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(Additional counsel on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

PAUL PARKER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUNBELT RENTALS, INC., a North
Carolina corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO. S-CV-0047378

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
201-203, 226, 226.7 AND 512;**

**(2) VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, *ET SEQ.*; and**

**(3) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

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ADDITIONAL COUNSEL

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Attorneys for Plaintiff

1 Plaintiff Paul Parker (“Plaintiff”) hereby submits this First Amended Class Action
2 Complaint (“Complaint”) against Defendant Sunbelt Rentals, Inc. (the “Company” or
3 “Defendant”), a North Carolina corporation, and DOES 1-50 (hereinafter collectively referred to
4 as “Defendants”), individually and on behalf of a Class of all other similarly situated current and
5 former employees of Defendants for wages, penalties and/or damages for violations of the
6 California Labor Code, including without limitation, failure to provide pay meal and/or rest
7 period premium wages based on the regular rate of pay owed as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code §§
10 201-203, 226, 226.7 and 512, the California Industrial Welfare Commission’s (“IWC”) Wage
11 Orders, and Business and Professions Code §§17200, *et seq.* (“UCL”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 jointly and severally have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to keep accurate records and failing to provide
17 accurate itemized wage statements identifying all required information, including without
18 limitation, the correct meal and/or rest period premium rate of pay.

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

23 **JURISDICTION AND VENUE**

24 5. The Court has jurisdiction over the violations of the California Labor Code §§
25 201-203, 226, 226.7 and 512.

26 6. Venue is proper in Placer County because Defendant maintains business locations
27 in this County and Plaintiff is a resident of this County.

28 **PARTIES**

7. In or around December 2018, Plaintiff began working for Defendant as a non-

1 exempt, HVAC technician in Placer County. Plaintiff's employment ended in or around February
2 2021. During Plaintiff's employment, Plaintiff was paid meal and/or rest period premiums in
3 periods covered by non-discretionary incentive pay.

4 8. Defendant is a corporation which provides equipment rentals throughout the State
5 of California.

6 9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
7 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
8 California Labor Code §§ 201-203, 226, 226.7 and 512, and the applicable IWC Wage Orders.

9 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,
11 and partnerships, licensed to do business and actually doing business in the State of California.

12 11. As such, and based upon all the facts and circumstances incident to Defendants'
13 business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7
14 and 512, the IWC Wage Orders and UCL.

15 12. Plaintiff does not know the true names or capacities, whether individual, partner or
16 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
17 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
18 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
19 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
20 matters alleged herein and proximately caused Plaintiff and members of the general public and
21 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

27 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 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

1 within the course and scope of such agency, employment, joint venture, or concerted activity. To
2 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
3 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

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

8 16. At all times herein mentioned, the acts and omissions of various Defendants, and
9 each of them, concurred and contributed to the various acts and omissions of each and all of the
10 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
11 herein mentioned, Defendants, and each of them, ratified each and every act or omission
12 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
13 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
14 the damages as herein alleged.

15 **CLASS ACTION ALLEGATIONS**

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

- 18 a. All non-exempt California employees who were paid non-discretionary
19 incentive wages and meal break premium wages in the same period at
20 any time during the period of time from September 29, 2017, through the
21 present (the “Class”).

22 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
23 that joinder of all members would be impractical, if not impossible. The identity of the members
24 of the Class is readily ascertainable by review of the Company’s records, including payroll
25 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to
26 pay meal and/or rest period premiums at the correct, higher regular rate of pay in violation of
27 California Labor Code §§ 201-203, 226, 226.7 and 512.

28 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
necessary steps to represent fairly and adequately the interests of the class defined above.

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
2 named Plaintiffs. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
3 the past and currently have a number of wage-and-hour class actions pending in California courts.

4 20. The Company uniformly administered a corporate policy, practice of failing to pay
5 meal and/or rest period premiums at the correct, higher regular rate of pay in violation of
6 California Labor Code §§ 201-203, 226, 226.7 and 512.

7 21. **Common Question of Law and Fact:** There are predominant common questions
8 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
9 concerning the Company's failure to pay meal and/or rest period premiums at the correct, higher
10 regular rate of pay in violation of California Labor Code §§ 201-203, 226, 226.7 and 512.

11 22. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
12 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
13 and typical manner as the Class members. As with other non-exempt employees, Plaintiff was
14 paid his meal and/or rest period premium wages based on the base rate of pay, as opposed to the
15 regular rate of pay. Specifically, Labor Code § 226.7(c) states that "the employer shall pay the
16 employee one additional hour of pay at the employee's regular rate of compensation for each
17 workday that the meal or rest or recovery period is not provided." Throughout Plaintiff's
18 employment with the Company, Plaintiff and Class Members earned non-discretionary
19 remuneration. As these items are non-discretionary forms of remuneration, they should have been
20 included in the regular rate of pay for purposes of paying Plaintiff and Class Members meal and
21 rest period premium pay. However, whenever the Company paid Plaintiff and Class Members
22 meal and rest period premium pay during periods in which they earned non-discretionary
23 remuneration, the meal and rest period premium was always paid at their base rate of pay.
24 Further, the Company also violated Labor Code §§ 201-203 by failing to pay Plaintiff and Class
25 Members all of the wages owed upon separation of employment due to the unpaid missed meal
26 and rest period premiums, and Labor Code § 226 by failing to accurately identifying the accurate
27 rate of pay, and gross and net wages earned. Accordingly, Plaintiff is a member of the Class and
28 has suffered the alleged violations of California Labor Code §§ 201-203, 226, 226.7 and 512 and
the applicable IWC Wage Orders.

1 23. The California Labor Code and upon which Plaintiff bases these claims is broadly
2 remedial in nature. These laws and labor standards serve an important public interest in
3 establishing minimum working conditions and standards in California. These laws and labor
4 standards protect the average working employee from exploitation by employers who may seek to
5 take advantage of superior economic and bargaining power in setting onerous terms and
6 conditions of employment.

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

17 25. The prosecution of separate actions by the individual class members, even if
18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
19 to individual Class members against the Company and which would establish potentially
20 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
21 individual Class members which would, as a practical matter, be dispositive of the interest of the
22 other Class members not parties to the adjudications or which would substantially impair or
23 impede the ability of the Class members to protect their interests. Further, the claims of the
24 individual members of the Class are not sufficiently large to warrant vigorous individual
25 prosecution considering all of the concomitant costs and expenses.

26 26. Such a pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation described herein is unlawful and creates an entitlement to
28 recovery by Plaintiff and the Class identified herein, in a civil action any and all applicable
penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate

1 of California Labor Code §§ 218.5 and 226, the applicable IWC Wage Orders, and Code of Civil
2 Procedure § 1021.5.

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

6 28. The Class is commonly entitled to a specific fund with respect to the compensation
7 illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of
8 those funds being improperly withheld by the Company. This action is brought for the benefit of
9 the entire class and will result in the creation of a common fund.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE §§ 201-203, 226, 226.7 AND 512**

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

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

15 30. At all relevant times, Defendants failed in their affirmative obligation to ensure
16 that Plaintiff, and other class members, had the opportunity to take and were provided with off-
17 duty meal and/or rest periods in accordance with the mandates of the California Labor Code
18 and the applicable IWC Wage Order. Plaintiff and Class Members were suffered and
19 permitted to work through legally required meal and/or rest breaks and were denied the
20 opportunity to take their full 30-minute off-duty meal breaks and/or 10-minute off-duty rest
21 breaks. As such, Defendants are responsible for paying premium compensation for missed
22 meal and/or rest periods pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC
23 Wage Order. Specifically, Labor Code § 226.7(c) provides that “the employer shall pay the
24 employee one additional hour of pay at the employee’s regular rate of compensation for each
25 workday the meal or rest or recovery period is not provided.” Defendants, as a matter of
26 corporate policy and procedure, regularly failed to pay the meal and/or rest period premium at
27 the correct rate of pay. Plaintiff and Class Members earned non-discretionary incentive pay,
28 such as on-call pay, which was not factored into the regular rate of pay for purposes of paying
meal and/or rest period premium pay. Instead, during the same periods in which Plaintiff and

1 Class Members earned non-discretionary remuneration, Defendants improperly paid the meal
2 and/or rest premium pay at the base rate of pay.

3 31. Plaintiff is informed and believe and based thereon alleges that Defendants
4 willfully failed to include all remuneration, including non-discretionary remuneration, in the
5 regular rate of pay for purposes of calculating meal and/or rest period premium pay, as
6 required by Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff
7 further alleges that Plaintiff and similarly situated employees are owed wages for the meal
8 and/or rest period violations set forth above.

9 32. Further, the Company also violated Labor Code §§ 201-203 by failing to pay
10 Plaintiff and Class Members all of the wages owed upon separation of employment due to the
11 unpaid missed meal and rest period premiums, and Labor Code § 226 by failing to accurately
12 identifying the accurate rate of pay, and gross and net wages earned. Plaintiff is informed and
13 believes, and based thereon allege, that Defendants' willful failure to provide all meal and/or
14 rest period premium pay and/or wages due and owing them upon separation from employment
15 results in a continued payment of wages up to thirty (30) days from the time the wages were
16 due. Therefore, Plaintiff and other members of the Class who have separated from
17 employment are entitled to compensation pursuant to Labor Code § 203.

18 33. Such a pattern, practice and uniform administration of corporate policy as
19 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
20 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
21 compensation pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable
22 IWC Wage Order, including interest thereon, penalties, and costs of suit.

SECOND CAUSE OF ACTION

VIOLATION OF CAL. BUS. & PROF. CODE § 17200

(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)

25 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as
26 though fully set for herein.

27 35. Defendant has engaged and continue to engage in unfair and unlawful business
28 practices in California by practicing, employing and utilizing the employment practices outlined

1 above, include, to wit, by failing to pay meal and/or rest period premium wages based on the
2 correct, higher regular of pay and engaging in Unfair Business Practices in violation of the UCL,
3 all in violation of the California Labor Code and applicable IWC Wage Orders.

4 36. Defendant's utilization of such unfair and unlawful business practices constitutes
5 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

6 37. Plaintiff seeks as an individual and on behalf of other members of the Class
7 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
8 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
9 practices complained of herein. Plaintiff also seeks injunctive relief to enjoin the unfair business
10 practices alleged herein.

11 38. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
13 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth
14 herein above thereby depriving Plaintiff and other members of the Class the minimum working
15 condition standards and conditions due to them under the California laws and the applicable IWC
16 Wage Orders as specifically described therein.

17 **THIRD CAUSE OF ACTION**

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

19 **(BY PLAINTIFF AS PROXY FOR THE STATE OF CALIFORNIA AGAINST ALL 20 DEFENDANTS)**

21 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as
22 though fully set for herein.

23 40. Plaintiff brings this cause of action as a proxy for the State of California and all
24 similarly aggrieved employees pursuant to the Private Attorneys General Act (the "PAGA"),
25 Labor Code § 2698, *et seq.* In this capacity, Plaintiff seeks penalties on behalf of the State and all
26 similarly aggrieved employees for Defendants' violations of Labor Code §§ 201-204, 226, 226.7
27 and 512, as alleged herein for the time period of September 20, 2020, through the present.
28 Specifically, Plaintiff seeks penalties on behalf of the State and all similarly aggrieved employees
for Defendants' violations of Labor Code §§ 201-203, 226, 226.7 and 512 for the time period of

1 September 20, 2020, through the present, arising from Defendant's failure to pay meal and rest
2 period premium based on the regular rate of pay during pay periods in which Plaintiff and
3 aggrieved employees were paid meal and rest period premium pay. Plaintiff earned non-
4 discretionary incentive pay, including on-call pay, which was not factored into the regular rate of
5 pay for purposes of paying meal and rest period premium pay. Instead, during pay periods in
6 which Plaintiff earned non-discretionary remuneration covering time periods in which Plaintiff
7 was paid meal and rest period premium pay, Defendants improperly paid the meal premium pay
8 at the base rate of pay.

9 41. On or about September 20, 2021, Plaintiff submitted written notice to the Labor
10 Workforce Development Agency (the "LWDA") and via certified mail, return-receipt requested
11 to Defendants, regarding Defendants' violations of 201-203, 226, 226.7 and 512. As of the date
12 of this filing, the LWDA has not informed Plaintiff whether it intends to investigate the claims.
13 Therefore, Plaintiff may proceed in this Court and seek penalties on behalf of the State and all
14 similarly aggrieved employees, as well as attorneys' fees and costs pursuant to Labor Code §§
15 226.3 and 2699.

16 **PRAYER FOR RELIEF**

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

- 19 1. For an order certifying the proposed Class;
- 20 2. For an order appointing Plaintiff as the representative of the Class as described
21 herein;
- 22 3. For an order appointing counsel for Plaintiff as Class counsel;
- 23 4. Upon the First Cause of Action, for all damages and/or penalties pursuant to
24 California Labor Code §§ 201-203, 226, 226.7 and 512, and for costs;
- 25 5. Upon the Second Cause of Action, for restitution in the form of unpaid overtime
26 wages, any available injunctive relief to enjoin the unfair business practices, and for costs;
- 27 6. Upon the Third Cause of Action, for civil penalties, costs, and attorneys' fees
28 pursuant to Labor Code §§ 226.3 and 2699;

1 7. On all causes of action, for attorneys' fees and costs as provided by California
2 Labor Code §§ 218.5 and 226 and Code of Civil Procedure § 1021.5; and

3 8. For such other and further relief as the Court may deem just and proper.

4 DATED: January 21, 2022

DIVERSITY LAW GROUP, P.C.

6 By: 

Larry W. Lee

Attorneys for PLAINTIFF and the CLASS

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

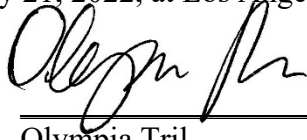
On January 21, 2022, I served the following document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action as follows:

Patrick J. Cain
pcain@sgrlaw.com
 Theodore H. Dokko
tdokko@sgrlaw.com
 Smith, Gambrell & Russell, LLP
 444 South Flower Street, Suite 1700
 Los Angeles, California 90071
Attorney for Defendant Sunbelt Rentals, Inc.

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct. Executed on January 21, 2022, at Los Angeles, California.

3 
4 _____

Olympia Tril