

FILED
Superior Court Of California,
Sacramento
02/28/2022
rsanmiguel
By _____, Deputy
Case Number:
34-2021-00308697

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

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

Attorneys for Plaintiff and the Class

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

ANTONIO JESUS JARAMILLO DE LA CRUZ,
as an individual and on behalf of all others
similarly situated, and as a private attorney
general,

Plaintiff,

vs.

WEIDNER PROPERTY MANAGEMENT, LLC,
a Washington limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00308697

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Unpaid Overtime
(Lab. Code §§ 510, 1198)
- (2) Unpaid Sick Pay Wages
(Lab. Code §§ 201-204, 233, 246)
- (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) Unreimbursed Business Expenses
(Lab. Code § 2802);
- (7) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (8) Civil Penalties for Labor Code Violations
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

BY FAX

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, Antonio Jesus Jaramillo De La Cruz, submits this
3 First Amended Class and Representative Action Complaint (the "Complaint") against Defendant,
4 Weidner Property Management, LLC, and Does 1 through 50 (collectively, "Defendants").

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices that
7 violate the California Labor Code. The Complaint seeks damages, penalties, and other relief pursuant to,
8 among other provisions, Labor Code sections 201-204, 210, 218, 218.5, 218.6, 226, 226.7, 233, 246,
9 510, 512, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, the Labor Code Private
10 Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA"), and the Unfair Competition
11 Law, codified at Business and Professions Code sections 17200 et seq. (the "UCL").¹

12 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
13 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
14 failing to pay all overtime wages due, failing to pay all sick pay wages due, failing to authorize and
15 permit duty-free rest periods, failing to provide duty-free meal periods, failing to pay all additional
16 hours of regular rate wages due for missed rest periods and meal periods, failing to provide accurate
17 itemized wage statements, and failing to reimburse necessary and reasonable business expenses.

18 3. Defendants routinely underpay overtime wages and sick pay wages. Specifically,
19 Plaintiff and other non-exempt employees are paid on an hourly basis but also earn non-hourly
20 remuneration, including but not limited to non-discretionary bonuses and rent discount incentives.
21 Defendants fail to consider non-hourly remuneration when calculating the regular rate for purposes of
22 paying overtime wages and sick pay wages. Defendants thus underpay overtime wages and sick pay
23 wages.

24 4. Defendants also routinely fail to authorize and permit duty-free rest periods and provide
25 duty-free meal periods. Specifically, Defendants require Plaintiff and other non-exempt employees to be
26 available and to respond to phone calls during rest periods and meal periods. Defendants thus fail to
27 relieve employees of all duties during meal periods and rest periods. Despite not permitting duty-free
28

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

1 rest periods and meal periods, Defendants also routinely fail to pay Plaintiff and other non-exempt
2 employees an additional hour of wages at all. For any payments actually made, Defendants underpay
3 the additional hour of regular rate wages.

4 5. Because Plaintiff and other non-exempt employees are not paid all of their wages,
5 Defendants also routinely fail to timely pay all wages during employment and fail to timely pay all due
6 wages upon separation of employment. Likewise, Defendants also routinely fail to provide accurate
7 itemized wage statements to Plaintiff and other non-exempt employees. Specifically, as a result of the
8 above practices, Defendants fail to furnish Plaintiff and other non-exempt employees with wage
9 statements that accurately show and itemize all applicable hourly rates, the corresponding numbers of
10 hours worked, the total hours worked, the gross wages earned, and the net wages earned.

11 6. Separately, Defendants routinely furnish wage statements that fail to show the name of a
12 legal entity that could be a California employer. Although all legal entities employing Californians must
13 be registered with the Secretary of State, only “Weidner Property Management LLC”—an entity which
14 is not among the corporations, limited liability companies, and limited partnerships of record with the
15 California Secretary of State—is shown on wage statements.

16 7. Defendants also routinely fail to reimburse Plaintiff and other employees for necessary
17 business expenses incurred in performing their work for Defendants. Specifically, Defendants require
18 employees to use their personal cell phones in order to perform their jobs, including for example to
19 perform daily COVID health screenings. Although Plaintiff and other employees are required to use
20 their personal cell phones, they are not reimbursed for their related expenses.

21 8. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
22 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
23 customs that knowingly deny employees their rights and benefits. These policies, practices, and customs
24 of Defendants result in unjust enrichment of Defendants and an unfair business advantage over those
25 that comply with the Labor Code.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

5
6

7

8
9
0
1
2
3
4
5
6
7
8
9
0

1
2
3
4
5
6
7

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

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

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

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

CLASS ACTION ALLEGATIONS

17. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes of current and former employees of Defendants in the State of California: (i) who were non-exempt and earned overtime wages in a workweek since February 10, 2021, in which they also earned non-hourly remuneration, including but not limited to non-discretionary bonuses and rent discount incentives (the “Overtime Class”); (ii) who were non-exempt and were paid sick pay wages in a workweek since September 22, 2017, in which they earned non-hourly remuneration, including but not limited to non-discretionary bonuses and rent discount incentives (the

1 “Sick Pay Class”); (iii) were non-exempt and worked at least 3.5 hours in a work shift since February
2 10, 2021 (the “Rest Period Class”); (iv) who were non-exempt and worked more than 5.0 hours in a
3 work shift since February 10, 2021 (the “Meal Period Class”); (v) who were exempt and paid wages
4 since September 22, 2020, or non-exempt and paid wages since February 10, 2021 (the “Wage
5 Statement Class”); and (vi) who were exempt and worked since November 16, 2019, or non-exempt and
6 worked since February 10, 2021 (the “Reimbursement Class”). The Overtime Class, Sick Pay Class,
7 Rest Period Class, Meal Period Class, Wage Statement Class, and Reimbursement Class are collectively
8 referred to as the “Class.”

9 **18. Numerosity and Ascertainability:** The members of the Class are so numerous that
10 joinder of all members would be impractical, if not impossible. The identities of the members of the
11 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
12 informed and believes that Defendants violated Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1198,
13 and 2802, and the UCL against Plaintiff and the Class by failing to pay all overtime wages due, failing
14 to pay all sick pay wages due, failing to authorize and permit duty-free rest periods, failing to provide
15 duty-free meal periods, failing to pay all additional hours of regular rate wages due for missed rest
16 periods and meal periods, failing to provide accurate itemized wage statements, and failing to reimburse
17 necessary and reasonable business expenses.

18 **19. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
19 represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready,
20 willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff’s attorneys have
21 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
22 and-hour class actions currently pending in California state and federal courts.

23 **20. Common Question of Law and Fact:** There are predominant common questions of law
24 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
25 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
26 failing to (i) pay overtime wages, (ii) pay sick pay wages, (iii) authorize and permit duty-free rest
27 periods, (iv) provide duty-free meal periods, (v) pay all additional hours of regular rate wages due for
28

missed rest periods and meal periods, (vi) provide accurate itemized wage statements, and (vii) reimburse necessary and reasonable business expenses.

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 non-exempt members of the Class, Plaintiff was paid on an hourly basis as a non-exempt employee and also received non-hourly remuneration, including bonuses and rent discount incentives. He worked in California for Defendants for 30 or more days within a year and regularly worked more than 3.5, 5, 6, and 8 hours in a workday. Plaintiff was not permitted to take duty-free 10-minute rest periods, was not provided duty-free 30-minute meal periods, and was not paid an additional hour of regular rate wages. Plaintiff also was not paid overtime at a rate of at least 1.5 times the regular rate. Any underpayments were not paid timely during employment or at the end of Plaintiff's employment in or about July of 2021. As with other members of the Class, Plaintiff also was regularly required to use his personal cell phone for work-related purposes, including to perform daily COVID health screenings before work, but was not reimbursed for cell phone related expenses. Plaintiff also was not provided with accurate itemized wage statements. 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 possible,
4 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
5 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 in violation
12 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
13 rights of Plaintiff and the Class under Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1198, and
14 2802, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover
15 damages and restitution, applicable penalties, liquidated damages, reasonable attorneys' fees, and costs
16 of suit.

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 Overtime Wages (Lab. Code §§ 510 and 1198)

22 (By Plaintiff and the Overtime Class Against All Defendants)

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

24 28. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of
25 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
26 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
27 less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess
28 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for

1 an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
2 IWC Wage Order.

3 29. As a matter of policy and practice, Defendants fail to pay all overtime wages to Plaintiff
4 and the Overtime Class. Plaintiff and the Overtime Class are paid on an hourly basis but also earn non-
5 hourly remuneration, including but not limited to non-discretionary bonuses and rent discount
6 incentives. Defendants fail to consider non-hourly remuneration when calculating the regular rate for
7 purposes of paying overtime wages. Plaintiff and the Overtime Class thus are owed underpaid overtime
8 wages.

9 30. Section 204 provides that wages generally are due and payable twice during each
10 calendar month and are to be paid no later than the payday for the next regular payroll period. Similarly,
11 Section 201 provides that if an employer discharges an employee, wages earned and unpaid at the time
12 of discharge are due and payable immediately. Section 202 provides that an employee is entitled to
13 receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless
14 the employee has given 72-hour notice of his or her intention to quit, in which case the employee is
15 entitled to his or her wages at the time of quitting. The Labor Code penalizes untimely payments. For
16 example, Section 203 provides that if an employer willfully fails to pay wages owed in accordance with
17 Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and
18 at the same rate until paid, but the wages shall not continue for more than thirty (30) days. Likewise,
19 Section 210 provides penalties for violations of Section 204 and untimely payments during
20 employment. Under Sections 203, 210, and 218, employees may sue to recover applicable penalties.

21 31. Based on Defendants’ failure to pay all overtime wages to Plaintiff and the Overtime
22 Class and as a matter of policy and practice, Defendants fail to timely pay all due wages and fail to
23 timely pay all due wages upon separation of employment. On information and belief, Defendants were
24 advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it
25 relates to Plaintiff’s allegations. Because Defendants willfully fail to timely pay Plaintiff and the
26 Overtime Class all overtime wages due, Defendants are subject to applicable penalties.

1 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff and the Overtime Class to recover underpaid overtime wages, including interest
3 thereon, applicable penalties, attorneys' fees, and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 210, 233, 246)**

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

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

8 34. Section 233 provides that an employer must permit an employee to use accrued sick
9 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
10 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section
11 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to
12 sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i)
13 "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of
14 pay for the workweek in which the employee uses paid sick time, whether or not the employee actually
15 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated
16 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
17 hours worked in the full pay periods of the prior 90 days of employment." Consistent with Section 204,
18 Section 246 specifically requires that, upon use of accrued sick leave, vested sick pay wages are due and
19 to be paid no later than the payday for the next regular payroll period after accrued sick leave is used as
20 paid sick time. Under Section 218, employees may sue to recover underpaid sick pay wages as
21 damages.

22 35. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the
23 Sick Pay Class at the incorrect rate of pay. Plaintiff and the Sick Pay Class regularly use accrued sick
24 leave in workweeks in which they also earn non-hourly remuneration, including but not limited to non-
25 discretionary bonuses and rent discount incentives. As a matter of policy and practice, Defendants pay
26 sick pay wages to Plaintiff and the Sick Pay Class at their base hourly rates, as opposed to their regular
27 rates, which would consider all non-hourly remuneration in addition to base hourly wages, or the rate
28 resulting from dividing the employee's total wages, not including overtime premium pay, by the

1 employee's total hours worked in the full pay periods of the prior 90 days of employment. As a result,
2 Defendants underpay sick pay wages to Plaintiff and the Sick Pay Class.

3 36. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
4 sick pay wages and thus do not timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick
5 pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other Labor
6 Code provisions. Plaintiff is informed and believes that Defendants were advised by skilled lawyers and
7 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations,
8 especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages'
9 also include those benefits to which an employee is entitled as a part of his or her compensation,
10 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods.,*
11 *Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay
12 Plaintiff and the Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

13 37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
14 entitles Plaintiff and the Sick Pay Class to underpaid sick pay wages, including interest thereon,
15 applicable penalties, attorneys' fees, and costs of suit.

16 THIRD CAUSE OF ACTION

17 Rest Period Violations (Lab. Code § 226.7)

18 (By Plaintiff and the Rest Period Class Against All Defendants)

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

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

27 40. As a matter of policy and practice for work periods of at least 3.5 hours, Defendants fail
28 to permit off-duty rest periods to Plaintiff and the Rest Period Class. Specifically, Defendants require

1 Plaintiff and the Rest Period Class to be available and to respond to phone calls during rest periods.
2 Defendants thus fail to relieve Plaintiff and the Rest Period Class of all duties during rest periods.
3 Despite not permitting duty-free rest periods and as a matter of policy and practice, Defendants
4 routinely fail to pay Plaintiff and the Rest Period Class an additional hour of wages at all. For any
5 payments actually made, Defendants underpay the additional hour of regular rate wages. Defendants
6 thus violate Section 226.7 and the applicable IWC Wage Order.

7 41. Based on Defendants' failure to pay the additional hour of regular rate wages to Plaintiff
8 and the Rest Period Class and as a matter of policy and practice, Defendants fail to timely pay Plaintiff
9 and the Rest Period Class all due wages. On information and belief, Defendants were advised by skilled
10 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's
11 allegations. Because Defendants willfully fail to timely pay Plaintiff and the Rest Period Class all
12 additional hours of regular rate wages due, Defendants are subject to applicable penalties.

13 42. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
14 entitles Plaintiff and the Rest Period Class to recover unpaid wages, including interest thereon,
15 applicable 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 Period Class Against All Defendants)**

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

20 44. Because Plaintiff and the Meal Period 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 for work periods exceeding five hours, Defendants fail to provide duty-free meal periods to Plaintiff and the Meal Period Class. Specifically, Defendants require Plaintiff and the Meal Period Class to be available and to respond to phone calls during meal periods. Defendants thus fail to relieve Plaintiff and the Meal Period Class of all duties during meal periods. Despite not permitting duty-free meal periods and as a matter of policy and practice, Defendants routinely fail to pay Plaintiff and the Meal Period Class an additional hour of wages at all. For any payments actually made, Defendants underpay the additional hour of regular rate wages. Defendants thus violate Sections 226.7 and 512 and the applicable IWC Wage Order.

46. Based on Defendants' failure to pay the additional hour of regular rate wages to Plaintiff and the Meal Period Class and as a matter of policy and practice, Defendants fail to timely pay Plaintiff and the Meal Period Class all due wages. 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. Because Defendants willfully fail to timely pay Plaintiff and the Meal Period Class all additional hours of regular rate wages due, Defendants are subject to applicable penalties.

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

FIFTH CAUSE OF ACTION

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

(By Plaintiff and the 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, the applicable hourly rates in effect during the pay period, the corresponding numbers of hours worked, the total hours worked, the gross wages earned, the net wages earned, and the name of the legal entity that is the employer.

50. Separately, Defendants routinely furnish wage statements that fail to show the name of a legal entity that could be a California employer.

51. As a result of Defendants' failure to pay all wages, including overtime wages, sick pay wages, and additional hours of regular rate wages, and as a matter of policy and practice, Defendants fail to provide accurate itemized wage statements to Plaintiff and the Class. Specifically, Defendants furnish Plaintiff and the Overtime Class, Sick Pay Class, Meal Period Class, and Rest Period Class with wage statements that inaccurately state the applicable hourly rates for overtime wages, sick pay wages, and additional hours of regular rate wages, as well as the gross wages earned and net wages earned. For on-duty work performed on purported meal periods, wage statements also inaccurately state the hours worked at certain rates and the total hours worked.

52. As a matter of separate policy and practice, Defendants furnish wage statements to that fail to show the name of a legal entity that could be a California employer. Although all legal entities employing Californians must be registered with the Secretary of State, only “Weidner Property Management LLC”—an entity which is not among the corporations, limited liability companies, and limited partnerships of record with the California Secretary of State—is shown on wage statements.

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

SIXTH CAUSE OF ACTION

Unreimbursed Business Expenses (Lab. Code § 2802)

(By Plaintiff and the Reimbursement Class Against All Defendants)

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

55. Section 2802 requires that an employer must reimburse employees for all necessary expenditures and losses incurred in the performance of their jobs. Section 2802 is intended to prevent employers from placing their operating expenses and cost of doing business on employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

56. As a matter of policy and practice, Defendants require Plaintiff and the Reimbursement Class to use their personal cell phones in order to perform their jobs, including for example to perform daily COVID health screenings. Although Plaintiff and the Reimbursement Class are required to use their personal cell phones, they are not reimbursed for their related expenses.

1 57. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff and the Reimbursement Class to recover unreimbursed expenses, including interest
3 thereon, attorneys' fees, and costs of suit.

4 **SEVENTH CAUSE OF ACTION**

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

6 **(By Plaintiff, the Overtime Class, Sick Pay Class, Rest Period Class, Meal Period Class, and**
7 **Reimbursement Class Against All Defendants)**

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

9 59. Plaintiff is informed and believes that at Defendants have engaged and continue to
10 engage in unfair and unlawful business practices in California by utilizing the employment policies and
11 practices alleged herein, including the failures to pay overtime wages and pay sick pay wages.

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

16 61. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
17 entitles Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by
18 Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys'
19 fees, and costs of suit.

20 **EIGHTH CAUSE OF ACTION**

21 **Penalties for Labor Code Violation (Lab. Code §§ 2698 et seq.)**

22 **(By Plaintiff as a Proxy for the State Against All Defendants)**

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

24 63. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks
25 penalties for Defendants' violations of Sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 510, 512,
26 558, 1182.12, 1194, 1198, and 2802 committed against all aggrieved employees. Under Section
27 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed
28 against Plaintiff as an employee of Defendants.

64. On or about July 15, 2021, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12, 1194, 1198, and 2802. Plaintiff simultaneously sent written notice to Defendants via certified mail. The LWDA has not elected to investigate the allegations.

65. As stated herein, aggrieved non-exempt employees since July 15, 2020, were subject to Defendants' failure to pay all sick pay wages due. Aggrieved non-exempt employees since February 10, 2021, were subject to Defendants' failures to (i) pay all overtime wages due, (ii) authorize and permit duty-free rest periods, (iii) provide duty-free meal periods, (iv) pay all additional hours of regular rate wages due for missed rest periods and meal periods, (v) provide accurate itemized wage statements, and (vi) reimburse necessary and reasonable business expenses. In addition, aggrieved exempt employees since July 15, 2020, were also subject to Defendant's failures to (i) provide accurate itemized wage statements and (ii) reimburse necessary and reasonable business expenses.

66. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees.

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 overtime wages and interest thereon, penalties, and costs and attorneys' fees, pursuant to Sections 203, 210, 218.6, 510, and 1194;
5. Upon the Second Cause of Action for damages, including sick pay wages and interest thereon, penalties, and costs and attorneys' fees, pursuant to Sections 203, 210, 218, 218.5, 218.6, 233, 246, and 248.5;

1 6. Upon the Third Cause of Action for damages, including additional hours of regular rate
2 wages and interest thereon, penalties, and costs and attorneys' fees, pursuant to Sections 210, 218.5,
3 218.6, and 226.7;

4 7. Upon the Fourth Cause of Action for damages, including unpaid hourly wages and
5 additional hours of regular rate wages and interest thereon, liquidated damages, penalties, and costs and
6 attorneys' fees, pursuant to Sections 203, 210, 218.5, 218.6, 226.7, 512, 1194, 1194.2, and 1197.1;

7 8. Upon the Fifth Cause of Action for penalties, actual damages, and costs and attorneys'
8 fees pursuant to Section 226;

9 9. Upon the Sixth Cause of Action for damages, including interest thereon, and costs and
10 attorneys' fees pursuant to Section 2802;

11 10. Upon the Seventh Cause of Action for restitution of all funds unlawfully acquired by
12 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
13 and costs and attorneys' fees;

14 11. Upon the Eighth Cause of Action for penalties according to proof pursuant to Section
15 2699(a), (f), and (g), and for costs and attorneys' fees;

16 12. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code,
17 UCL, and Code of Civil Procedure section 1021.5; and

18 13. For such other and further relief that the Court may deem just and proper.

19 DATED: February 28, 2022

DIVERSITY LAW GROUP, P.C.

20 By: _____
21

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8

5
6
7
8

8