

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
6/29/2023 2:15 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

DAVTYAN LAW FIRM, INC.
Emil Davtyan (State Bar No. 299363)
support@davtyanlaw.com
880 East Broadway
Glendale, California 91205
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**

AVEON GOOSBY, 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. **23STCV15228**

**INDIVIDUAL AND
CLASS/REPRESENTATIVE ACTION
COMPLAINT**

- (1) Whistleblower Retaliation
(Lab. Code § 1102.5) [Individual Claim];**
- (2) Wrongful Termination in Violation of
Public Policy [Individual Claim];**
- (3) Intentional Infliction of Emotional Distress
[Individual Claim];**
- (4) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.) [Class
Claim]; and**
- (5) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

**DEMAND FOR JURY TRIAL ON
INDIVIDUAL CLAIMS**

DEMAND OVER \$25,000.00

1 Plaintiff, Aveon Goosby, submits this Individual and Class/Representative Action Complaint
2 against Defendants Panda Restaurant Group, Inc., Panda Express, Inc., and Does 1 through 50
3 (collectively, “Defendants”), individually, on behalf of himself and other similarly situated current and
4 former employees of Defendants, and as a proxy for the State of California. Pursuant to Family Code
5 section 6710, Plaintiff hereby disaffirms in its entirety any contract between Plaintiff and Defendants
6 relating to arbitration of any disputes alleged herein.

7 **JURISDICTION AND VENUE**

8 1. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
9 Defendants’ violations of Labor Code sections 1102.5 and 1391 and the Unfair Competition Law,
10 codified at Business and Professions Code sections 17200 et seq. (the “UCL”).

11 2. Venue is proper because Defendants are headquartered in the County of Los Angeles.
12 Defendants also maintains business locations in the County of Los Angeles and employ aggrieved
13 individuals who perform their duties in the County of Los Angeles.

14 **PARTIES**

15 3. Plaintiff is an individual, who at all times herein mentioned was and is a resident of
16 Fresno, California.

17 4. Plaintiff is informed and believes and thereon alleges that Defendants operate various
18 restaurants with locations throughout the State of California.

19 5. Plaintiff is informed and believes that Panda Restaurant Group, Inc. was and is a
20 California corporation. Plaintiff is informed and believes that Panda Express, Inc. was and is a
21 California corporation. Plaintiff is informed and believes that at all times herein mentioned named
22 defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
23 partnerships that are and were licensed to do business and actually doing business in the State of
24 California.

25 6. During the time of Plaintiff’s employment with Defendants, each of them regularly
26 exercised direct and indirect control of Plaintiff’s wages, working hours, and working conditions during
27 Plaintiff’s employment for Defendants. Plaintiff further alleges that each of the said individual
28

Defendants, including unknown Defendants identified herein as Does, also directly and indirectly controlled the working conditions, wages, working hours, and working conditions of Plaintiff.

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

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

9. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, 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.

10. 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.

FACTUAL ALLEGATIONS

11. Plaintiff worked for Defendants from on or about November 9, 2021, to on or about June 11, 2022. Plaintiff worked in Fresno, California.

12. Defendants routinely require Plaintiff and other employees under the age of 18 to work hours not allowed under Labor Code section 1391. For example, Defendant requires 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.

13. On numerous occasions, Plaintiff complained to his manager, Bee Yang, about being required to work more than four hours on schooldays and being required to work after 10:00 p.m. on days preceding schooldays. In or around April of 2022, Plaintiff is informed and believes that the area coach Argie Santoyo acknowledged that Plaintiff and other employees under the age of 18 should not be required to work more than four hours on schooldays or to work after 10:00 p.m. on days preceding schooldays. Nonetheless, Bee Yang continued to require 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 schooldays. When a human resources representative visited Plaintiff's store, Plaintiff informed the human resources representative that employees under the age of 18 were required to work more than four hours on schooldays and being required to work after 10:00 p.m. on days preceding schooldays. Plaintiff also continued to complain to Bee Yang about the work hours. Instead of no longer requiring Plaintiff to work more than four hours on schooldays or to work after 10:00 p.m. on days preceding schooldays, Defendants terminated Plaintiff's employment on June 11, 2022.

14. California law prohibits employers from terminating at-will employees for reasons that violate established public policy. *See, e.g., Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 278 (1980); *Garcia v. Rockwell Int'l Corp.*, 187 Cal. App. 3d 1556, 1561 (1986) (holding that Labor Code section 1102.5 articulates a public policy against whistleblower retaliation) (disagreed with on other grounds by *Gantt v. Sentry Ins.*, 1 Cal. 4th 1083 (1992)). Labor Code section 1102.5 further prohibits an employer from retaliating against an employee for reporting information that the employee reasonably believes violates or constitutes noncompliance with local, state, or federal statutes, regulations, or rules "regardless of whether disclosing the information is part of the employee's job duties." Lab. Code § 1102.5(a), (b), (d).

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

1 **CLASS ACTION ALLEGATIONS**

2 16. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class
3 certification of the following classes: all current and former non-exempt employees of Defendants in the
4 State of California who at any time since June 29, 2019, were employed as a 16 or 17 year old either for
5 more than four hours in a schoolday when school is in session or after 10:00 p.m. on any day preceding
6 a schoolday.

7 17. **Numerosity and Ascertainability:** The members of the Class are so numerous that
8 joinder of all members would be impractical, if not impossible. The identities of the members of the
9 Class are readily ascertainable by review of Defendants' records, including personnel and payroll
10 records. Plaintiff is informed and believes that Defendants violated the UCL by requiring Plaintiff and
11 the Class to work hours not allowed under Labor Code section 1391.

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

17 19. **Common Question of Law and Fact:** There are predominant common questions of law
18 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
19 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
20 requiring Plaintiff and the Class to work hours not allowed under Labor Code section 1391.

21 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
22 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
23 suffered. As with other members of the Class, Plaintiff was required to work more than four hours on
24 schooldays and to work after 10:00 p.m. on days preceding a schoolday. Plaintiff thus is a member of
25 the Class and has suffered the alleged violations of the Labor Code.

26 21. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
27 in establishing minimum working conditions and requirements in California. These labor standards
28

1 protect employees from onerous terms and conditions of employment or exploitation by employers who
2 have superior economic and bargaining power.

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

12 23. The prosecution of separate actions by individual members of the Class, even if possible,
13 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
14 members of the Class that would establish potentially incompatible standards of conduct for
15 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
16 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
17 of other members of the Class not parties to the adjudications. Further, the claims of the individual
18 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
19 the concomitant costs and expenses.

20 24. Defendants' pattern, practice, and uniform administration of corporate policy in violation
21 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
22 rights of Plaintiff and the Class under Labor Code section 1391, applicable IWC Wage Orders, the
23 UCL, and Code of Civil Procedure section 1021.5 to recover restitution, reasonable attorneys' fees, and
24 costs of suit.

25 25. This action is brought for the benefit of the Class, which is commonly entitled to a
26 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
27 is commonly entitled to restitution of those funds being improperly withheld by Defendant.
28

1 **FIRST CAUSE OF ACTION**

2 **Whistleblower Retaliation (Lab. Code § 1102.5)**

3 **(By Plaintiff Against All Defendants)**

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

5 27. At all relevant times herein, California Labor Code § 1102.5 was in full force and effect
6 and was binding on Defendants. Section 1102.5(b), in pertinent part, provides:

7 [a]n employer, or any person acting on behalf of the employer, shall not retaliate against
8 an employee for disclosing information, or because the employer believes that the
9 employee disclosed or may disclose information, to a government or law enforcement
10 agency, to a person with authority over the employee or another employee who has the
11 authority to investigate, discover, or correct the violation or noncompliance...if the
employee has reasonable cause to believe that the information discloses a violation of
state or federal statute, or a violation of or noncompliance with a local, state, or federal
rule or regulation, regardless of whether disclosing the information is part of the
employee's job duties.

12 28. As alleged herein, Plaintiff complained to his manager, Bee Yang, about being required
13 to work more than four hours on schooldays and being required to work after 10:00 p.m. on days
14 preceding schooldays. In or around April of 2022, Plaintiff is informed and believes that the area coach
15 Argie Santoyo acknowledged that Plaintiff and other employees under the age of 18 should not be
16 required to work more than four hours on schooldays or to work after 10:00 p.m. on days preceding
17 schooldays. Nonetheless, Bee Yang continued to require Plaintiff and other employees under the age of
18 18 to work more than four hours on schooldays and to work after 10:00 p.m. on days preceding
19 schooldays. When a human resources representative visited Plaintiff's store, Plaintiff informed the
20 human resources representative that employees under the age of 18 were required to work more than
21 four hours on schooldays and being required to work after 10:00 p.m. on days preceding schooldays.
22 Plaintiff also continued to complain to Bee Yang about the work hours. In response thereto, Defendants
23 wrongfully terminated Plaintiff's employment.

24 29. As a direct and proximate result of Defendants' unlawful acts, practices, and omissions,
25 Plaintiff has suffered damages in an amount subject to proof at trial. Plaintiff claims such amount as
26 damages together with prejudgment interest thereon pursuant to Civil Code sections 3287 and 3288, and
27 any other applicable provision providing for prejudgment interest.
28

30. As a direct and proximate result of Defendants’ unlawful acts, practices, and omissions, and inasmuch as Defendants are corporations or limited liability companies, Plaintiff seeks civil penalties against Defendants pursuant to Labor Code section 1102.5(e), which provides in pertinent part: “[i]n addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.” Plaintiff further seeks attorneys’ fees pursuant to Labor Code section 1102.5(j).

31. By engaging in the aforementioned unlawful acts, practices, omissions, and by condoning and ratifying such acts, Defendants intended to cause injury to Plaintiff. Defendants' intentional and injurious conduct toward Plaintiff was reckless, malicious, and despicable, and was carried out with a conscious and willful disregard of the rights and safety of others. Therefore, Plaintiff seeks an award of punitive damages, sufficient to punish Defendants and to serve as an example to deter it from similar conduct in the future. Plaintiff claims such amount as damages together with prejudgment interest thereon pursuant to Civil Code sections 3287 and 3288, and any other applicable provision providing for prejudgment interest.

SECOND CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff Against All Defendants)

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

33. The State of California maintains well-established and fundamental public interests in deterring illegal, unethical, or unsafe practices in the workplace as reflected in California laws including, but not limited to, laws prohibiting excessive employment of minors in the workplace, which were binding on Defendants.

34. As described herein, Defendants terminated Plaintiff because of his complaints of excessive employment of minors in the workplace, which Plaintiff reasonably believed constituted a violation of state statutes or violations of or noncompliance with local or state rules or regulations including, but not limited to, California laws prohibiting excessive employment of minors in the workplace.

35. As a direct and proximate result of Defendants' unlawful and improper acts, practices, and omissions, Plaintiff has suffered damages in an amount subject to proof at trial. Plaintiff claims such amount as damages together with prejudgment interest thereon pursuant to Civil Code sections 3287 and 3288, and any other applicable provision providing for prejudgment interest.

36. By engaging in the aforementioned unlawful and improper acts, practices, omissions, and by condoning and ratifying such acts by failing to properly investigate and adequately discipline the perpetrators of these practices and omissions, Defendants intended to cause injury to Plaintiff. Defendants' intentional and injurious conduct toward Plaintiff was reckless, malicious, and despicable, and was carried out with a conscious and willful disregard of the rights and safety of others. Therefore, Plaintiff seeks an award of punitive damages, sufficient to punish Defendants and to serve as an example to deter them from similar conduct in the future.

THIRD CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(By Plaintiff Against All Defendants)

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

38. When Defendants committed the acts described above, they did so deliberately and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and emotional distress. The outrageousness of the above-described conduct is amplified due to upper management's abuse of their positions with actual and apparent authority over Plaintiff, such as is commonly found in employment relationships. Defendants were aware that their unlawful acts would cause Plaintiff to suffer extreme emotional distress and other consequential damages.

39. The above-said acts of Defendants constituted intentional infliction of emotional distress against Plaintiff and such conduct of Defendants was a substantial or determining factor in causing damage and injury to Plaintiff.

40. As a result of Defendants' intentional infliction of emotional distress, Plaintiff has suffered and continues to suffer substantial loss and damages including, loss of salary, future advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount to be determined at trial.

41. Defendants committed said intentional infliction of emotional distress alleged herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from Defendants in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

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

(By Plaintiff and the Class Against All Defendants)

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

43. 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 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.

44. 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 Class of the minimum working protections due to them under the Labor Code and Education Code.

45. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the 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.

FIFTH CAUSE OF ACTION

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

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

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

47. 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 Labor Code section 1391 committed since May 18, 2022, 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.

48. As stated herein, Defendants 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

49. On or about May 18, 2023, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code section 1391, 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.

50. 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. All special damages, according to proof;
2. General damages for emotional distress and mental anguish in a sum according to proof;
3. Exemplary and punitive damages in a sum appropriate to punish Defendants and set an example for others;
4. Prejudgment interest at the prevailing legal rate;
5. For an order certifying the proposed Class;
6. For an order appointing Plaintiff as the representative of the Class;
7. For an order appointing Counsel for Plaintiff as Class Counsel;
8. 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;
9. For all applicable penalties pursuant to Labor Code section 2699(a), (f), and (g), and for attorneys’ fees and costs;

1 10. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code,
2 UCL, and Code of Civil Procedure section 1021.5; and

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

4 DATED: June 29, 2023

DIVERSITY LAW GROUP, P.C.

5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff