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rcaddick
By _____, Deputy
Case Number:
34-2022-00317569

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

REGINA RILEY-COCUZZI, 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.

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

DEMAND OVER \$25,000.00

BY FAX

1 Plaintiff, Regina Railey-Cocuzzi, as a proxy for the State of California, submits this Complaint
2 against Defendant, Pan American Group LLC, and Does 1 through 50 (collectively, “Defendants”).

3 INTRODUCTION

4 1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
5 et seq. (“PAGA”), this representative action challenges systemic employment practices resulting in
6 violations of the California Labor Code against individuals who work for Defendants. The Complaint
7 seeks penalties and other relief pursuant to, among other provisions, Labor Code sections 201-204, 210,
8 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1197, 1197.1, 1198, 2802, and 2698 et seq.¹

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

15 3. Defendants routinely fail to pay wages to non-exempt employees for all hours worked,
16 including overtime. Specifically, employees are required to continue working after work shifts. Even
17 though employees are required to clock out before continuing to work, they are not paid any wages for
18 such work.

19 4. Defendants also routinely fail to authorize and permit non-exempt employees to take
20 duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, and fail to
21 provide non-exempt employees with a duty-free 30-minute meal period within the first five hours of
22 work. Specifically, due to staffing issues, employees are denied duty-free rest periods and meal periods
23 and instead required to continue to work. Despite not permitting duty-free rest periods and meal periods,
24 Defendants also routinely fail to pay employees the requisite additional hour of regular rate wages for
25 missed, late, or short rest periods and meal periods.

26 5. Defendants also routinely fail to provide accurate itemized wage statements to
27 employees. First, as a result of the above practices, Defendants fail to furnish non-exempt employees
28

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

1 with wage statements that accurately show and itemize all applicable work hours or gross wages earned
2 and net wages earned, including all minimum wages, overtime, and premium pay earned for missed rest
3 periods and meal periods. Second, whenever overtime wages are paid to non-exempt employees,
4 Defendants issue wage statements that fail to accurately itemize and show total hours worked.
5 Moreover, when the hours shown on the wage statements are added up, the sum also does not equal the
6 total hours worked. Third, whenever overtime wages are paid to non-exempt employees, Defendants
7 issue wage statements that do not itemize and show the overtime rate as 1.5 times the regular rate of
8 pay. Rather than show all applicable hourly rates in effect during the pay period, the overtime rates
9 appear to be one-half of the hourly rate of pay.

10 6. Defendants also routinely fail to reimburse employees for necessary business expenses
11 incurred in performing their work for Defendants. Employees are required to travel to other store
12 locations. Although employees are expected to use their personal vehicles, they are not reimbursed for
13 their mileage and related expenses.

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

21 8. Defendants' pattern, practice, and uniform administration of corporate policy in violation
22 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
23 rights of Plaintiff and aggrieved employees under Sections 201-204, 210, 226, 226.3, 226.7, 510, 512,
24 558, 1182.12, 1197, 1197.1, 1198, 2802, and 2698 et seq., applicable IWC Wage Orders, and Code of
25 Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of
26 suit.

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10. Venue is proper in the County of Sacramento, where Plaintiff and aggrieved employees worked for Defendants.

11. Plaintiff began working for Defendants in or about 2017 and was paid on an hourly basis as a non-exempt employee. 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 an additional hour of regular rate wages for missed rest periods or meal periods. Plaintiff also worked in excess of eight hours in a day or 40 hours in a week, including time spent after she clocked out at the end of her work shifts. Plaintiff was regularly required to use her personal vehicle to perform work duties for Defendants. She, however, was not reimbursed for her mileage and related expenses. Nor was Plaintiff paid for all work time when she was required to travel to other store locations. Plaintiff also was not provided with accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code.

13. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was

1 responsible in some way for the matters alleged herein and proximately caused the illegal employment
2 practices, wrongs, and injuries complained of herein.

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

7 15. Plaintiff is informed and believes that at all times material hereto, each of said
8 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
9 each of the other Defendants and was acting within the course and scope of such agency, employment,
10 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
11 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
12 omissions of the acting Defendants.

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

17 **PAGA ALLEGATIONS**

18 17. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks
19 penalties for Defendants' violations of Sections 201-204, 226, 226.7, 510, 512, 1182.12, 1197, 1198,
20 and 2802 committed against all aggrieved employees since January 21, 2021.

21 18. On or about January 21, 2022, Plaintiff sent written notice to the Labor & Workforce
22 Development Agency ("LWDA") of facts and theories for Defendants' violations of Sections 201-204,
23 226, 226.7, 510, 512, 1182.12, 1197, 1198, and 2802. Plaintiff simultaneously sent written notice to
24 Defendants via certified mail. The LWDA has neither responded nor indicated that it intends to
25 investigate the allegations in the written notice.

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

1 **FIRST CAUSE OF ACTION**

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

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

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

5 21. For Plaintiff and non-exempt employees, Defendants were required to comply with
6 Section 226.7 and the applicable IWC Wage Order. The applicable laws generally require an employer
7 to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof.
8 Section 226.7(b) provides that an employer shall not require an employee to work during a rest period.
9 Section 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the
10 employee’s regular rate of compensation for each workday that the meal or rest or recovery period is
11 not provided.”

12 22. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to
13 aggrieved employees. Specifically, due to staffing issues, aggrieved employees were denied duty-free
14 rest periods during their shifts of at least 3.5 hours. Aggrieved employees were routinely denied duty-
15 free rest periods and instead were not allowed to leave the work premises and were required to work and
16 respond to any work-related issues that arose. As a matter of policy and practice, Defendants also fail to
17 pay an additional hour of pay at the regular rate of compensation for each rest period missed by
18 aggrieved employees. Defendants thus violate Section 226.7 and the applicable IWC Wage Order.

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

26 24. As a matter of policy and practice on shifts exceeding five hours of work, Defendants
27 fail to provide aggrieved employees with a duty-free 30-minute meal period within the first five hours
28 of work. As with rest periods, due to staffing issues, aggrieved employees were denied duty-free meal

1 periods during their shifts of more than 5.0 hours. Aggrieved employees were routinely denied duty-free
2 meal periods and instead were not allowed to leave the work premises and were required to work and
3 respond to any work-related issues that arose. Aggrieved employees thus also were not paid all requisite
4 wages. As a matter of policy and practice, Defendants also do not pay an additional hour of pay at the
5 regular rate of compensation for each meal period missed by aggrieved employees. Defendants thus
6 violate Sections 226.7 and 512 and the applicable IWC Wage Order.

7 25. Sections 1182.12 and 1197 provide a minimum wage to be paid to employees and make
8 unlawful the payment of a lesser wage. The applicable IWC Wage Order defines compensable time as
9 “the time during which an employee is subject to the control of an employer, and includes all the time
10 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
11 § 11070(2)(G) (defining “Hours Worked”).

12 26. As a matter of policy and practice, Defendants fail to pay at least the minimum wage for
13 all hours worked by aggrieved employees. As a matter of policy and practice, employees are required to
14 continue working after work shifts. Even though employees are required to clock out before continuing
15 to work, they are not paid any wages for such work. Defendants thus violate Sections 1182.12 and 1197
16 and the applicable IWC Wage Order.

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

24 28. As a matter of policy and practice, Defendants fail to pay overtime worked by aggrieved
25 employees. As a matter of policy and practice, aggrieved employees regularly worked hours entitled to
26 overtime and were required to continue working after work shifts. Even though employees are required
27 to clock out before continuing to work, they are not paid any wages for such work. Even when this work
28 occurred after the end of their work shifts and resulted in more than eight or 12 hours of work in a day

1 or 40 hours of work in a week, aggrieved employees were not paid overtime for such work. Defendants
2 thus violate Sections 510 and 1198 and the applicable IWC Wage Order.

3 29. Section 204 provides that wages are generally due and payable no later than seven days
4 after the end of a pay period or at least twice during each calendar month, on days designated in
5 advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages
6 earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that
7 an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or
8 her employment, unless the employee has given seventy-two (72) hours previous notice of his or her
9 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.
10 Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections
11 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the
12 same rate until paid, but the wages shall not continue for more than thirty (30) days.

13 30. Based on Defendants' failure to pay all wages, including minimum or regular wages,
14 overtime wages, or additional hours of regular rate wages to aggrieved employees, and as a matter of
15 policy and practice, Defendants fail to timely pay aggrieved employees all due wages. On information
16 and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the
17 mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violated Section 201-
18 204 by not timely paying all due wages.

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

24 32. As a matter of policy and practice, Defendants failed to provide accurate itemized wage
25 statements to aggrieved employees. Specifically, because of Defendants' rest period, meal period,
26 minimum wage, and overtime violations, Defendants failed to furnish aggrieved employees with wage
27 statements that accurately showed all applicable work hours or gross wages earned and net wages
28 earned, including all minimum or regular wages, overtime wages, or additional hours of regular rate

1 wages. As a matter of policy and practice, Defendants also failed to provide accurate itemized wage
2 statements whenever aggrieved employees were paid overtime wages. Specifically, whenever overtime
3 wages are paid to non-exempt employees, Defendants issue wage statements that do not itemize and
4 show (i) the overtime rate as 1.5 times the regular rate of pay or (ii) the total hours worked. Rather than
5 show all applicable hourly rates in effect during the pay period, the overtime rates appear to be one-half
6 of the hourly rate of pay. Not only failing to itemize the accurate total hours worked during the pay
7 period, the hours shown on the wage statements also do not appear to add up to equal the total hours
8 worked. Defendants thus violate Sections 226(a).

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

13 34. As a matter of policy and practice, Defendants fail to reimburse aggrieved employees for
14 necessary business expenses incurred in performing their work for Defendants. As a matter of policy
15 and practice, aggrieved employees were required to travel to other store locations. Although aggrieved
16 employees were expected to use their personal vehicles, they were not reimbursed for their mileage and
17 related expenses. Defendants thus violate Sections 2802.

18 PRAYER FOR RELIEF

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

- 21 1. Upon the First Cause of Action for penalties according to proof pursuant to Section
22 2699, and for costs and attorneys' fees;
 - 23 2. Upon each cause of action for attorneys' fees and costs as provided by Section 2699,
24 Code of Civil Procedure section 1021.5, and any other applicable laws; and
 - 25 3. For such other and further relief that the Court may deem just and proper.
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1 DATED: March 29, 2022

DIVERSITY LAW GROUP, P.C.

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By: _____

3 Larry W. Lee

4 Simon L. Yang

Attorneys for Plaintiff