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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/13/2022 at 04:40:26 PM
Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

PHILIP LAPAT, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

STAFF BENEFITS MANAGEMENT, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00022652-CU-OE-CTL

CLASS ACTION

CLASS ACTION COMPLAINT

1. Failure to Pay All Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition

1 Plaintiff PHILIP LAPAT (“Plaintiff”), as an individual and on behalf of all others similarly
2 situated, brings this CLASS ACTION COMPLAINT against Defendants STAFF BENEFITS
3 MANAGEMENT, INC.; and DOES 1 through 50 (collectively, “Defendants”), and on information
4 and belief alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action brought under California Code of Civil Procedure § 382 for
7 Defendants’ violations of the California Labor Code and Business and Professions Code.

8 **JURISDICTION & VENUE**

9 2. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
10 California Constitution.

11 3. Venue as to each defendant is proper in this judicial district under Code of Civil
12 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed
13 Plaintiff in this county, and committed some of the alleged violations in this county.

14 **PARTIES**

15 **A. Plaintiff Philip LaPat**

16 4. Plaintiff PHILIP LAPAT is an individual over 18 years of age who worked for
17 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until OCTOBER 2021.

18 **B. Class Members**

19 5. Plaintiff brings this action as an individual and on behalf of the following classes
20 under Code of Civil Procedure § 382, altogether referred to in the collective as the “Class” or
21 “Class Members”:

22 a. Unpaid Overtime Subclass: All Class Members who were not paid for all overtime
23 and doubletime hours worked each pay period.

24 b. Meal Period Subclass: All Class Members who [1] worked shifts of five hours or
25 more without a duty-free meal period of at least 30 minutes, or worked shifts of 10
26 hours or more without a second duty-free meal period of at least 30 minutes, and
27 [2] who were not paid one hour of pay at the regular rate of compensation for each
28 of those days.

- 1 c. Rest Period Subclass: All Class Members who [1] were not authorized or
2 permitted to take a rest period of at least 10 minutes for every four hours worked
3 or major fraction thereof and [2] who were not paid one hour at the regular rate of
4 compensation for each of those days
- 5 d. Untimely Payment of Wages Subclass: All individuals who are members of the
6 following classes: (i) Unpaid Overtime Subclass, (ii) Meal Period Subclass, or
7 (iii) Rest Period Subclass.
- 8 e. Wage Statement Subclass: All individuals who are members of the following
9 classes who received a wage statement from Defendants at any time during the
10 one-year period preceding the filing of this action through the present: (i) Unpaid
11 Overtime Subclass, (ii) Meal Period Subclass, or (iii) Rest Period Subclass.
- 12 f. Waiting Time Subclass: All individuals who are members of the following classes
13 at any time during the three-year period preceding the filing of this action through
14 the present, excluding current employees who have never previously separated
15 from employment with Defendants: (i) Unpaid Overtime Subclass, (ii) Meal
16 Period Subclass, or (iii) Rest Period Subclass.

17 **C. Defendants**

18 6. Defendant STAFF BENEFITS MANAGEMENT, INC. is a corporation registered to
19 do business in the State of California, doing business and employing labor throughout San Diego
20 County.

21 7. The true names and capacities, whether individual, corporate, or otherwise, of the
22 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
23 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
24 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
25 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
26 capacities when they become known.

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1 8. Plaintiff is informed, believes, and alleges that all defendants in this action are
2 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
3 defendant exercises control over the wages, hours, and working conditions of Plaintiff and the other
4 aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce
5 creating a common law employment relationship.

6 9. Plaintiff is informed, believes, and alleges that at least some of the defendants have
7 common ownership, common management, interrelationship of operations, and centralized control
8 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
9 responsible for the acts and omissions alleged herein.

10 10. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
11 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
12 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
13 such that the acts and omissions of each defendant may be legally attributable to all others.

14 11. Plaintiff is informed, believes and alleges that the above-mentioned defendants
15 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or
16 regulating minimum wages and days of work and other provisions of the Labor Code with respect
17 to the Class of aggrieved employees. As a result, they may be held personally liable under Labor
18 Code sections 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th
19 809.

20 **GENERAL ALLEGATIONS**

21 12. Defendants failed to pay Plaintiff and the Class Members an overtime rate for all
22 overtime hours suffered or permitted to work, in violation of Labor Code section 510 and the IWC
23 Wage Orders.

24 13. Specifically, Defendants failed to pay Plaintiff and the Class Members at for all
25 overtime hours worked.

26 14. An illustrative example of this can be found in Plaintiff's timesheets and pay
27 statement for the pay period from September 27, 2021 through October 10, 2021, where it is shown
28 that Plaintiff worked 4.86 overtime hours, but was only compensated 0.85 hours of overtime.

1 15. Plaintiff is informed and believes that the underpayment of overtime and doubletime
2 was a common payroll practice that impacted other Class Members.

3 16. Additionally, due to understaffing issues and the steady flow of business, Defendants
4 failed to consistently provide timely, off-duty 30-minute meal periods to Plaintiff and Class
5 Members within the first five hours of work, and timely second off-duty 30-minute meal periods to
6 the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512
7 and section 11 of the applicable IWC Wage Orders.

8 17. “[T]ime records showing noncompliant meal periods raise a rebuttable presumption
9 of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services,*
10 *LLC* (2021) 11 Cal. 5th 58, 61.

11 18. Plaintiff’s time records (and those of the Class) establish meal period violations by
12 showing missed, short, and late meal periods throughout the duration of his employment.

13 19. When Defendants did not provide fully compliant meal periods, Defendants failed to
14 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
15 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
16 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under
17 section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
18 payments, not just hourly wages”).

19 20. Moreover, also because of understaffing issues and business demands, Defendants
20 failed to authorize or *permit* ten-minute rest periods for every four hours of work or major fraction
21 thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC
22 Wage Order. When Defendants did not provide a fully compliant rest periods to Plaintiff or other
23 Class Members, Defendants failed to pay Plaintiff and other Class Members a rest period premium
24 at the lawful “regular rate of compensation” in violation of Labor Code section 226.7.

25 21. Because Defendants did not pay Plaintiff and the Class for all wages (including meal
26 and rest period premiums) owed each pay period of their employment, Defendants failed to timely
27 pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
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1 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays). *See*
2 *Naranjo v. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

3 22. Defendants equally failed in their affirmative obligation to provide accurate itemized
4 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
5 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
6 two distinct types of violations.

7 23. First, on each wage statement furnished, Defendants failed to accurately state the
8 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
9 Plaintiff and Class Members earned overtime at one and one-half times their regular rate of pay, but
10 were not paid for all overtime hours suffered or permitted to work, and were deprived meal and rest
11 period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and net
12 wages earned on those wage statements.

13 24. Second, on each wage statement furnished to Plaintiff and, on information and belief,
14 the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate by the
16 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
17 Class Members do not accurately reflect the total number of overtime hours worked but a reduced
18 number instead, and also fail to reflect earned meal or rest period premiums.

19 25. Defendants’ wage statement issues described above rendered the wage statements
20 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
21 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
22 Members as the sole documentary evidence of their respective earnings.

23 26. Plaintiff and Class Members suffered injury in the form of confusion regarding
24 amounts paid for hours worked, and in the form of concealment of the common payroll practices
25 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
26 this Complaint.

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1 27. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
2 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
3 on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe
4 that the hourly rates and net and gross wages reflected were a complete and accurate reflection of
5 the wages actually earned under California law.

6 28. Defendants' wage statement violations were knowing and intentional as a matter of
7 law with respect to Plaintiff and California Class Members given that the legal obligation was not
8 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
9 Defendants nevertheless failed to comply despite the means and ability to do so.

10 29. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
11 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
12 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
13 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
14 under California law.

15 **CLASS ALLEGATIONS**

16 30. ***Numerosity.*** The members of the Class are so numerous that joinder of all
17 individuals would be impracticable. The identity of the Class Members is readily ascertainable by
18 inspection of employment and payroll records Defendants maintain and are required to maintain by
19 under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed,
20 believes, and alleges there are more than 40 Class Members.

21 31. ***Adequacy of Representation.*** Plaintiff is an adequate class representative. Plaintiff
22 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
23 Plaintiff is represented by attorneys who have substantial experience prosecuting, defending,
24 resolving and litigating wage and hour class actions in California state and federal courts.

25 32. ***Superiority.*** A class action is superior to other means for adjudication of the claims
26 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
27 for the common issues to be resolved in a single forum, simultaneously and without duplication of
28 effort and expense.

1 33. *Commonality.* Common questions of law and fact and a community of interest exists
2 amongst Plaintiff and the Class. These common issues arise from the employment relationship with
3 Defendants and predominate over any individual issues.

4 34. *Typicality.* Plaintiff's claims are typical of the claims of the other Class Members.
5 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
6 resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices,
7 which Plaintiff experienced and is representative of, will establish the right of the Class to recover
8 on the causes of action alleged herein.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

12 35. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 36. This cause of action is brought by the Overtime Subclass pursuant to the IWC Wage
14 Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be
15 timely paid overtime wages all overtime hours worked, and which further provide a private right of
16 action for an employer's failure to pay all overtime compensation for overtime hours worked.

17 37. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
18 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
19 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
20 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
21 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
22 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
23 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

24 38. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
25 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
26 extent permitted by law.

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1 **SECOND CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 39. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 40. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
5 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
6 provided complaint meal periods (or meal period premiums in lieu thereof), and which further
7 provide a private right of action for an employer’s failure to lawfully provide all meal periods
8 and/or pay meal period premiums at the lawful regular rate of compensation.

9 41. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
11 beginning before the fifth hour of hour for each work period of more than five hours per day and a
12 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of
13 work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the
14 “Meal Periods” sections of the applicable orders).

15 42. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
17 each workday that a fully compliant meal period was not provided, in violation of Labor Code
18 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
19 applicable orders).

20 43. Plaintiff and the Class are entitled to recover to the full amount of the meal period
21 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs
22 to the extent permitted by law.

23 **THIRD CAUSE OF ACTION**

24 **REST PERIOD VIOLATIONS**

25 44. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 45. This cause of action is brought by the Rest Period Subclass pursuant to the IWC
27 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be
28 authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which

1 further provide a private right of action for an employer's failure to lawfully provide all rest periods
2 and/or pay rest period premiums at the lawful regular rate of compensation.

3 46. Defendants willfully failed in their affirmative obligation to consistently authorize
4 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
5 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
6 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
7 applicable orders).

8 47. Further, Defendants willfully failed in their affirmative obligation to consistently pay
9 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
10 each workday that a fully compliant rest period was not provided, in violation of Labor Code
11 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

12 48. Plaintiff and the Class are entitled to recover to the full amount of the rest period
13 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs
14 to the extent permitted by law.

15 **FOURTH CAUSE OF ACTION**

16 **UNTIMELY PAYMENT OF WAGES**

17 49. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 50. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant
19 to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt
20 employees be timely paid all wages owed each pay period, and which further provide a private right
21 of action for an employer's failure to comply with this obligation.

22 51. Defendants willfully failed in their affirmative obligation to timely pay all wages and
23 premiums earned by Plaintiff and Class Members twice during each calendar month on days
24 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
25 basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of
26 Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of
27 the applicable orders).

52. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS

53. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

54. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code §§ 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer’s failure to comply with this obligation.

55. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

56. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

57. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES

58. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 59. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
2 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
3 termination of employment, and which further provide a private right of action to recover statutory
4 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
5 of 30 days wages.

6 60. Defendants willfully failed and continue to fail in their affirmative obligation to pay
7 all wages earned and unpaid to Plaintiff and members of the Waiting Time Penalty Subclass
8 immediately upon termination of employment or within 72 hours thereafter for employees who did
9 not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay
10 those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC
11 Wage Orders.

12 61. Plaintiff and the Waiting Time Subclass are entitled to recover to a waiting time
13 penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent
14 permitted by law.

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 63. Plaintiff brings this cause of action on behalf of all Classes.

19 64. Defendants have engaged and continue to engage in unfair and/or unlawful business
20 practices in the State of California in violation of California Business and Professions Code
21 § 17200 by failing committing the foregoing wage and hour violations alleged throughout this
22 Complaint.

23 65. Defendants' dependance on these unfair and/or unlawful business practices deprived
24 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
25 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
26 Defendants over competitors who have been and/or are currently employing workers in compliance
27 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
28 business acts and practices in violation of Business and Professions Code section 17200, et seq.

1 66. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
2 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
3 restitution of the moneys as necessary and according to proof to restore all monies withheld,
4 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and
5 17208.

6 67. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
7 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
8 interest and to prevent future damage and the public interest under Business and Professions Code §
9 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
10 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

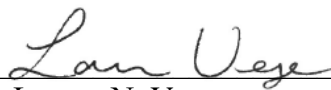
11 **PRAYER**

12 Plaintiff prays for judgment as follows:

- 13 a. For certification of this action as a class action;
- 14 b. For appointment of Plaintiff as the representative of the Class;
- 15 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 16 d. For recovery of damages in amount according to proof;
- 17 e. For all recoverable pre- and post-judgment interest;
- 18 f. For disgorgement of all amounts wrongfully obtained;
- 19 g. For restitution and injunctive relief;
- 20 h. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
21 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
22 1194, 2802, and Code of Civil Procedure section 1021.5; and
- 23 i. For such other relief the Court deems just and proper.

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25 Dated: June 13, 2022

Ferraro Vega Employment Lawyers, Inc.

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Lauren N. Vega
Attorneys for Plaintiff