

01/25/2021

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF TULARE**

CARL HANEY, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

PENINSULA PACKAGING, LLC, a  
California limited liability company; and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: VCU285695

**CLASS AND REPRESENTATIVE PAGA  
ACTION COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-203;
- (2) VIOLATION OF LABOR CODE § 226.7;
- (3) VIOLATION OF LABOR CODE § 226(A);
- (4) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*; and
- (5) VIOLATION OF LABOR CODE §§ 2698, *ET SEQ.*

**DEMAND OVER \$25,000**

**Case Management Conference**

05/25/2021 08:30 AM - Department 07

1 Plaintiff Carl Haney (“Plaintiff”) hereby submits this Class and Representative PAGA  
2 Action Complaint (“Complaint”) against Defendant Peninsula Packaging, LLC (“Defendant”),  
3 and Does 1-50 (collectively, “Defendants”), as an individual and on behalf of all other similarly  
4 situated current and former employees of Defendants for penalties and/or damages for failure to  
5 pay sick pay at the regular rate of pay, failure to provide off-duty rest periods, failure to provide  
6 accurate itemized wage statements, failure to pay all wages owed upon separation of  
7 employment, and for unfair business practices, in violation of the California Labor Code and the  
8 California Business & Professions Code, as follows:

### 9 **INTRODUCTION**

10 1. This class and representative PAGA action is within the Court’s jurisdiction under  
11 California Labor Code §§ 201-204, 226(a), 226.7, 246, and 2698, *et seq.*, the applicable Wage  
12 Orders of the California Industrial Welfare Commission (“IWC”), and the California Unfair  
13 Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*

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

17 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
18 jointly and severally have acted intentionally and with deliberate indifference and conscious  
19 disregard to the rights of all employees by failing to pay sick pay at the regular rate of pay,  
20 failing to provide compliant off-duty rest periods, failing to pay all wages owed upon separation  
21 of employment, and failing to provide accurate itemized wage statements to Plaintiff and other  
22 employees, in compliance with the California Labor Code and the UCL.

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

27 5. The policies, practices, and customs of Defendants described above and below  
28 have resulted in unjust enrichment of Defendants and an unfair business advantage over

businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 226(a), 226.7, 246, and 2698, *et seq.*, and the UCL.

7. Venue is proper in Tulare County, because Plaintiff worked for Defendant in this County, and Plaintiff resides in this County.

### **PARTIES**

8. Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant as an hourly, non-exempt employee from on or about August 12, 2019, through July 31, 2020. Throughout his employment with Defendant, Plaintiff worked as a Warehouse Lineman.

9. During his employment with Defendant, Plaintiff was paid wages for sick pay.

10. Plaintiff was and is the 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 California Labor Code §§ 201-204, 226(a), 226.7, 246, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

11. Plaintiff is informed and believes and based thereon alleges that Defendant was and is a California limited liability company doing business in the State of California, and in the County of Tulare. Plaintiff is informed and believes, and based thereon alleges, that Defendant is in the business of manufacturing, distributing, and selling plastics and plastic containers.

12. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-204, 226(a), 226.7, 246, and 2698, *et seq.*, the UCL, and the IWC Wage Orders.

13. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as DOES 1 through 50, inclusive, and for that reason,

1 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this  
2 Complaint when the true names and capacities are known. Plaintiff is informed and believes and  
3 based thereon alleges that each of said fictitious defendants were responsible in some way for the  
4 matters alleged herein and proximately caused Plaintiff and members of the general public and  
5 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

18 16. At all times herein mentioned, Defendants, and each of them, were members of,  
19 and engaged in, a joint venture, partnership and common enterprise, and acting within the course  
20 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

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

28 ///

**CLASS ACTION ALLEGATIONS**

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

a. All non-exempt employees of Defendants in the State of California who were paid sick pay, and whose employment ended (either voluntarily or involuntarily) at any time from July 29, 2018, through the present (the “Sick Pay Regular Rate Class”); and

b. All current and former non-exempt employees of Defendants in the State of California who worked three and one-half (3.5) hours or more in any shift, at any time during the period of July 29, 2017, through the present (the “Rest Period Class”).

19. **Numerosity and Ascertainability:** The members of the Classes are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Classes are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay Class Members sick pay at the regular rate of pay in violation of Labor Code §§ 201-203 and 246; (b) failed to authorize and permit off-duty rest periods to Class Members, or provide rest period premium compensation in lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; (c) failed to provide accurate, itemized wage statements to Class Members, in violation of Labor Code § 226(a); and (d) engaged in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

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

21. Defendants uniformly administered a corporate policy and practice of: (a) failing to pay Class Members sick pay at the regular rate of pay in violation of Labor Code §§ 201-203 and 246; (b) failing to authorize and permit off-duty rest periods to Class Members, or provide

rest period premium compensation in lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; (c) failing to provide accurate, itemized wage statements to Class Members, in violation of Labor Code § 226(a); and (d) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-203. Plaintiff and other Class Members did not secret or absent themselves from Defendants, and did not refuse to accept the earned and unpaid wages, including the underpaid sick pay wages and the premium compensation for missed/noncompliant rest periods. Accordingly, Defendants are liable for waiting time compensation for the unpaid wages to separated employees pursuant to California Labor Code § 203.

23. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class Members concerning Defendants' policy and practice of: (a) failing to pay Class Members sick pay at the regular rate of pay in violation of Labor Code §§ 201-203 and 246; (b) failing to authorize and permit off-duty rest periods to Class Members, or provide rest period premium compensation in lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; (c) failing to provide accurate, itemized wage statements to Class Members, in violation of Labor Code § 226(a); and (d) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Classes in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class Members. Plaintiff was a non-exempt employee and was paid hourly. As with other Sick Pay Regular Rate Class Members, Plaintiff was paid sick pay at an hourly rate that was lower than the regular hourly rate of pay for regular hours worked. In addition, Plaintiff and other Rest Period Class Members were also denied duty-free rest periods. In this regard, Plaintiff was required to sign-out before he was allowed to leave work premises during his rest breaks. Plaintiff also did not receive rest period premium compensation in lieu of the non-

1 compliant rest breaks. To date, Plaintiff has yet to receive the underpaid wages owed to him,  
2 including the underpaid sick pay wages and unpaid rest period premiums, and thus Defendant  
3 owes waiting time penalties under section 203. Furthermore, as a result of the sick pay regular  
4 rate and rest period violations, Plaintiff also did not receive accurate itemized wage statements  
5 from Defendant that indicated the correct hourly rates of pay, gross wages earned, net wages  
6 earned. As such, Plaintiff is a member of the Classes and has suffered the alleged violations of  
7 California Labor Code §§ 201-203, 226(a), 226.7, and 246, the applicable IWC Wage Orders,  
8 and the UCL.

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

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

25         27. The prosecution of separate actions by the individual class members, even if  
26 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
27 to individual class members against Defendants and which would establish potentially  
28 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to

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

28. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Classes identified herein, in a civil action, for all applicable penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, 226, 226.7, 1194, and Code of Civil Procedure § 1021.5.

29. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Classes to recovery on the causes of actions alleged herein.

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

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF LABOR CODE §§ 201-203**

#### **(BY PLAINTIFF AND THE SICK PAY REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

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

32. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees 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." Cal. Lab. Code § 246(l)(1) (emphasis added).

33. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular rate of pay. Whenever sick pay was paid to Plaintiff and Class Members, it was paid at hourly rates that were lower than their regular hourly rates of pay for regular hours worked. Thus, Plaintiff and Class Members were underpaid sick pay wages.

34. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class Members their correct wages and accordingly owe waiting time penalties pursuant to Labor Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such failure to pay sick pay at the correct regular rate of pay was willful, such that Plaintiff and Class Members whose employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-203.

35. 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 the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, and 1194.

## SECOND CAUSE OF ACTION

## VIOLATION OF LABOR CODE § 226.7

**(BY PLAINTIFF AND THE REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

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

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

39. At all relevant times, Defendants failed in their affirmative obligation to ensure

1 that Plaintiff, and other Class Members, had the opportunity to take off-duty rest periods in  
2 accordance with the mandates of the California Labor Code and the applicable IWC Wage  
3 Order. Specifically, Defendants required Plaintiff and Class Members to be on work premises  
4 during their rest breaks and to sign-out before being allowed to leave work premises. As a result  
5 of said policy and practice, Plaintiff and Class Members remained on-duty, and under  
6 Defendants' control, as they could not leave work premises accordingly during their rest breaks.  
7 Thus, Defendants are responsible for paying premium compensation for missed/noncompliant  
8 rest periods pursuant to Labor Code § 226.7 and the applicable IWC Wage Order.

9 40. As a pattern and practice, Defendants regularly denied Plaintiff and Class  
10 Members the right to take proper rest periods as required by law.

11 41. As a pattern and practice, Defendants failed to pay rest period premium  
12 compensation to Plaintiff and the Class Members for each missed rest period.

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

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

23 **THIRD CAUSE OF ACTION**

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

25 **(BY PLAINTIFF, THE SICK PAY REGULAR RATE CLASS, AND THE REST PERIOD**  
26 **CLASS AGAINST ALL DEFENDANTS)**

27 44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43 as  
28 though fully set forth herein.

45. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Defendants, as a matter of policy and practice, did not provide accurate itemized wage statements to Plaintiff, Sick Pay Regular Rate Class Members, and Rest Period Class Members, in violation of Labor Code § 226(a).

46. In particular, as a result of the sick pay regular rate violations identified above, the wage statements issued to Plaintiff and the Sick Pay Regular Rate Class failed to accurately identify the information required by Section 226(a), particularly the hourly rates of pay, the gross wages earned, and the net wages earned.

47. Additionally, as a result of rest period violations identified above, the wage statements issued to Plaintiff and the Rest Period Class failed to accurately identify the gross wages earned and net wages earned due to the unpaid rest period premium pay.

48. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff, the Sick Pay Regular Rate Class, and the Rest Period Class, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorney's fees, and costs of suit according to the mandate of Labor Code § 226.

#### FOURTH CAUSE OF ACTION

**VIOLATION OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***  
**(BY PLAINTIFF AND THE REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 as though fully set forth herein.

50. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, including failing to provide off-duty, 10-minute rest breaks to employees for every 4 hours worked, or major fraction thereof, in violation of Labor Code § 226.7.

51. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

52. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

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

#### **FIFTH CAUSE OF ACTION**

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

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

54. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53 as though fully set forth herein.

55. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from June 21, 2019, through the present, for Defendants' violations of Labor Code §§ 201-204, 226(a), 226.7, and 246, arising from Defendants' misconduct as alleged above: (a) failing to pay Plaintiff and Aggrieved Employees sick pay at the regular rate of pay, in violation of Labor Code §§ 201-204 and 246; (b) failing to provide off-duty rest periods, or pay rest period premium compensation in lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; and (c) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a).

56. On or about December 16, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-204, 226(a), 226.7, and 246, pursuant to Labor Code § 2698, *et seq.*, the Private Attorney General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice. In addition to the LWDA, Plaintiff also sent his PAGA notice to Defendant via certified mail

1 according to Labor Code § 2699.3.

2 57. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all  
3 applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 226(a), 226.7,  
4 and 246, for the time period described above, on behalf of herself and all other Aggrieved  
5 Employees.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others  
8 that this suit is brought against Defendants, jointly and severally, as follows:

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as the representative of the Classes as described  
11 herein;
- 12 3. For an order appointing counsel for Plaintiff as Class Counsel;
- 13 4. Upon the First Cause of Action, for damages and/or penalties pursuant to  
14 California Labor Code §§ 201-203, and for costs and attorneys' fees;
- 15 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to  
16 Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
- 17 6. Upon the Third Cause of Action, for penalties pursuant to statute as set forth in  
18 Labor Code § 226, and for costs and attorneys' fees;
- 19 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly  
20 affected members of the general public of all funds unlawfully acquired by Defendants by means  
21 of any acts or practices declared by this Court to be in violation of Business & Professions Code  
22 § 17200, *et seq.*;
- 23 8. Upon the Fifth Cause of Action, for the full amount of civil penalties according to  
24 the PAGA, Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
- 25 9. On all causes of action, for attorneys' fees and costs as provided by California  
26 Labor Code §§ 218.5, 1194, and 2699, and Code of Civil Procedure § 1021.5; and
- 27 10. For such other and further relief as the Court may deem just and proper.

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DATED: January 25, 2021

DIVERSITY LAW GROUP, P.C.

By: \_\_\_\_\_



Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved  
Employees