

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

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Attorneys for Plaintiffs, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

GILBERT PARAMO and ROSEMARIE
SANTOS, as individuals and on behalf of
all others similarly situated,

Plaintiffs,

vs.

WEEE LOGISTICS INC., a Delaware
corporation; WEEE! INC., a Delaware
corporation; WEEE! LOGISTICS LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-1129

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES FOR:**

- (1) FAILURE TO PAY WAGES;**
- (2) VIOLATION OF LABOR CODE § 226.7;**
- (3) VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (4) VIOLATION OF LABOR CODE § 226(a);**
- (5) VIOLATION OF LABOR CODE § 2802;**
- (6) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (7) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiffs Gilbert Paramo and Rosemarie Santos (together, “Plaintiffs”) hereby submit
2 this First Amended Class and Representative Action Complaint (“Complaint”) against
3 Defendants Weee Logistics Inc., Weee! Inc., Weee! Logistics LLC, and Does 1 through 50
4 (collectively, “Defendants”), on behalf of themselves and all other similarly situated current and
5 former employees of Defendants for damages and/or penalties under the California Labor Code
6 and the California Business & Professions Code as follows:

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
9 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2698, *et*
10 *seq.*, California Business and Professions Code § 17200, *et seq.* (the “UCL”), and the applicable
11 Wage Orders of the California Industrial Welfare Commission (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code and the UCL against individuals who worked for
14 Defendants.

15 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by failing to pay minimum, regular, and overtime wages
18 for all hours worked, failing to provide off-duty rest breaks or pay rest period premium in lieu
19 thereof, failing to provide off-duty meal breaks or pay meal period premium in lieu thereof,
20 failing to timely pay wages upon separation of employment, failing to provide accurate itemized
21 wage statements, failing to maintain accurate payroll records, and failing to reimburse business
22 expenses to their employees in the State of California.

23 4. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 have engaged in, among other things a system of willful violations of the California Labor Code,
25 the UCL, and the applicable IWC Wage Orders, by creating and maintaining policies, practices,
26 and customs that knowingly deny employees the above stated rights and benefits.

27 5. The policies, practices, and customs of Defendants described above and below
28 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 UCL.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2698, *et seq.*, the UCL, and the applicable IWC Wage Orders.

7. Venue is proper in San Joaquin County, because Defendants do business in San Joaquin County.

PARTIES

8. Plaintiff Gilbert Paramo (“Paramo”) was employed by Defendants as a picker/stockroom worker from in or about December 2020, until in or about January 2021. Throughout his employment with Defendants, Paramo worked as a non-exempt employee and was paid hourly.

9. During his employment with Defendants, Plaintiffs and Class Members were required to work before and after they clocked out of their shifts. Plaintiff and Class Members routinely performed work off-the-clock, including but not limited to attending meetings, checking work schedules, reading emails, using the Weee! app., undergoing off-the-clock temperature checks, filling out health questionnaires and other COVID-related protocols, pre-shift and post shift activities such as opening and closing activities and responding to escalated packing requests, performing routine administrative tasks, among other things.

10. Plaintiff Rosemarie Santos (“Santos”) was employed by Defendants as a cherry picker from in or about December 2020, until on or about January 26, 2021. Throughout her employment with Defendants, Santos worked as a non-exempt employee and was paid hourly.

11. Plaintiffs were and are the victims of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived them of the rights guaranteed by California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

12. Plaintiffs are informed and believe, and based thereon allege, that Defendant

Weee Logistics Inc. was and is a Delaware corporation that maintains operations and does business in the State of California, including in San Joaquin County, California. Plaintiffs are informed and believe, and based thereon allege, that Weee Logistics Inc. is an online Asian and Hispanic grocery retailer.

13. Plaintiffs are informed and believe, and based thereon allege, that Defendant Weee! Inc. was and is a Delaware corporation that maintains operations and does business in the State of California, including in San Joaquin County, California. Plaintiffs are informed and believe, and based thereon allege, that Weee! Inc. is an online Asian and Hispanic grocery retailer.

14. Plaintiffs are informed and believe, and based thereon allege, that Defendant Weee! Logistics LLC was and is a Delaware corporation that maintains operations and does business in the State of California, including in San Joaquin County, California. Plaintiffs are informed and believe, and based thereon allege, that Weee! Inc. is an online Asian and Hispanic grocery retailer.

15. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code, the IWC Wage Orders, and the UCL.

16. Plaintiffs do 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. Plaintiffs are informed and believe and based thereon allege that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiffs and members of the general public and class to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

17. At all times herein mentioned, each of said Defendants participated in the doing

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

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

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

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

CLASS ACTION ALLEGATIONS

21. **Definition:** The named individual Plaintiffs seek class certification, pursuant to California Code of Civil Procedure § 382, of the following Class: All current and former non-exempt employees who were employed by Defendants in the State of California, including those who worked for Defendants in California under a contract with one or more staffing agencies, at any time from July 26, 2017, through the present (the “Class”).

22. **Numerosity and Ascertainability:** The members of the classes are so numerous

1 that joinder of all members would be impractical, if not impossible. The identities of the
2 members of the classes are readily ascertainable by review of Defendants' records, including
3 payroll records.

4 23. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
5 necessary steps to represent fairly and adequately the interests of the classes defined above.
6 Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the class
7 members and the individual Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-
8 and-hour class actions in the past and currently have a number of wage-and-hour class actions
9 pending in California state and federal courts.

10 24. Defendants uniformly administered a corporate policy and practice of: (a) failing
11 to pay minimum, regular, and overtime/doubletime wages, including by systematically
12 underpaying employees by rounding, or failing to pay for all off-the-clock work , in violation of
13 Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay all
14 overtime/doubletime wages at the correct regular rate of pay including due to the failure to
15 calculate non-discretionary bonuses into the regular rate of pay in violation of Labor Code Labor
16 Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (c) failing to provide off-duty rest breaks,
17 or pay rest period premium compensation in lieu thereof, including paying such premium
18 compensation at the correct regular rate of pay, in violation of Labor Code § 226.7; (c) failing to
19 provide off-duty meal breaks, or pay meal period premium compensation in lieu thereof,
20 including paying such premium compensation at the correct regular rate of pay, as well as time
21 spent on duty during meal periods in violation of Labor Code §§ 226.7 and 512; (d) violating
22 Labor Code § 226(a) by failing to provide accurate itemized wage statements identifying:(1)
23 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
24 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
25 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
26 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
27 dates of the period for which the employee is paid, (7) the name of the employee and only the
28 last four digits of his or her social security number or an employee identification number other

1 than a social security number, (8) the name and address of the legal entity that is the employer,
2 and (9) all applicable hourly rates in effect during the pay period and the corresponding number
3 of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the
4 employer is a temporary services employer as defined in Section 201.3, the rate of pay and the
5 total hours worked for each temporary services assignment; (e) failing to maintain accurate
6 payroll records, in violation of Labor Code § 1174; (f) failing to reimburse all business expenses
7 including personal phones for work-related purposes, the purchase and maintenance of clothing
8 in compliance with the applicable dress code, the purchase and maintenance of shoes in
9 compliance with the applicable dress code, and the purchase and maintenance of tools and
10 equipment, including gloves and masks, among other things, in violation of Labor Code § 2802;
11 and (g) engaging in unfair business practices in violation of the California Labor Code, the
12 applicable IWC Wage Orders, and the UCL.

13 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
14 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
15 Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and
16 2802, the applicable IWC Wage Orders, and the UCL.

17 25. **Common Question of Law and Fact:** There are predominant common questions
18 of law and fact and a community of interest amongst Plaintiffs and the claims of the classes
19 concerning Defendants' policy and practice of: (a) failing to pay minimum, regular, and
20 overtime/doubletime wages, including because of unlawful rounding practices and off-the-clock
21 work in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to
22 provide off-duty rest breaks, or pay rest period premium compensation in lieu thereof, including
23 paying such premium compensation at the correct regular rate of pay, in violation of Labor Code
24 § 226.7; (c) failing to provide off-duty meal breaks, or pay meal period premium compensation
25 in lieu thereof, including paying such premium compensation at the correct regular rate of pay, in
26 violation of Labor Code §§ 226.7 and 512; (d) failing to provide accurate itemized wage
27 statements, in violation of Labor Code § 226(a); (e) failing to maintain accurate payroll records,
28 in violation of Labor Code § 1174; (f) failing to reimburse business expenses, in violation of

1 Labor Code § 2802; and (g) engaging in unfair business practices in violation of the California
2 Labor Code, the applicable IWC Wage Orders, and the UCL.

3 26. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the
4 classes in that Plaintiffs have suffered the harms alleged in this Complaint in a similar and
5 typical manner as the class members. As with other non-exempt employees of Defendants, class
6 members were underpaid due to unlawful rounding. Plaintiffs were required to perform work off-
7 the-clock. Specifically, Plaintiffs were required to undergo temperature checks before clocking
8 into their shifts, and again at the end of the workday, after they had clocked out of shifts. These
9 temperature checks were conducted off-the-clock, and Plaintiffs were not paid any applicable
10 minimum, regular, or overtime wages for such time spent undergoing said checks. Class
11 members were also required to work before and after they clocked out of their shifts. Class
12 members routinely performed work off-the-clock, including but not limited to attending
13 meetings, checking work schedules, reading emails, using the Weee! app., undergoing off-the-
14 clock temperature checks, filling out health questionnaires and performing COVID-related
15 protocols, pre-shift and post shift activities such as opening and closing activities, performing
16 routine administrative tasks, responding to escalated packing requests, among other things. Class
17 members were also not paid overtime at the correct, regular rate of pay, including because of the
18 failure to calculate non-discretionary bonuses into the regular rate of pay.

19 27. In addition, Plaintiffs were not provided with a duty-free 10-minute rest break for
20 every shift of 3.5 hours or more. Defendants also failed to authorize duty-free rest breaks in the
21 middle of each major fraction of a four (4) hour work period. Among other things, Defendants
22 required Plaintiffs and other employees to remain on work premises, stay on-call during breaks,
23 or work through breaks, such as attending work meetings during their rest breaks. Defendants
24 also authorized rest breaks late. Plaintiff Paramo was also not provided duty-free 30-minute meal
25 breaks for every shift of 5 hours or more. Instead, Defendants required Plaintiff Paramo and
26 other employees to remain on work premises and/or perform work during his meal breaks, stay
27 on-call during meal periods, or forfeit meal periods altogether. Defendants did not pay Plaintiffs
28 and other employees premium pay in lieu of these missed meal and rest breaks, or pay them

1 premium compensation at the correct regular rates.

2 28. To date, Plaintiffs have yet to receive the unpaid wages and rest and meal period
3 premium pay owed to them. Thus, Defendants are liable for waiting time penalties under Labor
4 Code § 203. Additionally, as a result of the underpayment and/or nonpayment of minimum,
5 regular, and overtime wages and rest and meal period premiums, the wage statements provided
6 to Plaintiffs displayed inaccurate gross wages earned, net wages earned, rates of pay and hours
7 worked, among the other items required by Labor Code § 226(a). As a separate violation of
8 Labor Code § 226(a), the wage statements issued to Plaintiffs' identified the employer's address
9 as "606 Red Lake Way, CA 89110." Such address is incorrect, and in fact does not exist.
10 Lastly, as a separate violation of the Labor Code, Defendants also failed to reimburse Plaintiffs
11 for business-related expenses incurred while performing the job. Among other business
12 reimbursements, Plaintiffs were required to use their personal cell phones to download a mobile
13 application—WEEE, for work purposes. Plaintiffs were required to use WEEE each shift.
14 However, Plaintiffs were not reimbursed for the costs or time worked incurred in connection
15 with the use of their personal cell phones for work purposes. Therefore, Plaintiffs are members
16 of the classes and have suffered the alleged violations of Labor Code §§ 201-204, 226, 226.7,
17 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Wage Orders,
18 and the UCL.

19 29. The California Labor Code upon which Plaintiffs base these claims are broadly
20 remedial in nature. These laws and labor standards serve an important public interest in
21 establishing minimum working conditions and standards in California. These laws and labor
22 standards protect the average working employee from exploitation by employers who may seek
23 to take advantage of superior economic and bargaining power in setting onerous terms and
24 conditions of employment.

25 30. The nature of this action and the format of laws available to Plaintiffs and class
26 members identified herein make the class action format a particularly efficient and appropriate
27 procedure to redress the wrongs alleged herein. If each employee were required to file an
28 individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage

1 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff
2 with their vastly superior financial and legal resources. Requiring each class member to pursue
3 an individual remedy would also discourage the assertion of lawful claims by employees who
4 would be disinclined to file an action against their former and/or current employer for real and
5 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

6 31. The prosecution of separate actions by the individual class members, even if
7 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
8 to individual class members against the Defendants and which would establish potentially
9 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
10 individual class members which would, as a practical matter, be dispositive of the interest of the
11 other class members not parties to the adjudications or which would substantially impair or
12 impede the ability of the class members to protect their interests. Further, the claims of the
13 individual members of the classes are not sufficiently large to warrant vigorous individual
14 prosecution considering all of the concomitant costs and expenses.

15 32. Such a pattern, practice, and uniform administration of corporate policy regarding
16 illegal employee compensation described herein is unlawful and creates an entitlement to
17 recovery by Plaintiffs and the classes identified herein, in a civil action, for unpaid wages,
18 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
19 according to the mandate of California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1174,
20 1194, 1197, 1197.1, 1198, 2800, and 2802.

21 33. Proof of a common business practice or factual pattern, which the named
22 Plaintiffs experienced and are representatives of, will establish the right of each of the members
23 of the classes to recovery on the causes of action alleged herein.

24 34. The classes are commonly entitled to a specific fund with respect to the
25 compensation illegally and unfairly retained by Defendants. The classes are commonly entitled
26 to restitution of those funds being improperly withheld by Defendants. This action is brought for
27 the benefit of the classes and will result in the creation of a common fund.

28 //

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

4 35. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
5 though fully set forth herein.

6 36. This cause of action is brought pursuant to Labor Code §§ 201-204, 510, 558,
7 1194, 1197, and 1197.1, which require an employer to pay employees minimum and regular
8 wages for all hours worked fewer than eight hours in a day and/or fewer than 40 hours in a
9 workweek. The Labor Code also requires an employer to pay employees overtime wages for all
10 hours worked greater than eight hours in a day and/or greater than 40 hours in a workweek.

11 37. At all relevant times herein, Defendants failed to pay all regular, minimum, and
12 overtime wages to Plaintiffs and Class Members. As a pattern and practice, Defendants suffered
13 and permitted Plaintiffs and Class Members to work without payment of minimum and regular
14 wages for all hours worked in a workday and workweek, and without payment of overtime
15 wages for all hours worked greater than eight hours in a day and/or greater than 40 hours in a
16 workweek.

17 38. Among other things, Defendants unlawfully rounded wages so as to
18 systematically underpay employees. Defendants also required Plaintiffs and Class Members to
19 work off-the-clock, including before and after being clocked out for shifts. Class members were
20 required to work before and after they clocked out of their shifts. Class members routinely
21 performed work off-the-clock, including but not limited to attending meetings, checking work
22 schedules, reading emails, using the Weee! app., undergoing off-the-clock temperature checks
23 (as further discussed below), filling out health questionnaires, performing other COVID-related
24 protocols, pre-shift and post shift activities such as opening and closing activities, performing
25 routine administrative tasks, responding to escalated packing requests, among other things.

26 39. Defendants also required Plaintiffs and Class Members to undergo temperature
27 checks before being allowed to leave work premises at the end of their shifts, after clocking out
28 of their shifts. Said temperature checks were conducted off-the-clock, and Plaintiffs and Class

Members were not compensated for the time spent undergoing said temperature checks. Thus, Defendants owe Plaintiffs and Class Members unpaid minimum, regular, and overtime wages.

40. Defendants also failed to properly pay overtime/doubletime wages at the correct regular rate of pay, including by failing to calculate all non-discretionary bonuses into the regular rate of pay.

41. Defendants had a uniform corporate pattern, practice, and procedure regarding the above practices in violation of the California Labor Code.

42. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-204, 218.5, 510, 558, 1194, 1197, and 1197.1.

43. Plaintiffs are informed and believe, and based thereon allege, that Defendants' willful failure to provide all regular, minimum, and overtime wages due and owing to Plaintiffs and Class Members upon separation of employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who have separated from employment are entitled to waiting time penalties pursuant to Labor Code § 203.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)

44. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

45. This cause of action is brought pursuant to Labor Code § 226.7, which requires an employer to provide employees with a ten (10) minute paid rest period for every 3.5 hours worked by an employee. Defendants failed in their affirmative obligation to ensure that Plaintiffs and Class Members had the opportunity to take and were provided with paid, duty-free rest periods in accordance with the mandates of the California Labor Code and the applicable IWC

1 Wage Order.

2 46. Plaintiffs and Class Members were suffered and permitted to work through legally
3 required rest breaks and were denied the opportunity to take their rest breaks. In this regard,
4 Defendants required employees to stay on-call during breaks, or work through breaks, such as
5 attending work meetings during their rest breaks. Defendants also authorized rest breaks late.

6 47. Defendants also failed to pay rest break premium compensation at the correct
7 regular rate of pay. As such, Defendants are responsible for paying all owed premium
8 compensation for missed rest periods pursuant to Labor Code § 226.7.

9 48. As a pattern and practice, Defendants regularly required employees to work
10 through their rest periods without proper compensation and denied Plaintiffs and their employees
11 the right to take proper rest periods as required by law. As a pattern and practice, Defendants
12 failed to pay rest period premium compensation to Plaintiffs and Class Members in lieu of
13 providing off-duty rest periods.

14 49. Such a pattern, practice, and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class
16 identified herein, in a civil action, for the lost wages and unpaid premium compensation pursuant
17 to Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties,
18 attorney's fees, and costs of suit.

19 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
20 willful failure to provide all rest period premium wages due and owing to Plaintiffs and Class
21 Members upon separation of employment results in a continued payment of wages up to thirty
22 (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who have
23 separated from employment are entitled to compensation pursuant to Labor Code § 203.

24 **THIRD CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

26 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

27 51. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
28 though fully set forth herein.

1 52. At all relevant times, Defendants failed in their affirmative obligation to ensure
2 that Plaintiffs and Class Members had the opportunity to take and were provided with timely
3 thirty minute off-duty meal periods in accordance with the mandates of the California Labor
4 Code and the applicable IWC Wage Order.

5 53. More specifically, as a pattern and practice, Defendants regularly failed to provide
6 Plaintiffs and Class Members with a thirty (30) minute uninterrupted duty-free meal period
7 within five (5) hours of the beginning of their shift, as well as timely, thirty minute second and
8 third meal periods. Rather, Defendants required Plaintiffs and Class Members to remain on work
9 premises and/or perform work during their meal breaks, or be on-call during their meal periods.
10 Defendants also did not pay for meal period premium compensation at the correct regular rate of
11 pay. As such, Defendants are responsible for paying premium compensation for missed meal
12 periods pursuant to Labor Code § 226.7.

13 54. As a pattern and practice, Defendants regularly required employees to work
14 through their meal periods without proper compensation and denied Plaintiffs and their
15 employees the right to take proper meal periods as required by law. As a pattern and practice,
16 Defendants failed to pay meal period premium compensation to Plaintiffs and Class Members in
17 lieu of providing off-duty meal periods.

18 55. Such a pattern, practice, and uniform administration of corporate policy as
19 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class
20 identified herein, in a civil action, for the lost wages and unpaid premium compensation pursuant
21 to Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties,
22 attorney's fees, and costs of suit.

23 56. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
24 willful failure to provide all meal period premium wages due and owing to Plaintiffs and Class
25 Members upon separation of employment results in a continued payment of wages up to thirty
26 (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who have
27 separated from employment are entitled to compensation pursuant to Labor Code § 203.

28 //

1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226(a)**

3 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

4 57. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
5 though fully set forth herein.

6 58. Labor Code § 226(a) requires employers to provide itemized wage statements to
7 its employees that identify accurate information regarding their compensation. Defendants, as a
8 matter of policy and practice, failed in their affirmative obligation to provide accurate itemized
9 wage statements to Plaintiffs and Class Members, in violation of Labor Code § 226(a).
10 Defendants' wage statements failed to provide accurate itemized wage statements identifying:(1)
11 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
12 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
13 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
14 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
15 dates of the period for which the employee is paid, (7) the name of the employee and only the
16 last four digits of his or her social security number or an employee identification number other
17 than a social security number, (8) the name and address of the legal entity that is the employer,
18 and (9) all applicable hourly rates in effect during the pay period and the corresponding number
19 of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the
20 employer is a temporary services employer as defined in Section 201.3, the rate of pay and the
21 total hours worked for each temporary services assignment.

22 59. In addition, as a Defendants' failure to pay wages and rest and meal period
23 violations as identified above, the wage statements issued to Plaintiffs and Class Members failed
24 to identify the correct gross wages earned, net wages earned, and hours worked, in violation of
25 Labor Code § 226(a).

26 60. As a separate violation of Labor Code § 226(a), the wage statements issued to
27 Plaintiffs and Wage Statement Class Members also violated Labor Code § 226(a)(8). In this
28 regard, Defendants issued wage statements to Plaintiffs and Wage Statement Class Members that

1 inaccurately identified the employer's address as "606 Red Lake Way, CA 89110." Such
2 address is incorrect as it does not exist.

3 61. The issuance of inaccurate wage statements caused injury to Plaintiffs and Class
4 Members under Labor Code § 226(e), as they cannot accurately verify and/or calculate their
5 wages.

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

11 **FIFTH CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 2802**

13 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

14 63. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
15 though fully set forth herein.

16 64. This cause of action is brought pursuant to Labor Code § 2802, which provides
17 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
18 their employers.

19 65. At all relevant times herein, Defendants regularly failed to reimburse and
20 indemnify Plaintiffs and Class Members for business expenses necessary for the discharge of
21 their duties. Specifically, Defendants failed to pay Plaintiffs and Class Members for work-
22 related expenses, including and without limitation, costs incurred with the use of personal cell
23 phones. Plaintiffs and Class Members were required to use their personal cell phones to
24 download and use a mobile application (WEEE) for work purposes. However, Defendants failed
25 to reimburse the costs of using personal cell phones for work-related purposes. Defendants also
26 failed to reimburse for the purchase and maintenance of clothing in compliance with the
27 applicable dress code, the purchase and maintenance of shoes in compliance with the applicable
28 dress code, and the purchase and maintenance of tools and equipment, including gloves and

1 masks, among other things.

2 66. Defendants had a uniform corporate pattern and practice and procedure regarding
3 the above practice in violation of Labor Code § 2802.

4 67. Such a pattern, practice, and uniform administration of corporate policy regarding
5 illegal employee compensation as described herein is unlawful and creates an entitlement to
6 recovery by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of
7 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
8 to the mandate of California Labor Code § 2802.

9 **SIXTH CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

11 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

12 68. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
13 though fully set forth herein.

14 69. Defendants, and each of them, have engaged and continue to engage in unfair and
15 unlawful business practices in California by practicing, employing, and utilizing the employment
16 practices outlined above, including by: (a) failing to pay minimum, regular, and
17 overtime/doubletime wages, in violation of Labor Code §§ 510, 558, 1194, 1197, and 1197.1; (b)
18 failing to provide off-duty rest breaks or pay rest period premium compensation in lieu thereof,
19 in violation of Labor Code § 226.7; (c) failing to provide off-duty meal breaks or pay meal
20 period premium pay in lieu thereof, in violation of Labor Code §§ 226.7 and 512; and (d) failing
21 to reimburse business expenses, in violation of Labor Code § 2802.

22 70. Defendants' utilization of such unfair and unlawful business practices constitutes
23 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

24 71. Plaintiffs seek, individually and on behalf of other members of the Class similarly
25 situated, full restitution of monies, as necessary and according to proof, to restore any and all
26 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
27 complained of herein.

28 72. Plaintiffs are informed and believe, and based thereon allege, that at all times

herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiffs and other Class Members the minimum working standards and conditions due to them under the California laws as specifically described therein.

SEVENTH CAUSE OF ACTION

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

(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

73. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

74. Plaintiffs bring this cause of action as proxies for the State of California and in this capacity, seek penalties on behalf of all Aggrieved Employees in the State of California from June 21, 2020, through the present, for Defendants' violations of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, arising from Defendants' policy and practice of: (a) failing to pay minimum, regular, and overtime/doubletime wages as described above; violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to provide off-duty rest breaks, or pay rest period premium compensation in lieu thereof, including paying such premium compensation at the correct regular rate pay in violation of Labor Code §§ 201-203 and 226.7; (c) failing to provide off-duty meal breaks, or pay meal period premium compensation in lieu thereof including paying such premium compensation at the correct regular rate of pay, in violation of Labor Code §§ 201-203, 226.7, and 512; (d) failing to provide accurate itemized wage statements, in violation of Labor Code § 226(a); (e) failing to maintain accurate payroll records, in violation of Labor Code § 1174; (f) failing to reimburse business expenses, in violation of Labor Code § 2802; and (g) violating Labor Code 1198 by requiring employees to work in excess of the maximum working hours set forth by the IWC.

75. On or about June 21, 2021, Santos sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 510, 558, 1194, 1197, 1197.1, and 2802, pursuant to the PAGA. In addition to

the LWDA, Santos also sent her notice to Defendants via certified mail pursuant to Labor Code § 2699.3. On or about July 28, 2023, Santos also sent an amended written notice to the LWDA of Defendants' violations of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

76. On or about January 3 and July 28, 2023, Paramo sent written notices to the California LWDA of Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802, pursuant to the PAGA. In addition to the LWDA, Paramo also sent his notice to Defendants via certified mail pursuant to Labor Code § 2699.3.

77. As of the date of the filing of this First Amended Complaint, the LWDA has not responded to Plaintiffs' written notices nor indicated that it intends to investigate the Labor Code violations provided for in the written notices.

78. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802, for the time period described above, on behalf of themselves and other Aggrieved Employees.

PRAYER FOR RELIEF

1. WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2. For an order certifying the proposed Class;

3. For an order appointing Plaintiffs as representatives of the Class as described herein;

4. For an order appointing Counsel for Plaintiffs as Class Counsel;

5. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

6. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-204 and 226.7, and for costs and attorneys' fees;

1 7. Upon the Third Cause of Action, for damages and/or penalties pursuant to
2 California Labor Code §§ 201-204, 226.7, and 512, and for costs and attorneys' fees;

3 8. Upon the Fourth Cause of Action, for penalties pursuant to California Labor Code
4 § 226, and for costs and attorneys' fees;

5 9. Upon the Fifth Cause of Action, for damages and/or penalties pursuant to
6 California Labor Code § 2802, and for costs and attorneys' fees;

7 10. Upon the Sixth Cause of Action, for restitution to Plaintiffs and other similarly
8 affected members of the general public of all funds unlawfully acquired by Defendants by means
9 of any acts or practices declared by this Court to be in violation of Business & Professions Code
10 § 17200, *et seq.*, and for costs and attorneys' fees;

11 11. Upon the Seventh Cause of Action, for the full amount of penalties pursuant to
12 California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

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

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

16
17 DATED: August 1, 2023

DIVERSITY LAW GROUP, P.C.

18
19 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiffs, the Class, and Aggrieved
Employees

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

On August 1, 2023, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

jwilson@grsm.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 1, 2023, at Los Angeles, California.


Erika Mejia