

11/02/2020
By: Marina Olivarez Fuentes, Deputy Clerk

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

WEBBER LAW GROUP
Kelsey A. Webber (State Bar No. 303721)
Kelsey.Webber@WebberLawGroup.com
333 University Ave, Suite 200
Sacramento, California 95825
Telephone: (916) 588-0683

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

MELISSA NUNO, as an individual and on behalf
of all others similarly situated, and 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

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Rest Period Violations
(Lab. Code § 226.7);
- (2) Meal Period Violations
(Lab. Code §§ 226.7, 512);
- (3) Unpaid Minimum Wages
(Lab. Code §§ 1182.12, 1197)
- (4) Unpaid Overtime
(Lab. Code §§ 510, 1198)
- (5) Unpaid Sick Pay
(Lab. Code §§ 204, 233, 246)
- (6) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
- (7) Unreimbursed Business Expenses
(Lab. Code § 2802);
- (8) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (9) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

On behalf of herself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Melissa Nuno, submits this Class and Representative Action Complaint against Defendant, Pan American Group LLC, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint addresses Defendants’ violations of Labor Code sections 204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802, and seeks penalties, damages, and other relief pursuant to, among other provisions, Labor Code sections 210, 218, 218.5, 248.5, 558, 1194, 1194.2. and 2698 *et seq.*, and the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the “UCL”).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 failed to authorize and permit Plaintiff and other 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 was on duty, Plaintiff and other non-exempt employees were denied duty-free rest periods. Instead, they were not allowed to leave the work premises and were required to work and respond to any work-related issues that arose. Despite not permitting duty-free rest periods, Defendants also routinely failed to pay Plaintiff and other non-exempt employees the requisite rest period premium pay of an additional hour of wages.

4. On shifts exceeding five hours of work, Defendants also routinely failed to provide Plaintiff and other non-exempt employees with a duty-free 30-minute meal period within the first five hours

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

1 of work. As with rest periods, whenever only one manager was on duty, Plaintiff and other non-exempt
2 employees were denied duty-free meal periods. Instead, they were not allowed to leave the work premises
3 and were required to work and respond to any work-related issues that arose. Defendants also routinely
4 failed to pay Plaintiff and other non-exempt employees the requisite meal period premium pay of an
5 additional hour of wages.

6 5. Defendants also routinely failed to pay wages to Plaintiff and other non-exempt employees
7 for all hours worked, including overtime. Specifically, Plaintiff and other non-exempt employees were
8 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 Plaintiff and other non-exempt employees' work shifts, they
10 were not paid any wages for such work.

11 6. Defendants also routinely failed to pay sick pay at the regular rate of pay. Specifically,
12 Plaintiff and other non-exempt employees earn non-discretionary remuneration, including for example profit
13 sharing bonuses, that Defendants fail to consider when paying sick pay. Rather than pay sick pay at the
14 regular rate of pay, Defendants underpay sick pay to Plaintiff and other non-exempt employees at their
15 base rates of pay.

16 7. Defendants also routinely failed to provide accurate itemized wage statements to Plaintiff
17 and other employees. First, as a result of the above practices, Defendants failed to furnish Plaintiff and
18 other non-exempt employees with wage statements that accurately showed and itemized all applicable work
19 hours or gross wages earned and net wages earned, including all minimum wages, overtime, and premium
20 pay earned for missed rest periods and meal periods. Second, whenever overtime wages were paid to
21 Plaintiff and other non-exempt employees, Defendants issued wage statements that fail to accurately
22 itemize and show total hours worked. Moreover, when the hours shown on the wage statements are
23 added up, the sum also does not equal the total hours worked. Third, whenever overtime wages were
24 paid to Plaintiff and other non-exempt employees, Defendants issued wage statements that do not
25 itemize and show the overtime rate as 1.5 times the regular rate of pay. Rather than show all applicable
26 hourly rates in effect during the pay period, the overtime rates appear to be one-half of the hourly rate of
27 pay. Fourth, Defendants issue wage statements to Plaintiff and all other employees that do not itemize
28 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.

8. Defendants also routinely failed to reimburse Plaintiff and other employees for necessary business expenses incurred in performing their work for Defendants. First, as discussed above, Plaintiff and other employees were required to travel to other store locations. Although Plaintiff and other employees were expected to use their personal vehicles, they were not reimbursed for their mileage and related expenses. Second, Plaintiff and other employees were required to download various apps to perform their job duties, including, for example, to recruit potential employee candidates. Although Plaintiff and other employees were expected to use their personal cell phones, they were not reimbursed for their related expenses.

9. 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.

10. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

JURISDICTION AND VENUE

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

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

PARTIES

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

1 an additional hour of wages for missed rest periods or meal periods. Plaintiff also was regularly required to
2 use her personal vehicle and personal cell phone to perform work duties for Defendants. She, however, was
3 not reimbursed for her mileage and related expenses or cell phone related expenses. Nor was Plaintiff
4 paid for work time when she was required to travel to other store locations. Plaintiff also was not provided
5 with accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and customs
6 of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by
7 the Labor Code and the UCL.

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 204, 226, 233, 246, 226.7, 510, 512, 1182.12, 1197, 1198, and 2802,
14 and the UCL.

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 CLASS ACTION ALLEGATIONS

8 19. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
9 certification of the following classes: (i) all current and former non-exempt managerial employees of
10 Defendants in the State of California who worked at any time since May 2, 2016 (the “Managerial
11 Class”), (ii) all current and former employees of Defendants in the State of California since May 2,
12 2019 (the “Wage Statement Class”), and (iii) all current and former non-exempt employees of
13 Defendants in the State of California who were paid overtime wages at any time since May 2, 2019 (the
14 “Wage Statement Sub-Class”). The Managerial Class, Wage Statement Class, and Wage Statement Sub-
15 Class are collectively referred to as the “Class.”

16 20. **Numerosity and Ascertainability:** The members of the Class are so numerous that
17 joinder of all members would be impractical, if not impossible. The identities of the members of the
18 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
19 informed and believes that Defendants violated Sections 204, 226, 233, 246, 226.7, 510, 512, 1182.12,
20 1197, 1198, and 2802, and the UCL against Plaintiff and the Class by failing to authorize and permit
21 duty-free rest periods, provide duty-free meal periods, pay all premium wages for such missed rest
22 periods and meal periods, pay minimum wages for all hours worked, pay all overtime, reimburse
23 necessary and reasonable business expenses, and provide accurate itemized wage statements.

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

1 22. **Common Question of Law and Fact:** There are predominant common questions of law
2 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
3 informed and believes that Defendants uniformly administer a corporate policy and practice of (i)
4 routinely failing to authorize and permit duty-free rest periods, (ii) routinely failing to provide duty-free
5 meal periods, (iii) routinely failing to pay all premium wages for such missed rest periods and meal
6 periods, (iv) routinely failing to pay minimum wages or overtime for all hours worked, (v) routinely
7 failing to pay sick pay at the regular rate of pay, (vi) routinely failing to reimburse necessary and
8 reasonable business expenses, and (vii) routinely failing to provide accurate itemized wage statements.

9 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
10 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
11 suffered. As with other members of the Class, Plaintiff regularly worked more than five hours in a
12 workday, but she was not permitted to take duty-free 10-minute rest periods, was not provided duty-free 30-
13 minute meal periods, and was not paid premium pay of an additional hour of wages. Plaintiff also was
14 regularly required to use her personal vehicle and personal cell phone to perform work duties for
15 Defendants. She, however, was not reimbursed for her mileage and related expenses or cell phone related
16 expenses. Nor was Plaintiff paid for work time when she was required to travel to other store locations.
17 Plaintiff also was not provided with accurate itemized wage statements. Plaintiff thus is a member of the
18 Class and has suffered the alleged violations of the Labor Code.

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

23 25. The nature of this action and the format of laws available to Plaintiff and members of the
24 Class make the class action format a particularly efficient and appropriate procedure to redress the
25 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
26 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
27 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
28 legal resources. Requiring each member of the Class to pursue an individual remedy would also

discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

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

27. Defendants' pattern, practice, and uniform administration of corporate policy in violation 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 204, 210, 218, 218.5, 226, 226.7, 233, 246, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and premium wages and interest thereon, applicable penalties, liquidated damages, reasonable attorneys' fees, and costs of suit.

28. 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

Rest Period Violations (Lab. Code § 226.7)

(By Plaintiff and the Managerial Class Against All Defendants)

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

30. Because Plaintiff and the Managerial Class were non-exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every four hours

1 worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an
2 employee to work during a rest period. Section 226.7(c) states that “the employer shall pay the
3 employee one additional hour of pay at the employee’s regular rate of compensation for each workday
4 that the meal or rest or recovery period is not provided.”

5 31. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to
6 Plaintiff and the Managerial Class. As a matter of policy and practice, Defendants also fail to pay an
7 additional hour of pay at the regular rate of compensation for each rest period missed by Plaintiff and
8 the Managerial Class. Specifically, whenever only one manager was on duty, Plaintiff and the
9 Managerial Class other non-exempt employees were denied duty-free rest periods during their shifts of at
10 least 3.5 hours. Plaintiff and the Managerial Class were routinely denied duty-free rest periods and
11 instead were not allowed to leave the work premises and were required to work and respond to any work-
12 related issues that arose. Plaintiff and the Managerial Class, however, were not paid the requisite rest period
13 premium pay. Defendants thus violate Section 226.7 and the applicable IWC Wage Order. As such,
14 Plaintiff and the Managerial Class are owed rest period premium pay.

15 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
16 entitles Plaintiff and the Managerial Class to recover unpaid rest period premium pay, including interest
17 thereon, attorneys’ fees, and costs of suit.

18 33. Moreover, Section 204 provides that wages are generally due and payable no later than
19 seven days after the end of a pay period or at least twice during each calendar month, on days
20 designated in advance as the regular paydays. Based on Defendants’ failure to pay rest period premium
21 pay to Plaintiff and the Managerial Class and as a matter of policy and practice, Defendants failed to
22 timely pay Plaintiff and the Managerial Class all due wages. On information and belief, Defendants
23 were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as
24 it relates to Plaintiff’s allegations. Defendants thus violated Section 204 by not timely paying all due
25 wages.

26 34. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
27 entitles Plaintiff and the Managerial Class to recover applicable penalties, attorneys’ fees, and costs of
28 suit.

1 **SECOND CAUSE OF ACTION**

2 **Meal Period Violations (Lab. Code §§ 226.7, 512)**

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

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

5 36. Because Plaintiff and the Managerial Class were non-exempt employees, Defendants
6 were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section
7 512(a) generally prohibits employment of an individual for a work period of more than five hours per
8 day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes.
9 Section 226.7(b) provides that an employer shall not require an employee to work during a meal period.
10 Section 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the
11 employee’s regular rate of compensation for each workday that the meal or rest or recovery period is
12 not provided.”

13 37. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail
14 to provide Plaintiffs and the Managerial Class with a duty-free 30-minute meal period within the first five
15 hours of work. As a matter of policy and practice, Defendants also do not pay an additional hour of pay
16 at the regular rate of compensation for each meal period missed by Plaintiff and the Managerial Class.
17 As with rest periods, whenever only one manager was on duty, Plaintiff and other non-exempt employees
18 were denied duty-free meal periods during their shifts of more than 5.0 hours. Plaintiff and the
19 Managerial Class were routinely denied duty-free meal periods and instead were not allowed to leave the
20 work premises and were required to work and respond to any work-related issues that arose. Plaintiff and
21 the Managerial Class, however, were not paid all requisite wages or meal period premium pay. Defendants
22 thus violate Sections 226.7 and 512 and the applicable IWC Wage Order. As such, Plaintiff and the
23 Managerial Class are owed meal period premium pay for meal periods Defendants failed to provide and
24 are owed unpaid wages for unpaid meal periods during which Plaintiff and the Managerial Class
25 remained on duty.

26 38. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
27 entitles Plaintiff and the Managerial Class to recover unpaid meal period premium pay and unpaid
28 wages for on-duty hours worked, including interest thereon, attorneys’ fees, and costs of suit.

39. Based on Defendants' failure to pay meal period premium pay to Plaintiff and the Managerial Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the Managerial Class all due wages. 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.

40. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Managerial Class to recover applicable penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Unpaid Minimum Wages (Lab. Code §§ 1182.12 and 1197)

(By Plaintiff and the Managerial Class Against All Defendants)

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

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

43. As a matter of policy and practice, Defendants fail to pay at least the minimum wage for all hours worked by Plaintiff and the Managerial Class. As a matter of policy and practice, Plaintiff and the Managerial Class were required to travel to pick up products or materials from other store locations. Even when this work occurred before the start or after the end of their work shifts, Plaintiff and the Managerial Class were not paid any wages for such work. As such, Plaintiff and the Managerial Class are owed unpaid minimum wages.

44. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Managerial Class to recover unpaid minimum wages, including interest thereon, liquidated damages, attorneys' fees, and costs of suit.

45. Based on Defendants' failure to pay minimum wages to Plaintiff and the Managerial Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the

1 Managerial Class all due wages. On information and belief, Defendants were advised by skilled lawyers
2 and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's
3 allegations.

4 46. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
5 entitles Plaintiff and the Managerial Class to recover applicable penalties, attorneys' fees, and costs of
6 suit.

7 **FOURTH CAUSE OF ACTION**

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

9 **(By Plaintiff and the Managerial Class Against All Defendants)**

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

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

18 49. As a matter of policy and practice, Defendants fail to pay overtime worked by Plaintiff
19 and the Managerial Class. As a matter of policy and practice, Plaintiff and the Managerial Class regularly
20 worked hours entitled to overtime and were required to travel to pick up products or materials from other
21 store locations. Even when this work occurred before the start or after the end of their work shifts and
22 resulted in more than eight or 12 hours of work in a day or 40 hours of work in a week, Plaintiff and the
23 Managerial Class were not paid overtime for such work. As such, Plaintiff and the Managerial Class are
24 owed overtime wages.

25 50. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
26 entitles Plaintiff and the Managerial Class to recover unpaid overtime, including interest thereon,
27 attorneys' fees, and costs of suit.
28

52. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Managerial Class to recover applicable penalties, attorneys' fees, and costs of suit.

(By Plaintiff and the Managerial Class Against All Defendants)

54. Section 233 provides that an employer must permit an employee to use accrued sick

55. Defendants paid Plaintiff and the Managerial Class for sick leave at the incorrect rate of pay. Defendants paid Plaintiff and the Managerial Class 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

1 including overtime premium pay, by the employees' total hours worked in the full pay periods of the
2 prior 90 days of employment, as required by Section 246. This resulted in underpayments of sick pay to
3 Plaintiff and the Managerial Class.

4 56. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid
5 sick pay to Plaintiff and the Managerial Class. Because Defendants did not pay or timely pay Plaintiff
6 and the Managerial Class all owing and underpaid sick pay wages, Defendants violated Sections 204,
7 233, and 246, and other Labor Code provisions. Defendants willfully failed to timely pay Plaintiff and
8 the Managerial Class all their sick pay wages due and are therefore subject to applicable penalties. On
9 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
10 of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since the California
11 Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to
12 which an employee is entitled as a part of his or her compensation, including money, room, board,
13 clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103
14 (2007) (emphasis added).

15 57. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
16 entitles Plaintiff and the Managerial Class to underpaid sick pay, including interest thereon, applicable
17 penalties, attorneys' fees, and costs of suit.

18 SIXTH CAUSE OF ACTION

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

20 (By Plaintiff and the Class Against All Defendants)

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

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

27 60. As a matter of policy and practice, Defendants failed to provide accurate itemized wage
28 statements to Plaintiff and the Managerial Class. Specifically, because of Defendants' rest period, meal

1 period, minimum wage, and overtime violations, Defendants failed to furnish Plaintiff and the Class with
2 wage statements that accurately showed all applicable work hours or gross wages earned and net wages
3 earned, including all minimum wages, overtime, and premium pay earned for missed rest periods and meal
4 periods

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

13 62. As a matter of policy and practice, Defendants also failed to provide accurate itemized
14 wage statements to Plaintiff and the Wage Statement Class. Defendants issue wage statements to Plaintiff
15 and all other employees that do not itemize and show the name of the legal entity that is the employer.
16 Instead, “Pan American Group LLC”—an entity which is not among the corporations, limited liability
17 companies, and limited partnerships of record with the California Secretary of State—is shown on wage
18 statements.

19 63. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
20 entitles Plaintiff and the Class to recover applicable penalties, attorneys’ fees, and costs of suit.

21 SEVENTH CAUSE OF ACTION

22 Unreimbursed Business Expenses (Lab. Code § 2802)

23 (By Plaintiff and the Managerial Class Against All Defendants)

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

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

1 66. As a matter of policy and practice, Defendants failed to reimburse Plaintiff and the
2 Managerial Class for necessary business expenses incurred in performing their work for Defendants. As a
3 matter of policy and practice, Plaintiff and the Managerial Class were required to travel to other store
4 locations. Although Plaintiff and other employees were expected to use their personal vehicles, they were
5 not reimbursed for their mileage and related expenses.

6 67. As a matter of policy and practice, Defendants also failed to reimburse Plaintiff and the
7 Expense Class for necessary business expenses incurred in performing their work for Defendants. As a
8 matter of policy and practice, Plaintiff and the Expense Class were required to download various apps to
9 perform their job duties, including, for example, to recruit potential employee candidates. Although
10 Plaintiff and other employees were expected to use their personal cell phones, they were not reimbursed for
11 their related expenses.

12 68. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
13 entitles Plaintiff and the Class to recover unreimbursed expenses, including interest thereon, attorneys'
14 fees, and costs of suit.

15 **EIGHTH 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 69. The preceding paragraphs are re-alleged and incorporated by this reference.

19 70. 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 failures to pay all premium wages for failures to authorize and
22 permit duty-free rest periods or provide duty-free meal periods, pay minimum wages for all hours
23 worked, pay all overtime, and reimburse necessary and reasonable business expenses.

24 71. 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 and the Class the minimum working condition
27 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.
28

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

5 **NINTH CAUSE OF ACTION**

6 **Violation of Labor Code §§ 2698 *Et Seq.***

7 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

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

9 74. 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 seeks penalties for Defendants' violations of Sections 204, 226, 226.7, 233, 246, 510,
12 512, 1182.12, 1197, 1198, and 2802 committed since May 2, 2019, against all aggrieved employees.
13 Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations
14 was committed against Plaintiff as an employee of Defendants.

15 75. As stated herein, Defendants fail to authorize and permit duty-free rest periods, provide
16 duty-free meal periods, pay all premium wages for such missed rest periods and meal periods, pay
17 minimum wages for all hours worked, pay all overtime, reimburse necessary and reasonable business
18 expenses, and provide accurate itemized wage statements.

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

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

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. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including unpaid rest period premium pay and interest thereon, and penalties pursuant to Sections 210, 218.6, and 226.7, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for damages, including unpaid meal period premium pay, unpaid wages, and interest thereon, and penalties pursuant to Sections 210, 218.6, 226.7, 512, 1194, 1194.2, and 1197.1, and for costs and attorneys' fees;
6. Upon the Third Cause of Action for damages, including unpaid wages and interest thereon, penalties, and liquidated damages pursuant to Sections 210, 218.6, 1194, 1194.2, and 1197.1, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action for damages, including unpaid overtime and interest thereon, and penalties pursuant to Sections 210, 218.6, and 1194, and for costs and attorneys' fees;
8. Upon the Fifth Cause of Action for damages, including unpaid sick pay and interest thereon, applicable penalties, and costs and attorneys' fees pursuant to Sections 210, 218, 218.5, 218.6, and 248.5;
9. Upon the Sixth Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;
10. Upon the Seventh Cause of Action for damages, including interest thereon, pursuant to Section 2802, and for costs and attorneys' fees;
11. Upon the Eighth Cause of Action 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 costs and attorneys' fees;

1 12. Upon the Ninth Cause of Action for penalties according to proof pursuant to Sections
2 210, 226.3, 248.5, 558, 1197.1, 2699, and 2802, and for costs and attorneys' fees;

3 13. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
4 226, 1194, 1198, 2699, and 2802, and Code of Civil Procedure section 1021.5; and

5 14. For such other and further relief that the Court may deem just and proper.

6 DATED: November 2, 2020

DIVERSITY LAW GROUP, P.C.

7
8 By: 

Larry W. Lee

Simon L. Yang

9 Attorneys for Plaintiff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28