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ELECTRONICALLY FILED
Superior Court of California,
County of Placer

01/29/2021
By: Olivia Lucatuorto, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

MELISSA NUNO, as a private attorney general,

Plaintiff,

vs.

PAN AMERICAN GROUP LLC, a Delaware
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. S-CV-0045804

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

Plaintiff, Melissa Nuno, as a proxy for the State of California, submits this First Amended Complaint against Defendant, Pan American Group LLC, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”), this representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who work for Defendants. The Complaint seeks penalties and other relief pursuant to, among other provisions, Labor Code sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 248.5, 510, 512, 558, 1182.12, 1197, 1197.1, 1198, 2802, and 2698 et seq.¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to authorize and permit duty-free rest periods, provide duty-free meal periods, pay all premium wages for such missed rest periods and meal periods, pay minimum wages for all hours worked, pay all overtime, pay all sick pay, reimburse necessary and reasonable business expenses, and provide accurate itemized wage statements.

3. Defendants routinely fail to authorize and permit non-exempt employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof. Specifically, whenever only one manager is on duty, employees are denied duty-free rest periods. Instead, they are not allowed to leave the work premises and are required to work and respond to any work-related issues that arise. Despite not permitting duty-free rest periods, Defendants also routinely fail to pay employees the requisite rest period premium pay of an additional hour of wages.

4. On shifts exceeding five hours of work, Defendants also routinely fail to provide non-exempt employees with a duty-free 30-minute meal period within the first five hours of work. As with rest periods, whenever only one manager is on duty, employees are denied duty-free meal periods. Instead, they are not allowed to leave the work premises and are required to work and respond to any work-related issues that arise. Defendants also routinely fail to pay employees the requisite meal period premium pay of an additional hour of wages.

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

1 5. Defendants also routinely fail to pay wages to non-exempt employees for all hours
2 worked, including overtime. Specifically, employees are required to travel to pick up products or
3 materials from other store locations. Even when this work occurs before the start or after the end of
4 employees' work shifts, they are not paid any wages for such work.

5 6. Defendants also routinely fail to pay sick pay at the regular rate of pay. Specifically, non-
6 exempt employees earn non-discretionary remuneration, including for example profit sharing bonuses,
7 that Defendants fail to consider when paying sick pay wages. Rather than pay sick pay wages at the
8 regular rate of pay, Defendants underpay sick pay wages to employees at their base rates of pay.

9 7. Defendants also routinely fail to provide accurate itemized wage statements to
10 employees. First, as a result of the above practices, Defendants fail to furnish non-exempt employees
11 with wage statements that accurately show and itemize all applicable work hours or gross wages earned
12 and net wages earned, including all minimum wages, overtime, and premium pay earned for missed rest
13 periods and meal periods. Second, whenever overtime wages are paid to non-exempt employees,
14 Defendants issue wage statements that fail to accurately itemize and show total hours worked.
15 Moreover, when the hours shown on the wage statements are added up, the sum also does not equal the
16 total hours worked. Third, whenever overtime wages are paid to non-exempt employees, Defendants
17 issue wage statements that do not itemize and show the overtime rate as 1.5 times the regular rate of
18 pay. Rather than show all applicable hourly rates in effect during the pay period, the overtime rates
19 appear to be one-half of the hourly rate of pay. Fourth, Defendants issue wage statements to Plaintiff
20 and all other employees that do not itemize and show the name of the legal entity that is the employer.
21 Instead, "Pan American Group LLC"—an entity which is not among the corporations, limited liability
22 companies, and limited partnerships of record with the California Secretary of State—is shown on wage
23 statements.

24 8. Defendants also routinely fail to reimburse employees for necessary business expenses
25 incurred in performing their work for Defendants. First, as discussed above, employees are required to
26 travel to other store locations. Although employees are expected to use their personal vehicles, they are
27 not reimbursed for their mileage and related expenses. Second, employees are required to download
28 various apps to perform their job duties, including, for example, to recruit potential employee

1 candidates. Although employees are expected to use their personal cell phones, they are not reimbursed
2 for their related expenses.

3 9. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
4 in establishing minimum working conditions and requirements in California. These labor standards
5 protect employees from onerous terms and conditions of employment or exploitation by employers who
6 have superior economic and bargaining power. Plaintiff is informed and believes that Defendants have
7 engaged in, among other things, a system of willful violations of the Labor Code by creating and
8 maintaining policies, practices, and customs that knowingly deny its employees the above stated rights
9 and benefits.

10 10. Defendants' pattern, practice, and uniform administration of corporate policy in violation
11 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
12 rights of Plaintiff and aggrieved employees under Sections 201-204, 210, 226, 226.3, 226.7, 233, 246,
13 248.5, 510, 512, 558, 1182.12, 1197, 1197.1, 1198, 2802, and 2698 et seq., applicable IWC Wage
14 Orders, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable
15 attorneys' fees, and costs of suit.

16 JURISDICTION AND VENUE

17 11. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
18 Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1198, and
19 2802.

20 12. Venue is proper in the County of Placer. Plaintiff worked for Defendants in Auburn,
21 California.

22 PARTIES

23 13. Plaintiff began working for Defendants in or about 2015 and has worked in California
24 for Defendants for 30 or more days within a year. Plaintiff is paid on an hourly basis as a non-exempt
25 managerial employee and receives non-hourly remuneration, including profit-sharing bonuses. Plaintiff
26 regularly worked more than five hours in a workday, but she was not permitted to take duty-free 10-
27 minute rest periods, was not provided duty-free 30-minute meal periods, and was not paid premium pay
28 of an additional hour of wages for missed rest periods or meal periods. Plaintiff also worked in excess

1 of eight hours in a day or 40 hours in a week, in excess of 12 hours in a day, and accrued and used paid
2 sick leave. Plaintiff was regularly required to use her personal vehicle and personal cell phone to
3 perform work duties for Defendants. She, however, was not reimbursed for her mileage and related
4 expenses or cell phone related expenses. Nor was Plaintiff paid for work time when she was required to
5 travel to other store locations. Plaintiff also was not provided with accurate itemized wage statements.
6 Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this
7 action in ways that have deprived her of the rights guaranteed by the Labor Code.

8 14. Plaintiff is informed and believes that Defendant, Pan American Group LLC, was and is
9 a Delaware limited liability company. Plaintiff is informed and believes that at all times herein
10 mentioned named defendants and Does 1 through 50, were and are corporations, business entities,
11 individuals, or partnerships that are and were licensed to do business and actually doing business in the
12 State of California. Based upon all the facts and circumstances incident to Defendants' business,
13 Defendants are subject to Sections 201-204, 226, 233, 246, 226.7, 510, 512, 1182.12, 1197, 1198, and
14 2802.

15 15. 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 16. At all times herein mentioned, 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 17. 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

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

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

7 **PAGA ALLEGATIONS**

8 19. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks
9 penalties for Defendants' (i) violations of Sections 233 and 246 committed against all aggrieved
10 employees since May 2, 2019, and (ii) violations of Sections 201-204, 226, 226.7, 510, 512, 1182.12,
11 1197, 1198, and 2802 committed against all aggrieved employees since November 6, 2020.

12 20. On or about October 16 and 20, 2020, Plaintiff sent written notice to the Labor &
13 Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of
14 Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802. Plaintiff
15 simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this
16 Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations
17 in the written notice.

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

20 **FIRST CAUSE OF ACTION**

21 **Violation of Lab. Code §§ 2698 et seq.**

22 **(By Plaintiff on Behalf of Aggrieved Employees Against All Defendants)**

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

24 23. For Plaintiff and non-exempt employees, Defendants were required to comply with
25 Section 226.7 and the applicable IWC Wage Order. The applicable laws generally require an employer
26 to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof.
27 Section 226.7(b) provides that an employer shall not require an employee to work during a rest period.
28 Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

24. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to aggrieved employees. As a matter of policy and practice, Defendants also fail to pay an additional hour of pay at the regular rate of compensation for each rest period missed by aggrieved employees. Specifically, whenever only one manager was on duty, aggrieved employees were denied duty-free rest periods during their shifts of at least 3.5 hours. Aggrieved employees were routinely denied duty-free rest periods and instead were not allowed to leave the work premises and were required to work and respond to any work-related issues that arose. Aggrieved employees were not paid the requisite rest period premium pay. Defendants thus violate Section 226.7 and the applicable IWC Wage Order.

25. For Plaintiff and non-exempt employees, Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally prohibits employment of an individual for a work period of more than five hours per day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes. Section 226.7(b) provides that an employer shall not require an employee to work during a meal period. Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

26. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail to provide aggrieved employees with a duty-free 30-minute meal period within the first five hours of work. As a matter of policy and practice, Defendants also do not pay an additional hour of pay at the regular rate of compensation for each meal period missed by aggrieved employees. As with rest periods, whenever only one manager was on duty, aggrieved employees were denied duty-free meal periods during their shifts of more than 5.0 hours. Aggrieved employees were routinely denied duty-free meal periods and instead were not allowed to leave the work premises and were required to work and respond to any work-related issues that arose. Aggrieved employees were not paid all requisite wages or meal period premium pay. Defendants thus violate Sections 226.7 and 512 and the applicable IWC Wage Order.

1 27. Sections 1182.12 and 1197 provide a minimum wage to be paid to employees and make
2 unlawful the payment of a lesser wage. The applicable IWC Wage Order defines compensable time as
3 “the time during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
5 § 11070(2)(G) (defining “Hours Worked”).

6 28. As a matter of policy and practice, Defendants fail to pay at least the minimum wage for
7 all hours worked by aggrieved employees. As a matter of policy and practice, aggrieved employees
8 were required to travel to pick up products or materials from other store locations. Even when this work
9 occurred before the start or after the end of their work shifts, aggrieved employees were not paid any
10 wages for such work. Defendants thus violate Sections 1182.12 and 1197 and the applicable IWC Wage
11 Order.

12 29. Section 510 and the applicable IWC Wage Order provide that “[a]ny work in excess of
13 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
14 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
15 less than one and one-half times the regular rate of pay for an employee” and that “[a]ny work in excess
16 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
17 an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
18 IWC Wage Order.

19 30. As a matter of policy and practice, Defendants fail to pay overtime worked by aggrieved
20 employees. As a matter of policy and practice, aggrieved employees regularly worked hours entitled to
21 overtime and were required to travel to pick up products or materials from other store locations. Even
22 when this work occurred before the start or after the end of their work shifts and resulted in more than
23 eight or 12 hours of work in a day or 40 hours of work in a week, aggrieved employees were not paid
24 overtime for such work. Defendants thus violate Sections 510 and 1198 and the applicable IWC Wage
25 Order.

26 31. Section 204 provides that wages are generally due and payable no later than seven days
27 after the end of a pay period or at least twice during each calendar month, on days designated in
28 advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages

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

8 32. Based on Defendants' failure to pay rest period premium pay, meal period premium pay,
9 minimum wages, and overtime to aggrieved employees and as a matter of policy and practice,
10 Defendants failed to timely pay aggrieved employees all due wages. On information and belief,
11 Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the
12 Labor Code as it relates to Plaintiff's allegations. Defendants thus violated Section 201-204 by not
13 timely paying all due wages.

14 33. Section 233 provides that an employer must permit an employee to use accrued sick
15 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
16 provides that an employee is entitled to sick pay wages for use of accrued sick leave. Once accrued sick
17 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer
18 must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt
19 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
20 the employee uses paid sick time, whether or not the employee actually works overtime in that
21 workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the
22 employee's total wages, not including overtime premium pay, by the employee's total hours worked in
23 the full pay periods of the prior 90 days of employment." Section 204 generally provides that wages are
24 due and payable twice during each calendar month, on days designated in advance by the employer as
25 the regular paydays. Consistent with Section 204, Section 246 also provides that an employer shall
26 provide payment for sick leave taken by an employee no later than the payday for the next regular
27 payroll period after the sick leave was taken.
28

34. As a matter of policy and practice, Defendants paid sick pay wages to Plaintiff and aggrieved employees at the incorrect rate of pay. As a matter of policy and practice, Defendants paid Plaintiff and aggrieved employees at the base hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary remuneration in addition to their base hourly wages, including profit-sharing bonuses, or by dividing the employees' total wages, not including overtime premium pay, by the employees' total hours worked in the full pay periods of the prior 90 days of employment, as required by Section 246. This resulted in underpayments of sick pay to Plaintiff and aggrieved employees.

35. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid sick pay wages to Plaintiff and aggrieved employees. Because Defendants did not pay or timely pay Plaintiff and aggrieved employees all owing and underpaid sick pay wages, Defendants violated Sections 201-204, 233, and 246, among other Labor Code provisions. On information and belief, 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).

36. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, gross wages earned, net wages earned, total hours worked, and the name of the legal entity that is the employer.

37. As a matter of policy and practice, Defendants failed to provide accurate itemized wage statements to aggrieved employees. Specifically, because of Defendants' rest period, meal period, minimum wage, and overtime violations, Defendants failed to furnish aggrieved employees with wage statements that accurately showed all applicable work hours or gross wages earned and net wages earned, including all minimum wages, overtime, and premium pay earned for missed rest periods and meal periods.

38. As a matter of policy and practice, Defendants also failed to provide accurate itemized wage statements whenever aggrieved employees were paid overtime wages. Specifically, whenever overtime wages are paid to non-exempt employees, Defendants issue wage statements that do not itemize and show (i) the overtime rate as 1.5 times the regular rate of pay or (ii) the total hours worked. Rather than show all applicable hourly rates in effect during the pay period, the overtime rates appear to be one-half of the hourly rate of pay. Not only failing to itemize the accurate total hours worked during the pay period, the hours shown on the wage statements also do not appear to add up to equal the total hours worked.

39. As a matter of policy and practice, Defendants also failed to provide aggrieved employees with wage statements that itemize and show the name of the legal entity that is the employer. Instead, “Pan American Group LLC”—an entity which is not among the corporations, limited liability companies, and limited partnerships of record with the California Secretary of State—is shown on wage statements. Defendants thus violate Sections 226.

40. Section 2802 requires that an employer must reimburse employees for all necessary expenditures and losses incurred in the performance of their jobs. Section 2802 is intended to prevent employers from placing their operating expenses and cost of doing business on employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

41. As a matter of policy and practice, Defendants failed to reimburse aggrieved employees for necessary business expenses incurred in performing their work for Defendants. As a matter of policy and practice, aggrieved employees were required to travel to other store locations. Although aggrieved employees were expected to use their personal vehicles, they were not reimbursed for their mileage and related expenses.

42. As a matter of policy and practice, Defendants also failed to reimburse aggrieved employees for necessary business expenses incurred in performing their work for Defendants. As a matter of policy and practice, aggrieved employees were required to download various apps to perform their job duties, including, for example, to recruit potential employee candidates. Although aggrieved employees were expected to use their personal cell phones, they were not reimbursed for their related expenses. Defendants thus violate Sections 2802.

PRAYER FOR RELIEF

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

1. Upon the First Cause of Action for penalties according to proof pursuant to Section 2699, and for costs and attorneys' fees;
2. Upon each cause of action for attorneys' fees and costs as provided by Section 2699, Code of Civil Procedure section 1021.5, and any other applicable laws; and
3. For such other and further relief that the Court may deem just and proper.

DATED: January 29, 2020

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

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4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES] ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On January 29, 2021, I served the following document(s) described as: **FIRST**
11 **AMENDED REPRESENTATIVE ACTION COMPLAINT UNDER THE LABOR CODE**
12 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**
13 on the interested parties in this action as follows:

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24 *Attorney for Plaintiff Melissa Nuno*
25 *(Via E-Mail Only)*

26 X BY MAIL: by placing _____ the original or X a true and correct
27 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
28 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.

1 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
2 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
3 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
4 indicated above or on the attached mailing list. I certify that said electronic transmission was
5 completed and that all pages were received by the party(ies) identified herein or on the attached
6 mailing list.

7 I declare under penalty of perjury under the laws of the State of California that the
8 above is true and correct. Executed on January 29, 2021, at Los Angeles, California.

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Erika Mejia