

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555
Fax: (213) 488-6554

Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

RACHEL QUIJADA, as an individual and
on behalf of aggrieved employees,

Plaintiff,

vs.

EXTRA SPACE MANAGEMENT, INC.,
a Utah corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **21CV385899**

**REPRESENTATIVE ACTION
COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

1 Plaintiff Rachel Quijada (“Plaintiff”) hereby submits this Representative Action
2 Complaint (“Complaint”) against Defendant Extra Space Management, Inc. (“Defendant”) and
3 Does 1 through 50 (collectively referred to as “Defendants”), on behalf of herself and all
4 aggrieved employees of Defendant, for penalties for violations of the California Labor Code as
5 follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194 and 2698 *et seq.*, and the
9 applicable California Industrial Welfare Commission’s (“IWC”) Wage Orders.

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees in Defendants’ failure to: authorize and permit duty-free
15 meal and rest periods; pay overtime and meal/rest period premium wages at the regular rate of
16 pay; and provide accurate itemized wage statements to Plaintiff and other aggrieved employees.

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

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of California Labor Code sections
23 201, 202, 203, 226, 226.7, 510, 512, 558, 1194 and 2698 *et seq.*

24 6. Venue is proper in this county because Defendant maintains operations
25 throughout the State of California, including in Santa Clara County. Furthermore, the Labor
26 Code violations occurred in multiple counties, including in Santa Clara County.

27 //

28 //

PARTIES

7. Plaintiff was hired by Defendants as an Assistant Manager and worked from about February 22, 2021 until about April 19, 2021. Plaintiff was a non-exempt, hourly employee.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California 201, 202, 203, 226, 226.7, 510, 512, 558, 1194 and 2698 *et seq.*

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Extra Space Management, Inc. was and is a Utah corporation doing business in the State of California providing general contracting services.

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants and Does 1 through 50, are and were corporations, 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, Defendants are subject to California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194 and 2698 *et seq.*

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

15. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

FIRST CAUSE OF ACTION

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

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

17. Plaintiff brings this cause of action, on behalf of and as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from June 21, 2020, through the present, for Defendant's violation of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558 and 1194, arising from Defendant's practice and policy of failing to: (1) authorize and permit duty-free meal and rest periods, in violation of Labor Code sections 226.7 and 512; (2) pay meal and rest period premiums at the regular rate of pay, in violation of

1 Labor Code sections 226.7 and 512; (3) pay overtime wages at the regular rate of pay, in
2 violation of Labor Code sections 510, 558 and 1194; (4) provide accurate itemized wage
3 statements; and (5) pay all earned wages upon separation of employment due the underpayment
4 and/or nonpayment of wages, including overtime and meal/rest period premium pay, in violation
5 of Labor Code sections 201, 202 and 203.

6 18. Defendant violated Labor Code sections 226.7 and 512. Defendant failed in its
7 affirmative obligation to ensure that Plaintiff and other Aggrieved Employees had the
8 opportunity to take and were provided with off-duty 10-minute rest periods and a thirty (30)
9 minute uninterrupted duty-free meal period within five (5) hours of the beginning of their shift.
10 Specifically, because of staffing issues, Defendant required employees to respond to customer
11 and other work-related issues that caused rest periods and meal breaks to be missed, taken in an
12 untimely manner, and/or to be interrupted.

13 19. Defendant is responsible for paying premium compensation for missed,
14 interrupted and untimely meal and rest periods pursuant to Labor Code section 226.7 and the
15 applicable IWC Wage Order. Specifically, Labor Code section 226.7(c) states that “the employer
16 shall pay the employee one additional hour of pay at the employee’s regular rate of
17 compensation for each workday that the meal or rest or recovery period is not provided.”
18 Defendant, as a matter of corporate policy and procedure, regularly failed to pay such premium
19 compensation at the correct regular rate. For the purpose of calculating the premium
20 compensation, Defendant failed to include non-discretionary incentive pay, such as
21 “Gift/Awards” and “Monthly Field Incentives,” in the calculation of the regular rate. Thus, when
22 Plaintiff and other Aggrieved Employees received meal/rest period premium compensation and
23 earned non-discretionary incentive pay in the same workweek, the employees were paid a
24 meal/rest period premium based on a lower, base rate that failed to take into account additional
25 items of non-discretionary remuneration.

26 20. Relatedly, Defendant failed to correctly calculate the regular rate of pay for
27 purposes of paying overtime wages, in violation of Labor Code sections 510, 558 and 1194.
28 Aggrieved Employees earned non-discretionary incentive pay and overtime wages during the

1 same work week. For the purpose of determining the applicable overtime rate, Defendant failed
2 to include non-discretionary incentive pay, such as “Gift/Awards” and “Monthly Field
3 Incentives,” in the calculation of the regular rate. Thus, when Aggrieved Employees worked
4 overtime and earned non-discretionary pay in the same workweek, the employees were paid
5 overtime based on a lower, base rate that did not take into account additional items of non-
6 discretionary remuneration

7 21. Defendant also failed in its affirmative obligation to provide accurate itemized
8 wage statements to Plaintiff and Aggrieved Employees, in violation of Labor Code section
9 226(a). The wage statements should have reflected all applicable hourly rates in effect during the
10 pay period, the corresponding number of hours worked at each hourly rate, total hours worked,
11 and net and gross wages earned. However, as a result of the underpayment and/or nonpayment of
12 wages, including overtime and meal/rest period premium pay, the wage statements provided to
13 Plaintiff and Aggrieved Employees identified incorrect wage rates, total hours worked, and net
14 and gross wages earned.

15 22. Defendant violated Labor Code sections 201, 202 and 203 due to the
16 underpayment and/or nonpayment of wages, including overtime and meal/rest period premium
17 pay, to Aggrieved employees upon separation of employment.

18 23. On or about June 21, 2021, Plaintiff sent written notice to the California Labor &
19 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code §§ 212
20 and 225.5, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).
21 On or about August 16, 2021, Plaintiff sent a supplemental written notice to the LWDA of
22 Defendant’s violations of Labor Code sections 226.7 and 512. To date, the LWDA has not
23 responded to Plaintiff’s written notices

24 24. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
25 and all applicable civil penalties for Defendant’s violation of Labor Code sections 201, 202, 203,
26 226, 226.7, 510, 512, 558 and 1194 for the time period described above, on behalf of himself and
27 other Aggrieved Employees.

28 //

1 **PRAYER FOR RELIEF**

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

- 4 1. Upon the First Cause of Action, for civil penalties pursuant to statute as set forth
5 in California Labor Code sections 226.3 and 2699, and for costs and attorney's
6 fees
7 2. On all causes of action for attorneys' fees and costs as provided by California
8 Code of Civil Procedure section 1021.5; and
9 3. For such other and further relief the Court may deem just and proper.

10
11 DATED: August 17, 2021

DIVERSITY LAW GROUP, P.C.

12
13 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

14
15 Attorneys for Plaintiff and Aggrieved Employees
16
17
18
19
20
21
22
23
24
25
26
27
28