permitted to take duty-free rest periods when working shifts of at least 3.5 hours, and he was not provided duty-free meal periods when working shifts of more than 5.0 hours. Finally, Plaintiff also did not receive itemized wage statements that showed all accurate hourly rates of pay, hours worked, gross wages earned, net wages earned, or name of the legal entity that was the employer. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

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

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

1 against their former or current employer for real and justifiable fear of retaliation and permanent
2 damage to their careers at their current or subsequent employment.

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

11 25. Defendants' pattern, practice, and uniform administration of corporate policy unlawfully
12 violates the Labor Code. Proof of a common business practice or factual pattern will establish the rights
13 of Plaintiff and the Class to recover underpaid wages, including sick pay, premium wages for missed
14 meal periods and rest periods, overtime, and interest thereon, applicable penalties, reasonable attorneys'
15 fees, and costs of suit, pursuant to Sections 201-202, 204, 226, 226.7, 246, 510, 512, 1182.12, 1197,
16 and 1198, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5.

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

20 **FIRST CAUSE OF ACTION**

21 **Unpaid Sick Pay (Lab. Code § 246)**

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

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

24 28. Section 246 provides that an employee is entitled to sick pay wages for use of accrued
25 sick leave. An employer must calculate paid sick leave by using one of two calculations: (i) "Paid sick
26 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
27 workweek in which the employee uses paid sick time, whether or not the employee actually works
28 overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by

1 dividing the employee's total wages, not including overtime premium pay, by the employee's total
2 hours worked in the full pay periods of the prior 90 days of employment."

3 29. Defendants paid Plaintiff and the Sick Pay Class for sick leave at the incorrect rate of
4 pay. Defendants paid Plaintiff and the Sick Pay Class at the base hourly rate of pay, as opposed to the
5 regular rate of pay, which would take into account all non-discretionary incentives, including
6 mandatory service charges, which Defendants regularly collected from customers, or by dividing the
7 employees' total wages, not including overtime premium pay, by the employees' total hours worked in
8 the full pay periods of the prior 90 days of employment, as required by Section 246. This resulted in
9 underpayments of sick pay to Plaintiff and the Sick Pay Class.

10 30. Moreover, Section 201 provides if an employer discharges an employee, the wages
11 earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that
12 an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or
13 her employment, unless the employee has given seventy-two (72) hours previous notice of his or her
14 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.
15 Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections
16 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the
17 same rate until paid, but the wages shall not continue for more than thirty (30) days. Section 204
18 generally provides that wages are due and payable twice during each calendar month, on days
19 designated in advance by the employer as the regular paydays. Consistent with Section 204, Section
20 246 also provides that an employer shall provide payment for sick leave taken by an employee no later
21 than the payday for the next regular payroll period after the sick leave was taken.

22 31. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid
23 sick pay to Plaintiff and the Sick Pay Class. Because Defendants did not pay or timely pay Plaintiff and
24 the Sick Pay Class all owing and underpaid sick pay wages, Defendants violated Sections 201-204,
25 246, and other Labor Code provisions. Defendants willfully failed to timely pay Plaintiff and the Sick
26 Pay Class all their wages due during employment and failed to timely pay all their wages due upon the
27 termination of their employment within the times prescribed by the Labor Code and are therefore
28 subject to applicable penalties, including a waiting time penalty pursuant to Section 203. On

1 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
2 of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since the California
3 Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to
4 which an employee is entitled as a part of his or her compensation, including money, room, board,
5 clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103
6 (2007) (emphasis added).

7 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
8 entitles Plaintiff and the Sick Pay Class to underpaid sick pay, including interest thereon, applicable
9 penalties, including waiting time penalties, attorneys' fees, and costs of suit.

10 **SECOND CAUSE OF ACTION**

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

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

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

14 34. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of
15 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
16 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
17 less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess
18 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
19 an employee." Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
20 IWC Wage Order.

21 35. As a matter of policy and practice, Defendants permit Plaintiff and the Overtime Class
22 to work more than eight hours in a workday or 40 hours in a workweek without proper overtime pay.
23 Defendants routinely fail to pay all overtime and double-time wages due to Plaintiff and the Overtime
24 Class. Specifically, whenever Plaintiff and the Overtime Class earn non-discretionary incentives,
25 including mandatory service charges, which Defendants regularly collected from customers,
26 Defendants do not consider such earnings or properly calculate the regular rate of pay for overtime and
27 double-time purposes.

36. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid overtime and double-time wages to Plaintiff and the Overtime Class. Because Defendants did not pay, or timely pay, Plaintiff and the Overtime Class all owing and underpaid overtime and double-time wages, Defendants willfully failed to timely pay Plaintiff and the Overtime Class all their wages due during employment and failed to timely pay all their wages due upon the termination of their employment within the times prescribed by the Labor Code. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. By not timely paying Plaintiff and the Overtime Class all due wages during employment and all due wages upon the separation of employment, Defendants thus violated Sections 201-204 and owe applicable penalties, including waiting time penalties, to Plaintiff and the Overtime Class.

37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Overtime Class to underpaid overtime and double-time wages, including interest thereon, applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Rest Period Violations (Lab. Code § 226.7)

(By Plaintiff and the Rest Break Class Against All Defendants)

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

39. Because Plaintiff and the Rest Break Class were non-exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an employee to work during a rest period. Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

40. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to Plaintiff and the Rest Break Class. Specifically, due to staffing issues, Plaintiff and the Rest Break Class regularly were not provided rest breaks when working shifts of at least 3.5 hours and, when provided,

1 were regularly required to take their rest periods on work premises and respond to any work issues that
2 arose. As a matter of policy and practice and despite not permitting duty-free rest periods, Defendants
3 also routinely failed to pay Plaintiff and the Rest Break Class the requisite rest period premium pay of an
4 additional hour of wages at the regular rate. Defendants thus violated Section 226.7 and the applicable
5 IWC Wage Order. As such, Plaintiff and the Rest Break Class are owed rest period premium pay.

6 41. Based on Defendants' failure to pay rest period premium pay to Plaintiff and the Rest
7 Break Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the
8 Rest Break Class all due wages or timely pay all due wages upon separation of employment. On
9 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
10 of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violated
11 Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the
12 separation of employment.

13 42. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
14 entitles Plaintiff and the Rest Break Class to recover unpaid rest period premium pay, including interest
15 thereon, applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

16 **FOURTH CAUSE OF ACTION**

17 **Meal Period Violations (Lab. Code §§ 226.7, 512)**

18 **(By Plaintiff and the Meal Break Class Against All Defendants)**

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

20 44. Because Plaintiff and the Meal Break Class were non-exempt employees, Defendants
21 were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section
22 512(a) generally prohibits employment of an individual for a work period of more than five hours per
23 day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes.
24 Section 226.7(b) provides that an employer shall not require an employee to work during a meal period.
25 Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the
26 employee's regular rate of compensation for each workday that the meal or rest or recovery period is
27 not provided."
28

45. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail to provide duty-free 30-minute meal periods within the first five hours of work to Plaintiff and the Meal Break Class. Specifically, due to staffing issues, Plaintiff and the Meal Break Class were regularly provided meal periods after the fifth hour of work and, when provided, were regularly required to take their meal periods on work premises and respond to any work issues that arose. As a matter of policy and practice and despite not providing duty-free meal periods, Defendants also routinely failed to pay Plaintiff and other non-exempt employees the requisite meal period premium pay of an additional hour of wages at the regular rate Defendants thus violated Sections 226.7 and 512 and the applicable IWC Wage Order. As such, Plaintiff and the Meal Break Class are owed meal period premium pay for meal periods Defendants failed to provide and are owed unpaid wages for unpaid meal periods during which Plaintiff and the Meal Break Class remained on duty.

46. Based on Defendants' failures to pay meal period premium pay or wages for work during meal periods to Plaintiff and the Meal Break Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the Meal Break Class all due wages or timely pay all due wages upon separation of employment. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violated Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the separation of employment.

47. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Meal Break Class to recover unpaid meal period premium pay and unpaid wages for on-duty hours worked, including interest thereon, applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION

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

(By Plaintiff and the Wage Statement Class and Sub-Class Against All Defendants)

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

49. 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

1 effect during the pay period, hours worked, gross wages earned, net wages earned, and the name of the
2 legal entity that is the employer.

3 50. As a matter of policy and practice, Defendants also failed to provide accurate itemized
4 wage statements to Plaintiff and the Wage Statement Class. Specifically, Defendants issue wage
5 statements to Plaintiff and all other employees that do not show the name of the legal entity that is the
6 employer. Instead, “San Francisco C&C” and “Mels Drive In”—entities which are not among the
7 corporations, limited liability companies, and limited partnerships of record with the California
8 Secretary of State—are shown on wage statements.

9 51. As a matter of policy and practice and because of Defendants’ sick pay, overtime, rest
10 period, and meal period violations, Defendants also failed to provide accurate itemized wage statements
11 to Plaintiff and the Wage Statement Sub-Class. Specifically, Defendants failed to furnish Plaintiff and the
12 Class with itemized wage statements that accurately showed all applicable hourly rates, hours worked, gross
13 wages earned, and net wages earned, including all sick pay, overtime, and premium pay earned for missed
14 rest periods and meal periods.

15 52. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
16 entitles Plaintiff and the Wage Statement Class and Sub-Class to recover applicable penalties,
17 attorneys’ fees, and costs of suit.

18 **SIXTH CAUSE OF ACTION**

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

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

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

22 54. Plaintiff is informed and believes that at Defendants have engaged and continue to
23 engage in unfair and unlawful business practices in California by utilizing the employment policies and
24 practices alleged herein in violation of Sections 204, 226.7, 246, 510, 512, 1182.12, 1197, and 1198.

25 55. As alleged herein, Defendants uniformly administer a corporate policy and practice of
26 routinely failing to pay sick pay at the regular rate of pay, failing to pay overtime wages at one and one-
27 half times (or double-time wages at two times) the regular rate of pay, failing to authorize and permit
28 duty-free rest periods, and failing to provide duty-free meal periods. Defendants’ utilization of such

1 unfair and unlawful business practices constitutes unfair and unlawful competition and provides an
2 unfair advantage over Defendants’ competitors, as proscribed by the UCL. Defendants have deprived
3 Plaintiff and the Class the minimum working condition standards and conditions due to them under the
4 Labor Code and applicable IWC Wage Orders.

5 56. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
6 entitles Plaintiff and the Class to full restitution of all resulting monies withheld, acquired, or converted
7 by Defendants, including interest thereon, attorneys’ fees, and costs of suit.

8 SEVENTH CAUSE OF ACTION

9 Violations of the California Labor Code (Lab. Code §§ 2698 et seq.)

10 (By Plaintiff and Aggrieved Employees Against All Defendants)

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

12 58. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
13 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this
14 capacity, Plaintiff seeks penalties for Defendants’ Labor Code violations committed since May 2, 2019,
15 against all aggrieved employees.

16 59. As alleged herein, Defendants violate Sections 201-202, 204, 226, 226.7, 246, 510, 512,
17 1182.12, 1197, and 1198 by failing to pay sick pay at the regular rate of pay, failing to pay overtime
18 wages at one and one-half times (or double-time wages at two times) the regular rate of pay, failing to
19 authorize and permit duty-free rest periods, failing to provide duty-free meal periods, and failing to
20 provide accurate itemized wage statements. Under Section 2699(c), Plaintiff is an “aggrieved
21 employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of
22 Defendants.

23 60. On or about October 15, 2020, Plaintiff sent written notice to the Labor & Workforce
24 Development Agency (“LWDA”) of specific facts and theories for Defendants’ Labor Code violations.
25 Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing
26 of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the
27 allegations in the written notice.

61. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' Labor Code violations against all aggrieved employees for the alleged period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself 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;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including unpaid sick pay and interest thereon, applicable penalties, and costs and attorneys' fees pursuant to Sections 203, 210, 218, 218.6, and 248.5;
5. Upon the Second Cause of Action for damages, including unpaid overtime and interest thereon, applicable penalties, and costs and attorneys' fees pursuant to Sections 203, 210, 218, 218.6, 512, and 1194;
6. Upon the Third Cause of Action for damages, including unpaid premium wages for missed rest periods and interest thereon, applicable penalties, and costs and attorneys' fees pursuant to Sections 203, 210, 218, 218.5, 226.7, and 1198;
7. Upon the Fourth Cause of Action for damages, including unpaid premium wages for missed meal periods, unpaid wages, and interest thereon, liquidated damages, applicable penalties, and costs and attorneys' fees pursuant to Sections 203, 210, 218, 218.5, 226.7, 512, 1194, and 1194.2;
8. Upon the Fifth Cause of Action for applicable penalties and costs and attorneys' fees pursuant to Section 226;
9. Upon the Sixth Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys' fees;
10. Upon the Seventh Cause of Action for penalties pursuant to Sections 210, 226.3, 248.5, 558, 1197.1, and 2699, and for costs and attorneys' fees;

1 11. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
2 226, 1194, and 2699, and Code of Civil Procedure section 1021.5; and

3 12. For such other and further relief that the Court may deem just and proper.

4 DATED: October 27, 2020

DIVERSITY LAW GROUP, P.C.

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6 By: 

Larry W. Lee

Simon L. Yang

7 Attorneys for Plaintiff
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