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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

NOEL MIRANDA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

PARTY CITY CORPORATION, a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2021-01233082-CU-OE-CXC

[Assigned for All Purposes to Hon. Peter
Wilson, Dept. CX102]

**FIRST AMENDED CLASS ACTION
AND PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE § 226;**
- (2) VIOLATION OF LABOR CODE §§ 201-204, 510, 558 AND 1194;**
- (3) VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200, ET SEQ.; AND**
- (4) VIOLATION OF CAL. LABOR CODE §2698, ET SEQ.**

DEMAND EXCEEDS \$25,000.00

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1 Plaintiff Noel Miranda (“Plaintiff”) hereby submits this Class Action Complaint against
2 Defendants Party City Corporation, a Delaware corporation (collectively, “Defendant” or the
3 “Company”), and Does 1-50 (hereinafter collectively referred to as “Defendants”), individually
4 and on behalf of a class of all other similarly situated current and former employees of
5 Defendants for penalties and/or damages for failure to provide accurate itemized wage
6 statements, failure to pay overtime, penalties under California Labor Code statutes, penalties
7 and/or damages for unfair business practices in violation of Business and Professions Code §
8 17200, *et seq.*, for restitution and Representative Private Attorneys General Act (“PAGA”)
9 Complaint, as a proxy for the State of California and on behalf of all current and former similarly
10 aggrieved employees of Defendants, as follows:

11 **INTRODUCTION**

12 1. This class action is within the Court’s jurisdiction under California Labor Code §§
13 201-204, 226, 510, 558, 1194, the California Industrial Welfare Commission’s (“IWC”) Wage
14 Orders, and the California Unfair Competition Law (the “UCL”), codified at California Business
15 and Professions Code § 17200, *et seq.* and the Private Attorneys General Act (the “PAGA”),
16 Labor Code § 2698, *et seq.*

17 2. This Complaint challenges systemic illegal employment practices resulting in
18 violations of the California Labor Code and Business and Professions Code against employees of
19 Defendants.

20 3. Plaintiff is informed and believes and based thereon alleges that Defendants
21 jointly and severally have acted intentionally and with deliberate indifference and conscious
22 disregard to the rights of all employees by failing to provide accurate itemized wage statements
23 and failing to pay overtime and/or double-time wages at the correct, higher regular rate of pay as
24 to Plaintiff and the Class.

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

benefits.

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

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 226, 510, 558, 1194, the IWC Wage Orders, and the UCL.

7. Venue is proper in Orange County because Plaintiff resides in this County.

PARTIES

8. Plaintiff was employed by Defendant until on or about October 28, 2021. Plaintiff worked for Defendant as a non-exempt Sales Associate at its store in Tustin, California.

9. Plaintiff is informed and believes and based thereon alleges that Defendants were and are California corporate entities doing business in the State of California operating retail stores, including in Orange County. Upon further discovery and investigation, Plaintiff reserves the right to amend this Complaint to add additional alter ego defendants.

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

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-204, 226, 510, 558, 1194, IWC Wage Orders and the UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants 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 members of the general public and

1 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

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

24 **CLASS ACTION ALLEGATIONS**

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

27 a. All current and former non-exempt employees of Defendant who worked
28 at any time during the period of time from November 22, 2017, through the present, who

1 were paid any non-discretionary remuneration, including without limitation, shift
2 differentials and/or shift premiums, that covered any pay periods in which the employee
3 was also paid overtime and/or double-time wages (the “REGULAR RATE CLASS”);

4 b. All of Defendant’s current and former California non-exempt employees
5 who were paid any double-time wages at any time from November 22, 2020, through the
6 present (the “DOUBLE-TIME WAGE STATEMENT CLASS”);

7 c. All of Defendant’s current and former California non-exempt employees
8 who were paid any shift premium and/or shift differential wages at any time from
9 November 22, 2020, through the present (the “SHIFT DIFFERENTIAL WAGE
10 STATEMENT CLASS”); and

11 d. All of Defendant’s current and former California non-exempt employees
12 who were paid any overtime wages at any time from November 22, 2020, through the
13 present (the “OVERTIME WAGE STATEMENT CLASS”).

14 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
15 that joinder of all members would be impractical, if not impossible. The identity of the members
16 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
17 Plaintiff is informed and believes and based thereon alleges that Defendants: (a) failed to
18 provide accurate itemized wage statements in violation of Labor Code § 226; (b) failed to pay
19 overtime and double-time wages based on the correct regular rate; and (c) engaged in Unfair
20 Business Practices in violation of the UCL, the California Labor Code, including without
21 limitation, California Labor Code §§ 201-204, 226, 510, 558, 1194, and the applicable IWC
22 Wage Orders.

23 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
24 necessary steps to represent fairly and adequately the interests of the class defined above.
25 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and
26 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
27 actions in the past and currently have a number of wage-and-hour class actions pending in
28 California courts.

1 20. **Common Question of Law and Fact:** There are predominant common questions
2 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
3 concerning Defendants: (a) failing to provide accurate itemized wage statements in violation of
4 Labor Code § 226 for Plaintiff and the Class; (b) failing to pay overtime and double-time wages
5 at the higher, correct regular rate of pay in violation of Labor Code §§ 201-204, 510, 558, and
6 1194; and (c) engaging in Unfair Business Practices in violation of the UCL, all in violation of
7 the California Labor Code and applicable IWC Wage Orders.

8 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
9 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
10 manner as the Class members. Plaintiff was paid on a non-exempt basis and, thus, was paid
11 overtime wages for work performed in excess of 8 hours in a workday and/or 40 hours in a
12 workweek and double-time wages for work performed in excess of 12 hours in a workday.
13 California law requires non-exempt employees to be paid overtime and double-time wages based
14 on 1.5 or 2x the regular rate of pay, as opposed to the base rate of pay. The regular rate of pay
15 must include all forms of non-discretionary remuneration, including without limitation, shift
16 differentials and/or shift premiums. Defendant paid Plaintiff and Class Members such non-
17 discretionary remuneration, including without limitation, shift differential wages. Defendant,
18 however, did not factor in the additional non-discretionary remuneration, including shift
19 differentials, into the rate of pay for the overtime and/or double-time wages. Instead, Defendant
20 paid the overtime and double-time wages at 1.5 or 2x the base rate of pay. In other words,
21 Defendant did not take into account the shift differentials, which should have increased the
22 regular rate of pay for purposes of paying overtime and/or double-time wages in pay periods in
23 which the additional non-discretionary pay applied. Plaintiff, therefore, did not receive all
24 overtime and/or double-time pay as required by law. Plaintiff is also a victim of Defendant's
25 violation Labor Code § 226(a). As set forth herein, Plaintiff's pay statements did not identify the
26 correct hourly overtime and/or double-time rates of pay whenever he was paid incentives
27 covering the same pay period, which violates Labor Code § 226(a)(9). Plaintiff was also subject
28 to a wholly separate and independent claim for violation of Labor Code § 226(a). Specifically,

1 whenever double time wages were paid, the wage statements identified the rate of pay as the
2 base rate of pay rather than the double time rate, which violates Section 226(a)(9). In addition,
3 whenever overtime and/or shift differential wages were paid, the wage statements identified the
4 wrong total hours worked in the applicable pay period in violation of Section 226(a)(2). As
5 such, Plaintiff is a member of the Class and has suffered the alleged violations of California
6 Labor Code §§ 201-204, 226, 510, 558, and 1194, and the applicable IWC Wage Orders.

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

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

23 24. The prosecution of separate actions by the individual class members, even if
24 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
25 to individual Class members against the Defendants and which would establish potentially
26 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
27 individual Class members which would, as a practical matter, be dispositive of the interest of the
28 other Class members not parties to the adjudications or which would substantially impair or

1 impede the ability of the Class members to protect their interests. Further, the claims of the
2 individual members of the Class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses.

4 25. Such a pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation described herein is unlawful and creates an entitlement to
6 recovery by the Plaintiff and the Class identified herein, in a civil action, for unpaid overtime,
7 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
8 according to the mandate of California Labor Code §§ 201-204, 218.5, 226, 510, 1194, the
9 applicable IWC Wage Orders and Code of Civil Procedure § 1021.5.

10 26. Proof of a common business practice or factual pattern, which the named Plaintiff
11 experienced and are representative of, will establish the right of each of the members of the Class
12 to recovery on the causes of action alleged herein.

13 27. The Class is commonly entitled to a specific fund with respect to the
14 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
15 restitution of those funds being improperly withheld by Defendants. This action is brought for
16 the benefit of the entire class and will result in the creation of a common fund.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 226**

19 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ALL CLASSES)**

20 28. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
21 though fully set for herein.

22 29. Defendants failed in their affirmative obligation to provide accurate itemized
23 wage statements. Labor Code § 226(a) requires that an employer provide an itemized wage
24 statement every time wages are paid to an employee. Here, Defendants violated Labor Code §
25 226(a)(9) by not listing the accurate, higher overtime and double-time rates of pay based on the
26 correct regular rate whenever additional non-discretionary remuneration was paid covering pay
27 periods in which the employees also were paid overtime and double-time wages. As discussed
28 herein, Defendants failed to pay Plaintiff and the Class the proper overtime and double rates and,

1 therefore, failed to list the accurate rates of overtime and double-time pay on wage statements.
2 Moreover, whenever double time wages were paid, the wage statements identified the rate of pay
3 as the base rate of pay rather than the double time rate, which violates Section 226(a)(9). In
4 addition, whenever overtime and/or shift differential wages were paid, the wage statements
5 identified the wrong total hours worked in the applicable pay period in violation of Section
6 226(a)(2).

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

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE §§ 201-204, 510, 558, AND 1194**
14 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFF AND THE REGULAR RATE**
15 **CLASS)**

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

18 32. At all relevant times, Defendant was required to compensate its employees proper
19 overtime wages for overtime hours worked pursuant to California Labor Code §§ 510, 558 and
20 1194. Plaintiff and the Class were and are employed by Defendant as non-exempt employees
21 and, thus, Plaintiff and the Class are entitled to overtime and double-time wages. Plaintiff and
22 the Class earned additional non-discretionary incentive pay, including without limitation, shift
23 differentials, which covered the same pay periods in which Plaintiff and Class Members were
24 also paid overtime and/or double-time wages. Defendant, as a corporate-wide practice and
25 policy, did not calculate and/or factor such remuneration into the regular rate of pay for purposes
26 of calculating revised and increased overtime and double-time pay, and as such, owes Plaintiff
27 and the Class additional overtime and/or double-time pay.
28

1 33. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation as described herein is unlawful and creates an entitlement to
3 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
4 overtime and/or double-time premiums owing, including interest thereon, penalties, attorneys'
5 fees, and costs of suit according to the mandate of California Labor Code §§ 201-204, 218.5,
6 510, 1194 and 1197.1.

7 34. Plaintiff is informed and believes and based thereon alleges that Defendant
8 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
9 informed and believes and based thereon alleges that Defendant's willful failure to provide all
10 wages due and owing them upon separation from employment results in a continued payment of
11 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
12 members of the Class who have separated from employment are entitled to compensation
13 pursuant to Labor Code § 203.
14

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***
17 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFF AND THE REGULAR RATE**
18 **CLASS)**

19 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
20 though fully set for herein.

21 36. Defendants, and each of them, have engaged and continue to engage in unfair and
22 unlawful business practices in California by practicing, employing and utilizing the employment
23 practices outlined above, include, to wit, by failing to pay all owed overtime and/or double-time
24 wages based on the higher, correct regular rate of pay in violation of Labor Code §§ 510 and
25 1194, and engaging in Unfair Business Practices in violation of the UCL, all in violation of the
26 California Labor Code and applicable IWC Wage Orders.

27 37. Defendants' utilization of such unfair and unlawful business practices constitutes
28 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

1 38. Plaintiff seeks individually and on behalf of other members of the Class similarly
2 situated, full restitution of monies, as necessary and according to proof, to restore any and all
3 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
4 complained of herein. Specifically, Plaintiff seeks restitution for unpaid overtime and/or double-
5 time wages.

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

12 **FOURTH CAUSE OF ACTION**

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

14 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFF AS PROXY FOR**
15 **THE STATE OF CALIFORNIA)**

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

18 41. Pursuant to the PAGA, Plaintiff seeks penalties on behalf of the State of
19 California and all similarly aggrieved current and former California non-exempt employees for
20 the violations of Labor Code §§ 201-204, 226, 510, 558 and 1194 and the IWC Wage Orders,
21 for the time period of November 22, 2020, through the present. Plaintiff was not provided
22 proper and accurate wage statements identifying all information required by Labor Code §
23 226(a). Specifically, whenever double time wages were paid, the wage statements identified
24 the rate of pay as the base rate of pay rather than the double time rate. In addition, whenever
25 overtime and/or shift differential wages were paid, the wage statements identified the wrong
26 total hours worked in the applicable pay period. Plaintiff also alleges Defendant violated Labor
27 Code §§ 510, 558, and 1194 by failing to correctly calculate the regular rate of pay for
28 purposes of paying overtime and double time wages to Plaintiff and other similarly aggrieved

employees by not properly calculating all non-discretionary compensation into the regular rate, including without limitation, shift differential wages. Further as a result of such violations, Defendant violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid overtime and double time wages and Labor Code § 226(a) as the overtime and double time wage rates, and net/gross wages earned shown on the wage statements were inaccurate due to the overtime and double time violations set forth above.

42. On or about November 22, 2021, Plaintiff submitted written notice to the Labor Workforce Development Agency (the “LWDA”) and to Defendants via certified mail, return receipt requested, of the aforementioned violations of Labor Code §§ 201-204, 226, 510, 558 and 1194. As of the date of this filing, the LWDA has not initiated an investigation. Therefore, Plaintiff may proceed in this Court and in this regard, Plaintiff seeks penalties pursuant to Labor Code §§ 226.3 and 2699, as well as attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment individually 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 as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys’ fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-204, 510, 1194, and 1197.1 and for costs and attorneys’ fees;
6. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly effected members of the general public of all funds unlawfully acquired by Defendants by any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*, for the time periods described above;
7. Upon the Fourth Cause of Action, for civil penalties pursuant to Labor Code §§ 226.3

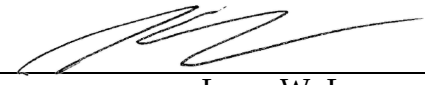
1 and 2699, and for costs and attorneys' fees;

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

4 9. For such other and further relief as the Court may deem just and proper.
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6 DATED: September 21, 2022

DIVERSITY LAW GROUP, P.C.

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8 By:  _____

Larry W. Lee

9 Attorneys for Plaintiff and the Class
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(Code of Civil Procedure Sections 1013a, 2015.5)

PROOF OF SERVICE