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Sacramento
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By _____, Deputy
Case Number:
34-2021-00308475

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BY FAX

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

ANTONIO JESUS JARAMILLO DE LA CRUZ,
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.

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

DEMAND OVER \$25,000.00

1 Plaintiff, Antonio Jesus Jaramillo De La Cruz, as a proxy for the State of California, submits this
2 Complaint against Defendant, Weidner Property Management, LLC, and Does 1 through 50
3 (collectively, “Defendants”).

4 INTRODUCTION

5 1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
6 et seq. (“PAGA”), this representative action Complaint seeks penalties and other relief for Defendants’
7 violations of the California Labor Code. Defendants’ systemic employment practices have deprived
8 aggrieved employees of the benefits and protections of Labor Code sections 201-204, 210, 226, 226.3,
9 226.7, 233, 246, 510, 512, 558, 1182.12, 1194, 1198, and 2802, among other provisions.¹

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

16 3. Defendants routinely underpay Plaintiff and other non-exempt employees by failing to
17 correctly calculate their regular rates. Specifically, Defendants fail to consider all non-hourly
18 remuneration, including but not limited to non-discretionary bonuses and rent discount incentives, when
19 calculating the regular rate. Defendants thus underpay overtime and sick pay wages.

20 4. Defendants also routinely fail to provide Plaintiff and other non-exempt employees with
21 proper meal periods and rest periods. Specifically, Defendants require employees to be available and
22 respond to phone calls during meal periods and rest periods. Defendants thus fail to relieve employees
23 of all duties during meal periods and rest periods. Defendants generally fail to pay an additional hour of
24 regular rate wages for these meal period and rest period failures.

25 5. Based on the above underpayments of wages, Defendants also routinely fail to timely
26 pay all wages due during employment and upon the termination of employment. Likewise, Defendants
27 fail to provide accurate itemized wage statements, which show incorrect applicable hourly rates,

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

1 corresponding numbers of hours worked, total hours worked, and gross and net wages earned.
2 Separately, Defendants furnish wage statements that fail to show the name of a legal entity that could be
3 a California employer. Although all legal entities employing Californians must be registered with the
4 Secretary of the State, only “Weidner Property Management LLC”—an entity which is not among the
5 corporations, limited liability companies, and limited partnerships of record with the California
6 Secretary of State—is shown on wage statements.

7 6. Defendants also routinely failed to reimburse Plaintiff and other employees for necessary
8 business expenses incurred in performing their work for Defendants. Specifically, Defendants require
9 employees to use their personal cell phones in order to perform their jobs, including for example to
10 perform daily COVID health screenings. Although Plaintiff and other employees were expected to use
11 their personal cell phones, they were not reimbursed for their related expenses.

12 7. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
13 in establishing minimum working conditions and requirements in California. These labor standards
14 protect employees from onerous terms and conditions of employment or exploitation by employers who
15 have superior economic and bargaining power. Plaintiff is informed and believes that Defendants have
16 engaged in, among other things, a system of willful violations of the Labor Code by creating and
17 maintaining policies, practices, and customs that knowingly deny its employees the above stated rights
18 and benefits.

19 8. Defendants’ pattern, practice, and uniform administration of corporate policy in violation
20 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish
21 entitlement under Sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12, 1194,
22 1198, and 2802, applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5 to recover
23 applicable penalties, reasonable attorneys’ fees, and costs of suit.

24 **JURISDICTION AND VENUE**

25 9. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
26 Defendants’ violations of Sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12,
27 1194, 1198, and 2802.

1 10. Venue is proper in the County of Sacramento. Defendants employ aggrieved employees
2 in Sacramento, California.

3 **PARTIES**

4 11. Plaintiff began working for Defendants in or about November of 2020 as a maintenance
5 technician. Plaintiff was paid on an hourly basis as a non-exempt employee and also received non-
6 hourly remuneration, including bonuses and rent discount incentives. He worked in California for
7 Defendants for 30 or more days within a year, regularly worked more than 3.5, 5, 6, and 8 hours in a
8 workday. Plaintiff was not permitted to take duty-free 10-minute rest periods, was not provided duty-
9 free 30-minute meal periods, was not paid an additional hour of regular rate wages for missed rest
10 periods or meal periods, and was not paid overtime at a rate of 1.5 times the regular rate. Plaintiff also
11 was regularly required to use his personal cell phone for work-related purposes, including to perform
12 daily COVID health screenings before work. Plaintiff was not reimbursed for cell phone related
13 expenses. Plaintiff also was not provided with accurate itemized wage statements. Any underpayments
14 were not paid timely during employment or at the end of Plaintiff's employment in or about July of
15 2021. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in
16 this action in ways that have deprived him of rights guaranteed by the Labor Code.

17 12. Plaintiff is informed and believes that Weidner Property Management, LLC was and is a
18 Washington limited liability company. Plaintiff is informed and believes that at all times herein
19 mentioned named defendants and Does 1 through 50, were and are corporations, business entities,
20 individuals, or partnerships that are, were, or should have been licensed to do business in the State of
21 California and actually doing business in the State of California. Based upon all the facts and
22 circumstances incident to Defendants' business, Defendants are subject to Sections 204, 226, 233, 246,
23 226.7, 510, 512, 1182.12, 1197, 1198, and 2802.

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

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

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

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

17 **PAGA ALLEGATIONS**

18 17. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks
19 penalties for Defendants' violations of Sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 510, 512,
20 558, 1182.12, 1194, 1198, and 2802 committed against all aggrieved employees since July 15, 2020.

21 18. On or about July 15, 2021, Plaintiff sent written notice to the Labor & Workforce
22 Development Agency ("LWDA") of Defendants' violations of Sections 201-204, 210, 226, 226.3,
23 226.7, 233, 246, 510, 512, 558, 1182.12, 1194, 1198, and 2802. Plaintiff simultaneously sent written
24 notice to Defendants via certified mail. The LWDA has not elected to investigate the allegations. As
25 such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for
26 Defendants' violations against all aggrieved employees for the period described above.

1 **FIRST CAUSE OF ACTION**

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

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

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

5 20. **Underpaid Overtime:** For Plaintiff and non-exempt employees, Defendants were
6 required to comply with Section 510 and the applicable IWC Wage Order. Section 510 and the
7 applicable IWC Wage Order provide that “[a]ny work in excess of eight hours in one workday and any
8 work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
9 work in any one workweek shall be compensated at the rate of no less than one and one-half times the
10 regular rate of pay for an employee” and that “[a]ny work in excess of 12 hours in one day shall be
11 compensated at the rate of no less than twice the regular rate of pay for an employee.” Section 1198
12 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order.

13 21. As a matter of policy and practice, Defendants fail to pay all overtime wages to
14 aggrieved employees. Plaintiff and aggrieved employees earn non-hourly remuneration, including but
15 not limited to non-discretionary bonuses and rent discount incentives, that Defendants fail to consider
16 when calculating the regular rate for purposes of paying overtime wages. Defendants thus underpay
17 overtime wages and violate Section 510.

18 22. **Underpaid Sick Pay Wages:** For Plaintiff and non-exempt employees, Section 246
19 provides that an employee is entitled to sick pay wages for use of accrued sick leave. Once accrued sick
20 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer
21 must calculate and compensate based on one of two calculations: (i) “Paid sick time for nonexempt
22 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
23 the employee uses paid sick time, whether or not the employee actually works overtime in that
24 workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated by dividing the
25 employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in
26 the full pay periods of the prior 90 days of employment.”

27 23. As a matter of policy and practice, Defendants fail to pay all sick pay wages to aggrieved
28 employees. As discussed above, Plaintiff and aggrieved employees earn non-hourly remuneration,

1 including but not limited to non-discretionary bonuses and rent discount incentives, that Defendants fail
2 to consider when calculating the regular rate for purposes of paying sick pay wages. Defendants thus
3 underpay sick pay wages and violate Section 246.

4 24. **Failure to Provide Meal Periods and Rest Periods:** For Plaintiff and non-exempt
5 employees, Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC
6 Wage Order. Section 512(a) generally prohibits employment of an individual for a work period of more
7 than five hours per day without providing the employee with an uninterrupted, duty-free meal period of
8 at least 30 minutes. The applicable laws generally require an employer to provide a duty-free, 10-minute
9 rest period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an
10 employer shall not require an employee to work during a meal period or rest period. Section 226.7(c)
11 states that “the employer shall pay the employee one additional hour of pay at the employee’s regular
12 rate of compensation for each workday that the meal or rest or recovery period is not provided.”

13 25. As a matter of policy and practice, Defendants fail to permit off-duty meal periods and
14 rest periods to aggrieved employees. Instead, Defendants require employees to be available and respond
15 to phone calls during their meal periods and rest periods. Also as a matter of policy and practice,
16 Defendants pay neither an additional hour of regular rate wages for each day a duty-free meal period is
17 not provided nor an additional hour of regular rate wages for each day a duty-free rest period is not
18 permitted. Defendants thus violate Sections 226.7 and 512 the applicable IWC Wage Order.

19 26. **Failure to Timely Pay Wages Due:** Section 204 provides that wages are generally due
20 and payable no later than seven days after the end of a pay period or at least twice during each calendar
21 month, on days designated in advance as the regular paydays. Section 201 provides if an employer
22 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than
24 72 hours after an employee quits his or her employment, unless the employee has given seventy-two
25 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
26 her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages
27 owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a
28 penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than

thirty (30) days. that wages are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Consistent with Section 204, Section 246 also provides that an employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

27. As alleged herein and as a matter of policy and practice, Defendants fail to timely pay all wages due during employment and upon the termination of employment. Based on Defendants' failure to pay all overtime wages, sick pay wages, and additional hours of regular rate wages for meal periods and rest periods, Defendants fail to timely pay aggrieved employees all due wages. On information and belief, Defendants are advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violate Sections 201-204 by not timely paying all due wages.

28. **Failure to Provide Accurate Itemized Wage Statements:** Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, gross wages earned, net wages earned, total hours worked, and the name of the legal entity that is the employer.

29. As a matter of policy and practice, Defendants fail to provide accurate itemized wage statements to aggrieved employees. Specifically, because of Defendants' overtime, sick pay, meal period, and rest period violations, Defendants fail to furnish aggrieved employees with wage statements that accurately show all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, gross wages earned, net wages earned, and total hours worked. Also as a matter of policy and practice, Defendants fail to provide aggrieved employees with wage statements that itemize and show the name of the legal entity that is the employer. Although all legal entities employing Californians must be registered with the California Secretary of State, no such corporation, limited liability company, or limited partnership of record with the California Secretary of State is shown on wage statements. Defendants thus violate Sections 226.

30. **Failure to Reimburse Business Expenses:** Section 2802 requires that an employer must reimburse employees for all necessary expenditures and losses incurred in the performance of their jobs.

1 Section 2802 is intended to prevent employers from placing their operating expenses and cost of doing
2 business on employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

3 31. As a matter of policy and practice, Defendants fail to reimburse aggrieved employees for
4 necessary business expenses incurred in performing their work for Defendants. Specifically, Defendants
5 require employees to use their personal cell phones in order to perform their jobs, including for example
6 to perform daily COVID health screenings. Although Plaintiff and other employees were expected to
7 use their personal cell phones, they were not reimbursed for their related expenses. Defendants thus
8 violate Sections 2802.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment for himself as a proxy for the State and all others on
11 whose behalf this suit is brought against Defendants, jointly and severally, as follows:

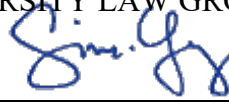
12 1. Upon the First Cause of Action for penalties according to proof pursuant to Section
13 2699(a), (f), and (g), and for costs and attorneys' fees;

14 2. Upon each cause of action for attorneys' fees and costs as provided by Section 2699,
15 Code of Civil Procedure section 1021.5, and any other applicable laws; and

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

17 DATED: September 21, 2021

DIVERSITY LAW GROUP, P.C.

18 By: 

19 Larry W. Lee

Simon L. Yang

20 Attorneys for Plaintiff
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