

From 213.488.6554

Thu 04 Feb 2021 12:17:04 PM PST

Page 3 of 23

FILED BY FAX

ALAMEDA COUNTY

February 04, 2021

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG21087839

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Kelsey A. Webber (State Bar No. 303721)
Kelsey.Webber@WebberLawGroup.com
WEBBER LAW GROUP
333 University Ave, Suite 200
Sacramento, California 95825
Telephone: (916) 588-0683

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

JAMES JONES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TFC PARTNERS, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §§ 226.7
AND 512;
- (2) VIOLATION OF LABOR CODE § 226.7;
- (3) VIOLATION OF LABOR CODE §§ 1194,
1197, AND 1197.1;
- (4) VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;
- (5) VIOLATION OF LABOR CODE § 226(A);
- (6) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND
- (7) VIOLATION OF THE PAGA, LABOR
CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff James Jones (“Plaintiff”) hereby submits this Class and Representative Action
2 (“Complaint”) against Defendant TFC Partners, Inc. (“Defendant”) and Does 1 through 50
3 (collectively, “Defendants”), on behalf of himself and all other similarly situated current and
4 former employees of Defendants for penalties and/or damages under the California Labor Code
5 and the California Business & Professions Code, resulting from Defendant’s failure to provide
6 off-duty meal and rest periods, failure to pay wages for all hours worked, failure to provide
7 accurate itemized wage statements, and failure to maintain accurate time records, as follows:

8 **INTRODUCTION**

9 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
10 201-203, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2698, *et seq.*,
11 the Private Attorney General Act (“PAGA”), California Business and Professions Code § 17200,
12 *et seq.* (the “UCL”), and the applicable Wage Orders of the California Industrial Welfare
13 Commission (“IWC”).

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 provide off-duty meal and rest periods,
20 failing to pay wages for all hours worked, failing to provide accurate itemized wage statements,
21 and failure to maintain accurate time records for its employees in the State of California.

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

26 5. The policies, practices and customs of Defendants described above and below
27 have resulted in unjust enrichment of Defendants and an unfair business advantage over
28 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

1 **JURISDICTION AND VENUE**

2 6. The Court has jurisdiction over the violations of the California Labor Code §§
3 201-203, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2698, *et seq.*,
4 the UCL, and the applicable IWC Wage Orders.

5 7. Venue is proper in Alameda County, because Defendant does business in
6 Alameda County and Plaintiff is a resident of Alameda County.

7 **PARTIES**

8 8. Plaintiff is a former employee of Defendant. Plaintiff was employed by
9 Defendant as a Concierge from on or about March 29, 2020, to on or about December 31, 2020.
10 Throughout his employment with Defendant, Plaintiff worked as a non-exempt employee.

11 9. Plaintiff was and is the victims of the policies, practices, and customs of
12 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
13 by California Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1,
14 1198, 1199, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

15 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant was
16 and is a Delaware corporation that continues to maintain operations and do business in the State
17 of California, including in Alameda County, California. Plaintiff is informed and believes, and
18 based thereon alleges, that Defendant is an amenities hospitality and management company.

19 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
20 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
21 and partnerships, licensed to do business and actually doing business in the State of California.
22 As such and based upon all the facts and circumstances incident to Defendants' business,
23 Defendants are subject to the California Labor Code, the IWC Wage Orders, and the UCL.

24 12. Plaintiff does not know the true names or capacities, whether individual, partner
25 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
26 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
27 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
28 based thereon alleges that each of said fictitious defendants was responsible in some way for the

1 matters alleged herein and proximately caused Plaintiff and members of the general public and
2 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

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

25 **CLASS ACTION ALLEGATIONS**

26 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
27 California Code of Civil Procedure § 382, of the following Class and Sub-Classes”

28 a. All current and former non-exempt employees who worked for Defendants in the

1 State of California at any time from August 10, 2016, through the present (the “Class”);

2 b. All current and former non-exempt employees of Defendants in the State of
3 California who worked more than five (5) hours in any shift, at any time from August 10, 2016,
4 through the present (the “Meal Period Sub-Class”);

5 c. All current and former non-exempt employees of Defendants in the State of
6 California who worked three and one-half (3.5) hours or more in any shift, at any time from
7 August 10, 2016, through the present (the “Rest Period Sub-Class”); and

8 d. All current and former non-exempt employees of Defendants in the State of
9 California who were paid double time wages, at any time from August 10, 2019, through the
10 present (the “Double Time Wage Statement Sub-Class”).

11 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
12 that joinder of all members would be impractical, if not impossible. The identity of the members
13 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.

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

20 20. Defendants uniformly administered a corporate policy and practice of: (a) failing
21 to provide off-duty meal periods to employees, or pay meal period premium compensation in
22 lieu thereof, in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-
23 duty rest periods, or pay rest period premium compensation in lieu thereof, in violation of Labor
24 Code §§ 201-203 and 226.7; (c) failing to pay employees wages owed for all hours worked in
25 violation of Labor Code §§ 201-203, 510, 558, 1194, 1197, and 1197.1; (d) failing to provide
26 accurate itemized wage statements in violation of Labor Code § 226(a); and (e) engaging in
27 unfair business practices in violation of the California Labor Code, the applicable IWC Wage
28 Orders, and the UCL.

1 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
3 Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and
4 1199, the applicable IWC Wage Orders, and the UCL.

5 22. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
7 concerning Defendants' policy and practice of: (a) failing to provide off-duty meal periods to
8 employees, or pay meal period premium compensation in lieu thereof, in violation of Labor Code
9 §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods, or pay rest period
10 premium compensation in lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; (c)
11 failing to pay employees wages owed for all hours worked in violation of Labor Code §§ 201-
12 203, 510, 558, 1194, 1197, and 1197.1; (d) failing to provide accurate itemized wage statements
13 in violation of Labor Code § 226(a); and (e) engaging in unfair business practices in violation of
14 the California Labor Code, the applicable IWC Wage Orders, and the UCL.

15 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
16 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
17 manner as the Class Members. As a pattern and practice, Defendants routinely denied off-duty
18 meal and rest breaks to Plaintiff and other non-exempt employees. As with other non-exempt
19 employees, Plaintiff was required to keep his communication device on and respond to any
20 incoming calls during his meal and rest breaks. In lieu of providing proper off-duty meal and
21 rest breaks, Defendants also did not pay any meal and/or rest period premium compensation to
22 Plaintiff. In addition, Defendants regularly required Plaintiff and other employees to work off-
23 the-clock without payment of minimum, regular, and overtime wages. Specifically, Defendants
24 required Plaintiff to continue working past the end of his scheduled shifts, until the employee
25 working the next shift clocks in for work. Plaintiff was not paid for the time spent working until
26 the next employee showed up and clocked in. To date, Plaintiff has yet to receive the unpaid
27 meal and rest premium compensation and wages owed to him for off-the-clock work. Thus,
28 Defendants are liable for waiting time penalties under Labor Code § 203. Moreover, as a result

1 of the meal and rest period violations and the unpaid wages violation alleged above, the wage
2 statements provided to Plaintiff displayed inaccurate total hours worked, premium pay earned,
3 gross wages earned, and net wages earned, in violation of Labor Code § 226(a). As a separate
4 independent violation under Labor Code § 226(a), the wage statements provided to Plaintiff also
5 displayed incorrect hourly rates of pay whenever double time wages were paid. In this regard,
6 Plaintiff regularly worked double time and were paid double time wages. However, the
7 corresponding wage statements incorrectly displayed Plaintiff's double time rate of pay as the
8 base rate of pay, rather than two times the regular rate of pay. Therefore, Plaintiff is a member
9 of the Class and has suffered the alleged violations of Labor Code §§ 201-203, 226(a), 226.7,
10 510, 512, 558, 1194, 1197, and 1197.1, the applicable Wage Orders, and the UCL.

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

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

27 26. The prosecution of separate actions by the individual class members, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect

1 to individual class members against the Defendants and which would establish potentially
2 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
3 individual class members which would, as a practical matter, be dispositive of the interest of the
4 other class members not parties to the adjudications or which would substantially impair or
5 impede the ability of the class members to protect their interests. Further, the claims of the
6 individual members of the class are not sufficiently large to warrant vigorous individual
7 prosecution considering all of the concomitant costs and expenses.

8 27. Such a pattern, practice and uniform administration of corporate policy regarding
9 illegal employee compensation described herein is unlawful and creates an entitlement to
10 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
11 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
12 according to the mandate of California Labor Code §§ 201-203, 218.5, 226, 510, 558, 1194,
13 1197, 1197.1, 2698, and Code of Civil Procedure § 1021.5.

14 28. Proof of a common business practice or factual pattern, which the named Plaintiff
15 experienced and is representative of, will establish the right of each of the members of the Class
16 to recovery on the causes of action alleged herein.

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

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

23 **(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD SUB-CLASS**
24 **AGAINST ALL DEFENDANTS)**

25 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
26 though fully set forth herein.

27 31. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
28 requires an employer to provide a duty-free, 30-minute meal period within the first five (5) hours

1 for shifts in excess of five (5) hours per day. Plaintiff and Class Members regularly worked in
2 excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each
3 day worked in excess of five (5) hours.

4 32. At all relevant times, Defendants failed in their affirmative obligation to ensure
5 that Plaintiff and Class Members had the opportunity to take and were provided with off-duty
6 meal periods in accordance with the mandate of the California Labor Code and the applicable
7 IWC Wage Order. At all relevant times, Plaintiff and Class Members were suffered and
8 permitted to work through legally required meal breaks and were denied the opportunity to take
9 their off-duty meal breaks. This included, without limitation, Defendants requiring Plaintiff and
10 Class Members to keep their communication devices on during such meal breaks and to respond
11 to any calls during these breaks. As such, Plaintiff and Class Members were denied legally
12 compliant off-duty meal periods, and thus Defendants are responsible for paying premium
13 compensation pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order.
14 Defendants, as a matter of corporate policy and procedure, regularly failed to pay such premium
15 compensation for each 30-minute duty-free meal period Plaintiff and Class Members missed.

16 33. As a pattern and practice, Defendants regularly required employees to work
17 through their meal periods without proper compensation and denied Plaintiff and Class Members
18 the right to take proper meal periods as required by law.

19 34. Such a pattern, practice and uniform administration of corporate policy as
20 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a
21 civil action, for the unpaid balance of the unpaid premium compensation pursuant to California
22 Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including interest thereon,
23 penalties, and costs of suit.

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

VIOLATION OF LABOR CODE § 226.7

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

36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs 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 major fraction thereof. Plaintiff and other 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 rest period each day.

38. At all relevant times, Defendants failed in their affirmative obligation to provide Plaintiff and other Class Members with the opportunity to take rest periods in accordance with the mandate of the California Labor Code and the applicable IWC Wage Order. As a pattern and practice, Defendants suffered and permitted Plaintiff and Class Members to work through legally required rest breaks and denied Plaintiff and Class Members the opportunity to take off-duty rest breaks. Specifically, Plaintiff and Class Members were required to keep their communication devices on during their rest breaks and to respond to any calls received during their rest breaks. As a result, Plaintiff and Class Members remained on-duty during these purported rest breaks and Defendants are responsible for paying premium compensation for missed rest breaks pursuant to Labor Code § 226.7.

39. As a pattern and practice, Defendants regularly required employees to work through their rest periods without proper compensation and denied Plaintiff and Class Members the right to take proper rest periods as required by law.

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

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

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 1194, 1197, AND 1197.1

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

43. This cause of action is brought pursuant to Labor Code §§ 1194, 1197, and 1197.1, which require an employer to pay employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than 40 hours in a workweek.

44. As a pattern and practice, Defendants suffered and permitted employees to work without payment of minimum wages for all hours worked in a workday and workweek. Specifically, Defendants required its employees to work off-the-clock by continuing to work past the end of their scheduled shifts until employees working the next shift clocked in for work to take over. However, Defendants failed to pay Plaintiff and Class Members for the time working until the next employee showed up for their scheduled shift. As a result, Plaintiff and Class Members were consistently underpaid for all hours worked.

45. Plaintiff and Class Members whose employment ended are also entitled to waiting time penalties pursuant to Labor Code §§ 201-203. As a pattern and practice, Defendants regularly and willfully failed to pay all wages due and earned to discharged employees at the time of their termination, or within 73 hours of employees who quit and/or have resigned, or at the time of termination for those employees who gave 72 hours' notice. Thus, Plaintiff and the Class Members are entitled to recover from Defendants continued payment of wages up to thirty (30) days from the time the wages were due pursuant to Labor Code § 203.

46. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation as described herein is unlawful and creates an entitlement to
2 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
3 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
4 to the mandate of California Labor Code §§ 1194, 1197, and 1197.1.

5 **FOURTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

7 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

8 47. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set forth herein.

10 48. This cause of action is brought pursuant to Labor Code §§ 510, 558, and 1194,
11 which require an employer to pay employees overtime wages for all hours worked greater than
12 eight hours in a day and/or greater than 40 hours in a workweek.

13 49. As a pattern and practice, Defendants suffered and permitted employees to work
14 without payment of overtime wages for all hours worked in a workday and workweek.
15 Specifically, Defendants required its employees to work off-the-clock by continuing to work past
16 the end of their scheduled shifts until employees working the next shift clocked in for work to
17 take over. However, Defendants failed to pay Plaintiff and Class Members for the time working
18 until the next employee showed up for their scheduled shift. As a result, Plaintiff and Class
19 Members were not paid overtime wages for all overtime hours worked.

20 50. Plaintiff and Class Members whose employment ended are also entitled to waiting
21 time penalties pursuant to Labor Code §§ 201-203. As a pattern and practice, Defendants
22 regularly and willfully failed to pay all wages due and earned to discharged employees at the
23 time of their termination, or within 73 hours of employees who quit and/or have resigned, or at
24 the time of termination for those employees who gave 72 hours' notice. Thus, Plaintiff and the
25 Class Members are entitled to recover from Defendants continued payment of wages up to thirty
26 (30) days from the time the wages were due pursuant to Labor Code § 203.

27 51. Such a pattern, practice and uniform administration of corporate policy regarding
28 illegal employee compensation as described herein is unlawful and creates an entitlement to

1 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
2 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
3 to the mandate of California Labor Code §§ 510, 558, and 1194.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226(A)**

6 **(BY PLAINTIFF, THE CLASS, AND ALL SUB-CLASSES**

7 **AGAINST ALL DEFENDANTS)**

8 52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set forth herein.

10 53. Labor Code § 226(a) requires employers to provide itemized wage statements to
11 its employees that identify accurate information regarding their compensation. Defendants, as a
12 matter of policy and practice, failed in its affirmative obligation to provide accurate itemized
13 wage statements to Plaintiff and Class Members, in violation of Labor Code § 226(a).

14 54. As a result of Defendants' meal period violations, rest period violations, and
15 nonpayment of wages identified above, the wage statements issued to Plaintiff and Class
16 Members failed to identify the meal period and rest period premium compensation payments
17 earned, and failed to identify the hours worked at each rate, gross and net wages earned, and total
18 hours worked, in violation of Labor Code § 226(a).

19 55. As a separate independent violation of Labor Code § 226(a), Defendants provided
20 wage statements to Plaintiff and Double Time Wage Statement Sub-Class Members that
21 inaccurately identified the double time hourly rates of pay whenever double time wages were
22 paid. In particular, Labor Code § 510 provides that "[a]ny work in excess of 12 hours in one day
23 shall be compensated at the rate of no less than twice the regular rate of pay for an employee."
24 However, whenever double time wages were paid, the wage statements issued to Plaintiff and
25 Double Time Wage Statement Sub-Class Members did not identify the double time rate as 2
26 times the regular rate of pay. Rather, the double time rate appeared on wage statements as the
27 employee's base hourly rate of pay. This is a violation of Labor Code § 226(a)(9).

28 56. The issuance of inaccurate wage statements caused actual injury to Plaintiff and

1 Class Members as they cannot accurately verify and/or calculate their wages.

2 57. Such a pattern, practice and uniform administration of corporate policy as
3 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
4 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
5 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
6 California Labor Code § 226.

7 **SIXTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

9 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

10 58. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 59. Defendants, and each of them, have engaged and continue to engage in unfair and
13 unlawful business practices in California by practicing, employing, and utilizing the employment
14 practices outlined above, including by: (a) failing to provide off-duty meal periods, or pay meal
15 period premiums in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (b) failing to
16 provide off-duty rest periods, or pay rest period premiums in lieu thereof, in violation of Labor
17 Code § 226.7; and (c) failing to pay wages for all hours worked, in violation of Labor Code §§
18 510, 558, 1194, 1197, and 1197.1.

19 60. Defendants' utilization of such unfair and unlawful business practices constitutes
20 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

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

25 62. Plaintiff is informed and believes, and based thereon alleges, that at all times
26 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
27 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
28 forth herein above thereby depriving Plaintiff and other members of the Class the minimum

1 working condition standards and conditions due to them under the California laws as specifically
2 described therein.

3 **SEVENTH CAUSE OF ACTION**

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

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

6 63. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
7 though fully set forth herein.

8 64. As identified above, Defendants have violated Labor Code §§ 201-203, 226(a),
9 226.7, 510, 512, 558, 1194, 1197, and 1197.1, by failing to provide off-duty meal periods, or pay
10 meal period premiums in lieu thereof, in violation of Labor Code §§ 201-203, 226.7, and 512;
11 failing to provide off-duty rest periods, or pay rest period premiums in lieu thereof, in violation
12 of Labor Code §§ 201-203 and 226.7; failing to pay employees wages owed for all hours
13 worked, in violation of Labor Code §§ 201-203, 510, 558, 1194, 1197, and 1197.1; and failing to
14 provide accurate itemized wage statements in violation of Labor Code § 226(a).

15 65. In addition, Defendants have also violated Labor Code §§ 1174, 1198, and 1199,
16 and §§ 7 and 11 of the applicable IWC Wage Order, by failing to maintain accurate time records
17 showing when Plaintiff and other employees begin and end each work shift. Specifically,
18 Defendants did not allow Plaintiff and other employees to record the exact time of the start and
19 end of their meal periods.

20 66. Thus, Plaintiff brings this cause of action as a proxy for the State of California
21 and in this capacity, seeks penalties on behalf of all Aggrieved Employees from July 11, 2019,
22 through the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), 226.7, 510,
23 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and §§ 7 and 11 of the applicable IWC Wage
24 Order.

25 67. Because of Defendants' above-stated Labor Code violations, Plaintiff is an
26 "aggrieved employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause
27 of action on behalf of the State of California for violations committed against all similarly
28 situated Aggrieved Employees of Defendants.

68. On or about January 5, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 1199, and §§ 7 and 11 of the applicable IWC Wage Order, pursuant to Labor Code § 2698, *et seq.* As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the violations provided for in the written notice. In addition to the LWDA, Plaintiff also sent his written notice to Defendants via certified mail according to Labor Code § 2699.3.

69. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 1199, and §§ 7 and 11 of the applicable IWC Wage Order, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

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

2. For an order certifying the proposed classes;

3. For an order appointing Plaintiff as the representative of the classes as described herein:

4. For an order appointing Counsel for Plaintiff as Class Counsel;

5. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;

6. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

7. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;

1 9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California
2 Labor Code § 226, and for costs and attorneys' fees;

3 10. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
4 affected members of the general public of all funds unlawfully acquired by Defendants by means
5 of any acts or practices declared by this Court to be in violation of Business & Professions Code
6 § 17200, *et seq.*, and for costs and attorneys' fees;

7 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
8 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees; and

9 12. On all causes of action for attorneys' fees and costs as provided by California
10 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

11 13. For such other and further relief the Court may deem just and proper.
12

13 DATED: February 4, 2021

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
Employees
16
17
18
19
20
21
22
23
24
25
26
27
28