

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

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/24/2024 4:15 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

D. LAW, INC.
Emil Davtyan (State Bar No. 299363)
emil@d.law
400 N. Brand Blvd., Suite 700
Glendale, California 91203
Telephone: (818) 875-2008
Facsimile: (818) 722-3974

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

AMERICO PENA, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

PANDA RESTAURANT GROUP, INC., a
California corporation; PANDA EXPRESS, INC.,
a California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **24STCV15775**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Unpaid Wages**
(Lab. Code §§ 1182.12, 1197, 510, 1198);
(2) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
(3) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
(4) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 Plaintiff, Americo Pena, submits this Class and Representative Action Complaint against Defendants
3 Panda Restaurant Group, Inc., Panda Express, Inc., and Does 1 through 50 (collectively, “Defendants”).
4 Pursuant to Family Code section 6710, Plaintiff hereby disaffirms in its entirety any contract between
5 Plaintiff and Defendants relating to arbitration of any disputes alleged herein.

6 INTRODUCTION

7 1. This class and representative action challenges systemic employment practices resulting
8 in violations of the California Labor Code against individuals who worked for Defendants. Plaintiff is
9 informed and believes that Defendants have jointly and severally acted intentionally and with deliberate
10 indifference and conscious disregard to the rights of employees by failing to pay all regular, overtime,
11 and reporting time pay wages, failing to timely pay all wages during employment or upon termination
12 of employment, and by failing to provide complete and accurate itemized wage statements. Defendants
13 have also jointly and severally acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of employees under the age of 18 by requiring them to work more than four hours
15 on schooldays and to work after 10:00 p.m. on days preceding a schoolday without authorizing work
16 permits. The Complaint seeks damages, penalties, and other relief pursuant to, among other provisions,
17 Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 510, 558, 1174, 1182.12, 1194, 1197,
18 1197.1, 1198, 1391, and 2698 et seq. and the Unfair Competition Law, codified at Business and
19 Professions Code sections 17200 et seq. (the “UCL”).¹

20 2. Defendants routinely fail to pay reporting time pay to non-exempt employees.
21 Specifically, despite being scheduled for work shifts and showing up for such shifts, Plaintiff and other
22 non-exempt employees were routinely told to go home as their shifts were cancelled due to reasons such
23 as overstaffing. But Plaintiff and other non-exempt employees were not paid for the time that they spent
24 in showing up for their shifts.

25 3. Because Plaintiff and other non-exempt employees are underpaid regular, overtime, and
26 reporting time pay wages, Defendants routinely fail to timely pay Plaintiff and other non-exempt
27 employees all wages during employment or upon separation of employment. Moreover, Defendants also
28

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

1 routinely fail to furnish wage statements that accurately show and itemize total hours worked, gross
2 wages earned, and net wages earned.

3 4. Defendants also routinely require Plaintiff and other employees under the age of 18 to
4 work hours not allowed under Labor Code section 1391. For example, Defendant requires Plaintiff and
5 other employees under the age of 18 to work more than four hours on schooldays and to work after
6 10:00 p.m. on days preceding a schoolday. Plaintiff is informed and believes that he and other
7 employees under the age of 18 were not issued any work permits under Education Code section
8 49112(c) that would permit such work hours.

9 5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
10 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
11 customs that knowingly deny its employees the above stated rights and benefits.

12 6. The policies, practices, and customs of Defendants result in unjust enrichment of
13 Defendants and an unfair business advantage over businesses that comply with the Labor Code.

14 **JURISDICTION AND VENUE**

15 1. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
16 Defendants' violations of Labor Code section 201-204, 226, 510, 1182.12, 1197, 1198, and 1391 and
17 the Unfair Competition Law, codified at Business and Professions Code sections 17200 et seq. (the
18 "UCL").

19 2. Venue is proper in the County of Los Angeles. Defendants are headquartered in the
20 County of Los Angeles. Defendants also maintains business locations in the County of Los Angeles and
21 employ aggrieved individuals who perform their duties in the County of Los Angeles.

22 **PARTIES**

23 3. Plaintiff is an individual, who at all times herein mentioned was and is a resident of
24 Fresno, California. Plaintiff worked for Defendants from November 2021 to June 2023. Until his
25 employment ended, Plaintiff was paid on an hourly basis as a non-exempt employee. Despite being
26 scheduled for work shifts and showing up for such shifts, Plaintiff was routinely told to go home as his
27 shifts were cancelled due to reasons such as overstaffing. But Plaintiff was not paid for the time that he
28 spent in showing up for these shifts. As a result, Plaintiff was not timely paid all due wages during

1 employment or upon separation of employment and also was not provided with accurate itemized wage
2 statements. Moreover, while under the age of 18, Plaintiff also was required to work hours not allowed
3 under Labor Code section 1391. For example, Defendants requires Plaintiff to work more than four
4 hours on schooldays and to work after 10:00 p.m. on days preceding a schoolday. Plaintiff is informed
5 and believes that he was not issued any work permits under Education Code section 49112(c) that
6 would permit such work hours. Plaintiff thus is a victim of the policies, practices, and customs of
7 Defendants complained of in this action in ways that have deprived his of the rights guaranteed by the
8 Labor Code and the UCL.

9 4. Plaintiff is informed and believes that Panda Restaurant Group, Inc. and Panda Express,
10 Inc. were and are California corporations. Plaintiff is informed and believes that at all times herein
11 mentioned named defendants and Does 1 through 50, were and are corporations, business entities,
12 individuals, or partnerships that are and were licensed to do business and actually doing business in the
13 State of California. Based upon all the facts and circumstances incident to Defendants' business,
14 Defendants are subject to Sections 201-204, 226, 510, 1182.12, 1197, and 1198, and the UCL.

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

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

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

certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

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

CLASS ACTION ALLEGATIONS

9. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California since June 24, 2020 (the “Unpaid Wage Class”), and (ii) all current and former non-exempt employees of Defendants in the State of California since June 24, 2023 (the “Wage Statement Class”). The Unpaid Wage Class and Wage Statement Class are collectively referred to as the “Class.”

10. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including personnel and payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226, 510, 1182.12, 1197, and 1198, and the UCL by failing to pay all regular, overtime, and reporting time pay wages, failing to timely pay all wages during employment or upon termination of employment, and by failing to provide complete and accurate itemized wage statements.

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

12. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of routinely

1 failing to pay all regular, overtime, and reporting time pay wages, failing to timely pay all wages during
2 employment or upon termination of employment, and by failing to provide complete and accurate
3 itemized wage statements.

4 13. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
5 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
6 suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt
7 employee. Despite being scheduled for work shifts and showing up for such shifts, Plaintiff was
8 routinely told to go home as his shifts were cancelled due to reasons such as overstaffing. But Plaintiff
9 was not paid for the time that he spent in showing up for these shifts. As a result, Plaintiff was not
10 timely paid all due wages during employment or upon separation of employment and also was not
11 provided with accurate itemized wage statements. Plaintiff thus is a member of the Class and has
12 suffered the alleged violations of the Labor Code.

13 14. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
14 in establishing minimum working conditions and requirements in California. These labor standards
15 protect employees from onerous terms and conditions of employment or exploitation by employers who
16 have superior economic and bargaining power.

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

26 16. The prosecution of separate actions by individual members of the Class, even if possible,
27 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
28 members of the Class that would establish potentially incompatible standards of conduct for

1 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
2 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
3 of other members of the Class not parties to the adjudications. Further, the claims of the individual
4 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
5 the concomitant costs and expenses.

6 17. Defendants' pattern, practice, and uniform administration of corporate policy in violation
7 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
8 rights of Plaintiff and the Class under Sections 201-204, 210, 218.5, 218.6, 226, 510, 1174, 1182.12,
9 1194, 1194.2, 1197, 1197.1, and 1198, applicable IWC Wage Orders, the UCL, and Code of Civil
10 Procedure section 1021.5 to recover restitution, reasonable attorneys' fees, and costs of suit.

11 18. This action is brought for the benefit of the Class, which is commonly entitled to a
12 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
13 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

14 **FIRST CAUSE OF ACTION**

15 **Unpaid Wages (Lab. Code §§ 1182.12, 1197, 510, 1198)**

16 **(By Plaintiff and the Unpaid Wage Class Against All Defendants)**

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

18 20. Sections 1182.12 and 1197 provide a minimum wage to be paid to employees and make
19 unlawful the payment of a lesser wage. The applicable IWC Wage Order defines compensable time as
20 "the time during which an employee is subject to the control of an employer, and includes all the time
21 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
22 § 11040(2)(K) (defining "Hours Worked"). California law thus generally requires that employers pay
23 employees for all hours worked and pay at least the minimum wage for all hours worked.

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

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

22. Moreover, the IWC Wage Orders require an employer to pay non-exempt employees reporting time pay when employees report to a scheduled shift, but are not permitted to work, and/or when employees report to a scheduled shift, but are only permitted to work less than half of their scheduled shift. This cause of action is also brought pursuant to the applicable IWC Wage Orders, which require an employer to pay reporting time pay to employees at their regular rate of pay for at least half of the employee’s scheduled day’s work, with a minimum of two (2) hours pay and a maximum of four (4) hours pay.

23. As a matter of policy and practice, Defendants fail to pay all regular, overtime, and reporting time pay wages to Plaintiff and the Unpaid Wage Class. Specifically, despite being scheduled for work shifts and showing up for such shifts, Plaintiff and the Unpaid Wage Class were routinely told to go home as their shifts were cancelled due to reasons such as overstaffing. Plaintiff and the Unpaid Wage Class were routinely not paid for the time that they spent in showing up for their shifts. As such, Plaintiff and the Unpaid Wage Class are owed unpaid regular, overtime, and reporting time pay wages.

24. Moreover, Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

25. Based on Defendants’ failure to pay all regular and minimum wages to Plaintiff and the Unpaid Wage Class, and as a matter of policy and practice, Defendants fail to timely pay all due wages

1 during employment and fail to timely pay all due wages upon separation of employment. On
2 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
3 of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully
4 fail to timely pay Plaintiff and the Unpaid Wage Class all wages due, Defendants are subject to
5 applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

6 26. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
7 entitles Plaintiff and the Unpaid Wage Class to recover unpaid wages, including interest thereon,
8 liquidated damages, applicable penalties, attorneys' fees, and costs of suit.

9 **SECOND CAUSE OF ACTION**

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

11 **(By Plaintiff and the Wage Statement Class Against All Defendants)**

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

13 28. Section 226(a) requires an employer to furnish to its employees itemized wage
14 statements that show accurate information, including without limitation, the total hours worked, gross
15 wages earned, and net wages earned.

16 29. Defendants fail to provide accurate itemized wage statements to Plaintiff and the Wage
17 Statement Class. Because of the above violations and as a matter of policy and practice, Defendants fail
18 to furnish Plaintiff and the Wage Statement Class with wage statements that accurately show the total
19 hours worked, gross wages earned, and net wages earned.

20 30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
21 entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys' fees, and costs
22 of suit.

23 **THIRD CAUSE OF ACTION**

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

25 **(By Plaintiff and the Unpaid Wage Class Against All Defendants)**

26 31. The preceding paragraphs are re-alleged and incorporated by this reference.
27
28

32. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including failing to pay all regular, overtime, and reporting time pay wages.

33. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Unpaid Wage Class of the minimum working protections due to them under the Labor Code.

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

FOURTH CAUSE OF ACTION

Violation of California Labor Code (Lab. Code §§ 2698 Et Seq.)

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

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

36. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 201-204, 226, 510, 1182.12, 1197, 1198, and 1391 committed since June 20, 2023, against all aggrieved employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

37. As stated herein, Defendants fail to (i) pay all regular, overtime, and reporting time pay wages, (ii) timely pay all wages during employment or upon termination of employment, and (iii) provide complete and accurate itemized wage statements. Moreover, Defendants also uniformly administer a corporate policy and practice of routinely requiring Plaintiff and other employees under the age of 18 to work more than four hours on schooldays and to work after 10:00 p.m. on days preceding a schoolday. Plaintiff is informed and believes that he and other aggrieved employees were not issued any work permits under Education Code section 49112(c) that would permit such work hours.

38. Plaintiff has sent written notice to the Labor & Workforce Development Agency (“LWDA”) of Defendants’ above referenced violations, including facts and theories to support the violations. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

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

PRAYER FOR RELIEF

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

1. Prejudgment interest at the prevailing legal rate;
2. For an order certifying the proposed Class;
3. For an order appointing Plaintiff as the representative of the Class;
4. For an order appointing Counsel for Plaintiff as Class Counsel;
5. Upon the First Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys' fees and costs;
6. Upon the Second Cause of Action for penalties, and attorneys' fees and costs;
7. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for attorneys' fees and costs;
8. Upon the Fourth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g), and for attorneys' fees and costs;
9. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code, UCL, and Code of Civil Procedure section 1021.5; and
10. For such other and further relief that the Court may deem just and proper.

1 DATED: June 24, 2024

DIVERSITY LAW GROUP, P.C.

2 
By: _____

3 Larry W. Lee
4 Simon L. Yang
5 Attorneys for Plaintiff
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28