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*Superior Court of California,
County of San Francisco*
03/01/2024
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

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

LAUREN HAMILTON, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

LAWRENCE RECRUITING SPECIALISTS,
INC., a Nebraska corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CGC-24-611347

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Unpaid Overtime
(Lab. Code §§ 510, 1198);**
- (2) Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512);**
- (3) Failure to Provide Rest Periods
(Lab. Code § 226.7);**
- (4) Unpaid Sick Pay Wages
(Lab. Code §§ 201-204, 233, 246);**
- (5) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));**
- (6) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and**
- (7) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 Plaintiff, Lauren Hamilton, submits this First Amended Class and Representative Action Complaint (the
3 “Complaint”) against Defendant, Lawrence Recruiting Specialists, Inc., and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. Plaintiff is
8 informed and believes that Defendants have jointly and severally acted intentionally and with deliberate
9 indifference and conscious disregard to the rights of employees by failing to pay all overtime wages,
10 failing to pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and
11 rest periods, failing to pay all sick pay wages, failing to timely pay all wages during employment or
12 upon termination of employment, and by failing to provide complete and accurate itemized wage
13 statements. The Complaint seeks damages, penalties, and other relief pursuant to, among other
14 provisions, Labor Code sections 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 233, 246, 510, 512,
15 558, 1198, and 2698 et seq., and the Unfair Competition Law, codified at Business and Professions
16 Code sections 17200 et seq. (the “UCL”).¹

17 2. Plaintiff and other non-exempt employees are paid on an hourly basis and also earn non-
18 base hourly wages or other non-hourly, non-discretionary remuneration, including for example
19 Housing/Travel incentives and Per Diems. When Plaintiff and other non-exempt employees work more
20 than 8.0 hours in a day or more than 40.0 hours in a week, Defendants fail to consider such earnings
21 when paying overtime wages and thus fail to pay the required overtime rates of pay.

22 3. Moreover, Plaintiff and other non-exempt employees regularly work shifts of at least 3.5
23 hours requiring rest periods and shifts of more than 5.0 hours requiring meal periods. Defendants fail to
24 consider such earnings when Plaintiff and other non-exempt employees’ meal periods and rest periods
25 are missed, late, or interrupted. Specifically, rather than pay an additional hour of regular rate wages for
26 a missed, late, or interrupted meal period or rest period, Defendants routinely underpay the additional
27 hour of wages to Plaintiff and other non-exempt employees at their base hourly rates of pay.

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

4. Defendants also fail to pay sick pay wages at the regular rate of pay. As discussed above, Plaintiff and other non-exempt employees also earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example Housing/Travel incentives and Per Diems. Defendants fail to consider such wages when paying sick pay wages. Rather than pay sick pay wages at the regular rate of pay, Defendants underpay sick pay wages to Plaintiff and other non-exempt employees at their base rates of pay.

5. Because Plaintiff and other non-exempt employees are underpaid overtime wages, are not paid an additional hour of wages at their regular rates, and are underpaid sick pay wages, Defendants routinely fail to timely pay Plaintiff and other non-exempt employees all wages during employment or upon separation of employment. Moreover, Defendants also routinely fail to furnish wage statements that accurately show and itemize all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

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

7. 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.

JURISDICTION AND VENUE

8. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, 510, and 512 and the UCL.

9. Venue is proper in the County of San Francisco. Plaintiff worked for Defendants in San Francisco, California.

PARTIES

10. Plaintiff was employed by Defendants as an interventional radiology technologist and worked in California for Defendants for 30 or more days within a year of hiring. Until her employment ended in December of 2023, Plaintiff was paid on an hourly basis as a non-exempt employee and earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example Housing/Travel incentives and Per Diems. When Plaintiff earned such compensation and worked more

1 than 8.0 hours in a day or more than 40.0 hours in a week, Plaintiff was not paid overtime at the legally
2 required rate. When Plaintiff worked 3.5 hours in a workday, she regularly was not provided lawful rest
3 periods. Likewise, when Plaintiff worked more than 5.0 hours in a workday, she regularly was not
4 provided lawful meal periods. Plaintiff also was regularly not provided an additional hour of regular rate
5 wages for a missed, late, or interrupted meal period or rest period but instead paid an additional hour of
6 wages at her base hourly rate of pay. Throughout her employment, Plaintiff also accrued and actually
7 used sick leave. When sick leave was used in workweeks that Plaintiff earned non-base hourly wages or
8 other non-hourly, non-discretionary remuneration in addition to her base hourly wages, sick pay wages
9 were paid at Plaintiff's base rate of pay rather than her regular rate of pay. Plaintiff was not timely paid
10 all due wages during employment or upon separation of employment and also was not provided with
11 accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and customs of
12 Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the
13 Labor Code and the UCL.

14 11. Plaintiff is informed and believes that Lawrence Recruiting Specialists, Inc. was and is a
15 Nebraska corporation. Plaintiff is informed and believes that at all times herein mentioned named
16 defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
17 partnerships that are and were licensed to do business and actually doing business in the State of
18 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
19 subject to Sections 201-204, 226, 226.7, 233, 246, 510, and 512 and the UCL.

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

26 13. At all times mentioned herein, each of said Defendants participated in the doing of the
27 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
28

the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

14. 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.

15. 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

16. **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 who have worked more than 8.0 hours in a day or 40 hours in a workweek since January 2, 2020, in a workweek in which they also earned non-base hourly wages or other non-hourly, non-discretionary remuneration (the “Overtime Class”), (ii) all current and former non-exempt employees of Defendants in the State of California who have been paid an additional hour of pay for missed, late, or interrupted meal periods and rest periods in a workweek since January 2, 2020, in which they also earned non-base hourly wages or other non-hourly, non-discretionary remuneration (the “Additional Hour Class”), (iii) all current and former non-exempt employees of Defendants in the State of California who have been paid sick pay wages in a workweek since January 2, 2020, in which they also earned non-base hourly wages or other non-hourly, non-discretionary remuneration (the “Sick Pay Class”), and (iv) all current and former non-exempt employees of Defendants in the State of California who have worked more than 8.0 hours in a day or 40 hours in a workweek, been paid an additional hour of pay for missed, late, or interrupted meal periods and rest periods, or been paid sick pay wages in a workweek since January 2, 2023, in which they also earned non-base hourly wages or other non-hourly,

1 non-discretionary remuneration (the “Wage Statement Class”). The Overtime Class, Additional Hour
2 Class, Sick Pay Class, and Wage Statement Class are collectively referred to as the “Class.”

3 17. **Numerosity and Ascertainability:** The members of the Class are so numerous that
4 joinder of all members would be impractical, if not impossible. The identities of the members of the
5 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
6 informed and believes that Defendants violated Sections 201-204, 226, 226.7, 233, 248, 510, and 512
7 and the UCL against Plaintiff and the Class by failing to pay all overtime wages, failing to pay an
8 additional hour of regular rate wages for a missed, late, or interrupted meal period or rest period, failing
9 to pay all sick pay wages, and failing to provide complete and accurate itemized wage statements.

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

15 19. **Common Question of Law and Fact:** There are predominant common questions of law
16 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
17 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
18 failing to pay all overtime wages, to pay an additional hour of regular rate wages for missed, late, or
19 interrupted meal periods and rest periods, to pay all sick pay wages due, to timely pay all wages during
20 employment or upon separation of employment, or provide complete and accurate itemized wage
21 statements.

22 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
23 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
24 suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt
25 employee and also earned non-base hourly wages or other non-hourly, non-discretionary remuneration,
26 including for example Housing/Travel incentives and Per Diems. Plaintiff was regularly not paid
27 overtime at the legally required rate. Plaintiff was regularly not provided an additional hour of regular
28 rate wages for a missed, late, or interrupted meal period or rest period but instead paid an additional

1 hour of wages at her base hourly rate of pay. Plaintiff also was regularly paid sick pay wages at
2 Plaintiff's base rate of pay rather than her regular rate of pay. Plaintiff was not timely paid all due wages
3 during employment or upon separation of employment and also was not provided with accurate
4 itemized wage statements. Plaintiff thus is a member of the Class and has suffered the alleged violations
5 of the Labor Code.

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

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

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

27 24. Defendants' pattern, practice, and uniform administration of corporate policy in violation
28 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the

rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 226.7, 233, 246, 510, 512, and 1198, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

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

FIRST CAUSE OF ACTION

Unpaid Overtime (Lab. Code §§ 510, 1198)

(By Plaintiff and the Overtime Class Against All Defendants)

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

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

28. Plaintiff and the Overtime Class regularly work more than 8.0 hours in a day or 40.0 hours in a workweek. As a matter of policy and practice, when Plaintiff and the Overtime Class work hours entitled to overtime wages, Defendants fail to pay overtime wages for all hours exceeding eight in a day or 40 in a workweek. Specifically, whenever Plaintiff and the Overtime Class are paid non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example Housing/Travel incentives and Per Diems, Defendants fail to consider such earnings when paying overtime wages and thus fail to pay the required overtime rates of pay. As such, Plaintiff and the Overtime Class are owed overtime wages.

29. Moreover, all owing wages must be paid timely. 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

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

10 30. Based on Defendants' failure to pay overtime wages to Plaintiff and the Overtime Class,
11 as a matter of policy and practice, Defendants fail to timely pay Plaintiff and the Overtime Class all due
12 wages during employment and fail to timely pay all due wages upon separation of employment. On
13 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
14 of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully
15 fail to timely pay Plaintiff and the Overtime Class all wages due, Defendants are subject to applicable
16 penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

17 31. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
18 entitles Plaintiff and the Overtime Class to recover unpaid overtime and interest thereon, applicable
19 penalties, attorneys' fees, and costs of suit.

20 **SECOND CAUSE OF ACTION**

21 **Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512)**

22 **(By Plaintiff and the Additional Hour Class Against All Defendants)**

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

24 33. Because Plaintiff and the Additional Hour Class were non-exempt employees,
25 Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order.
26 Section 512(a) generally prohibits employment of an individual for a work period of more than five
27 hours per day without providing the employee with an uninterrupted, duty-free meal period of at least 30
28 minutes. Section 226.7(b) provides that an employer shall not require an employee to work during a

1 meal period. Section 226.7(c) states that “the employer shall pay the employee one additional hour of
2 pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
3 period is not provided.”

4 34. As a matter of policy and practice, whenever Defendants pay an additional hour of wages
5 to Plaintiff and the Additional Hour Class for missed, late, or interrupted meal periods, Defendants pay
6 an additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in
7 workweeks in which Plaintiff and the Additional Hour Class earn non-base hourly wages or other non-
8 hourly, non-discretionary remuneration, including for example Housing/Travel incentives and Per
9 Diems, Defendants fail to consider such wages when calculating the regular rate of pay for purposes of
10 paying the additional hour of wages. As such, Plaintiff and the Additional Hour Class are owed
11 additional wages for missed, late, or interrupted meal periods.

12 35. Moreover, all owing wages must be paid timely. Based on Defendants’ failure to pay an
13 additional hour of wages to Plaintiff and the Additional Hour Class for missed, late, or interrupted meal
14 periods, and as a matter of policy and practice, Defendants also fail to timely pay Plaintiff and the
15 Additional Hour Class all due wages. On information and belief, Defendants were advised by skilled
16 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff’s
17 allegations. Because Defendants willfully fail to timely pay Plaintiff and the Additional Hour Class all
18 wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among
19 other Labor Code provisions.

20 36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
21 entitles Plaintiff and the Additional Hour Class to recover unpaid wages, including interest thereon,
22 applicable penalties, attorneys’ fees, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure to Provide Rest Periods (Lab. Code § 226.7)**

25 **(By Plaintiff and the Additional Hour Class Against All Defendants)**

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

27 38. Because Plaintiff and the Additional Hour Class were non-exempt employees,
28 Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. Section

1 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order. The
2 applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every
3 four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not
4 require an employee to work during a rest period. Section 226.7(c) states that “the employer shall pay
5 the employee one additional hour of pay at the employee’s regular rate of compensation for each
6 workday that the meal or rest or recovery period is not provided.”

7 39. As a matter of policy and practice, whenever Defendants pay an additional hour of wages
8 to Plaintiff and the Additional Hour Class for missed, late, or interrupted rest periods, Defendants pay an
9 additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in workweeks
10 in which Plaintiff and the Additional Hour Class earn non-base hourly wages or other non-hourly, non-
11 discretionary remuneration, including for example Housing/Travel incentives and Per Diems,
12 Defendants fail to consider such wages when calculating the regular rate of pay for purposes of paying
13 the additional hour of wages. As such, Plaintiff and the Additional Hour Class are owed additional
14 wages for missed, late, or interrupted rest periods.

15 40. Moreover, all owing wages must be paid timely. Based on Defendants’ failure to pay an
16 additional hour of wages to Plaintiff and the Additional Hour Class for missed, late, or interrupted rest
17 periods, and as a matter of policy and practice, Defendants also fail to timely pay Plaintiff and the
18 Additional Hour Class all due wages. On information and belief, Defendants were advised by skilled
19 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff’s
20 allegations. Because Defendants willfully fail to timely pay Plaintiff and the Additional Hour Class all
21 wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among
22 other Labor Code provisions.

23 41. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
24 entitles Plaintiff and the Additional Hour Class to recover unpaid wages, including interest thereon,
25 applicable penalties, attorneys’ fees, and costs of suit.

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1 **FOURTH CAUSE OF ACTION**

2 **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 233, 246)**

3 **(By Plaintiff and the Sick Pay Class Against All Defendants)**

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

5 43. Section 233 provides that an employer must permit an employee to use accrued sick leave
6 in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
7 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section
8 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to
9 sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i)
10 "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of
11 pay for the workweek in which the employee uses paid sick time, whether or not the employee actually
12 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated
13 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
14 hours worked in the full pay periods of the prior 90 days of employment." Under Sections 204, 218, and
15 233, employees may sue to recover underpaid sick pay wages as damages.

16 44. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the
17 Sick Pay Class at the incorrect rate of pay. Plaintiff and the Sick Pay Class regularly use accrued sick
18 leave in workweeks in which they also earn non-base hourly wages or other non-hourly, non-
19 discretionary remuneration, including for example Housing/Travel incentives and Per Diems. As a
20 matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the Sick Pay Class at the
21 base hourly rate of pay, as opposed to the regular rate of pay, which would consider all non-
22 discretionary remuneration in addition to base hourly wages, or the rate resulting from dividing the
23 employee's total wages, not including overtime premium pay, by the employee's total hours worked in
24 the full pay periods of the prior 90 days of employment. As a result, Defendants underpay sick pay
25 wages to Plaintiff and the Sick Pay Class.

26 45. Section 204 provides that wages generally are due and payable twice during each
27 calendar month and are to be paid no later than the payday for the next regular payroll period. Consistent
28 with Section 204, Section 246 specifically requires that, upon use of accrued sick leave, vested sick pay

wages are due and to be paid no later than the payday for the next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer discharges an employee, 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 72-hour 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. The Labor Code penalizes untimely payments. For example, 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. Likewise, Section 210 provides penalties for violations of Section 204 and untimely payments during employment. Under Sections 203, 210, and 218, employees may sue to recover applicable penalties.

46. As alleged herein and as a matter of policy and practice, Defendants routinely underpay sick pay wages and thus do not timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other Labor Code provisions. Plaintiff is informed and believe that Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay Plaintiff and the Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

47. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Sick Pay Class to recover underpaid sick pay wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

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1 **FIFTH CAUSE OF ACTION**

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

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

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

5 49. Section 226(a) requires an employer to furnish to its employees itemized wage
6 statements that show accurate information, including without limitation, all applicable hourly rates in
7 effect during the pay period, gross wages earned, and net wages earned.

8 50. Defendants fail to provide accurate itemized wage statements to Plaintiff and the Wage
9 Statement Class. Because of the above violations and as a matter of policy and practice, Defendants fail
10 to furnish Plaintiff and the Wage Statement Class with wage statements that accurately show the
11 applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

12 51. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
13 entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys' fees, and costs
14 of suit.

15 **SIXTH CAUSE OF ACTION**

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

17 **(By Plaintiff and the Class Against All Defendants)**

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

19 53. Plaintiff is informed and believes that at Defendants have engaged and continue to
20 engage in unfair and unlawful business practices in California by utilizing the employment policies and
21 practices alleged herein, including the failure to pay all overtime wages, to pay an additional hour of
22 regular rate wages for missed, late, or interrupted meal periods and rest periods, and to pay all sick pay
23 wages.

24 54. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
25 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed
26 by the UCL. Defendants have deprived Plaintiff, the Overtime Class, the Additional Hour Class, and the
27 Sick Pay Class the minimum working condition standards and conditions due to them under the Labor
28 Code and applicable IWC Wage Orders.

1 55. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff, the Overtime Class, the Additional Hour Class, and the Sick Pay Class to full
3 restitution of all monies withheld, acquired, or converted by means of the unfair practices complained of
4 herein, including interest thereon, attorneys' fees, and costs of suit.

5 **SEVENTH CAUSE OF ACTION**

6 **Violations of California Labor Code (Lab. Code §§ 2698 et seq.)**

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

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

9 57. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
10 et seq. ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
11 capacity, Plaintiff would seek penalties for Defendants' violations of Sections 201-204, 226, 226.7, 233,
12 248, 510, 512, and 1198 committed since December 28, 2022, against all aggrieved employees. As
13 stated herein, Defendants fail to (i) pay overtime wages, (ii) pay an additional hour of regular rate wages
14 for missed, late, or interrupted meal periods and rest periods, (iii) pay all sick pay wages, (iv) timely pay
15 all wages during employment or upon termination of employment, and (v) provide complete and
16 accurate itemized wage statements. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one
17 or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

18 58. On or about December 28, 2023, Plaintiff sent written notice to the Labor & Workforce
19 Development Agency ("LWDA") of specific facts and theories for Defendants' above violations.
20 Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing
21 of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the
22 allegations in the written notice.

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

26 **PRAYER FOR RELIEF**

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys' fees and costs;
5. Upon the Second Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys' fees and costs;
6. Upon the Third Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys' fees and costs;
7. Upon the Fourth Cause of Action damages, including unpaid wages and interest thereon, penalties, and attorneys' fees and costs;
8. Upon the Fifth Cause of Action for penalties, actual damages, and attorneys' fees and costs;
9. Upon the Sixth 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;
10. Upon the Seventh Cause of Action for penalties pursuant to Section 2699(a), (f), and (g), and for attorneys' fees and costs;
11. 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
12. For such other and further relief that the Court may deem just and proper.

DATED: March 1, 2024

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

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STATE OF CALIFORNIA]
COUNTY OF LOS ANGELES]ss.

On March 1, 2024, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

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


Erika Mejia