

1 Larry W. Lee (State Bar No. 228175)  
2 lwlee@diversitylaw.com  
3 DIVERSITY LAW GROUP, P.C.  
4 515 S. Figueroa St., Suite 1250  
5 Los Angeles, CA 90071  
6 (213) 488-6555  
7 (213) 488-6554 facsimile

8 Edward W. Choi, Esq. SBN 211334  
9 LAW OFFICES OF CHOI & ASSOCIATES  
10 515 S. Figueroa St., Suite 1250  
11 Los Angeles, CA 90071  
12 Telephone: (213) 381-1515  
13 Facsimile: (213) 465-4885  
14 Email: edward.choi@choiandassociates.com

15 Attorneys for Plaintiff and the Class

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

18 DOUGLAS HERNANDEZ, as an  
19 individual and on behalf of all others  
20 similarly situated,

21 Plaintiff,

22 vs.

23 PEI WEI ASIAN DINER, LLC, a  
24 Delaware limited liability company;  
25 and DOES 1 through 100, inclusive,

26 Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR DAMAGES:**

**(1) VIOLATION OF LABOR CODE § 226.7;**

**(2) VIOLATION OF LABOR CODE § 226;**

**(3) VIOLATION OF BUSINESS CODE § 17200, ET SEQ.; AND**

**(4) VIOLATION OF LABOR CODE § 2698, ET SEQ.**

1 Plaintiff DOUGLAS HERNANDEZ (“Plaintiff”), hereby submits this Class  
2 and Representative Action Complaint (“Complaint”) against Defendants PEI WEI  
3 ASIAN DINER, LLC., a Delaware limited liability company, and DOES 1-100  
4 (hereinafter collectively referred to as “Defendants”), on behalf of himself and the  
5 Class of all other similarly situated current and former employees of Defendants  
6 for penalties and/or damages for violations of the California Labor Code, including  
7 without limitation, failure to provide employees with proper meal breaks, accurate  
8 itemized wage statements, and failure to timely pay wages to terminated  
9 employees as follows:

10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under the Class  
12 Action Fairness Act (the “CAFA”) 28 U.S.C. § 1332(d)(2), in that Plaintiff is  
13 informed and believes and based thereon alleges that this class action’s amount in  
14 controversy exceeds \$5 million, exclusive of interest and costs, and is a class  
15 action in which Plaintiff and members of the class are citizens from a state that is  
16 different than the states in which Defendants are citizens. Specifically, Plaintiff  
17 and members of the class are California citizens, while Defendants are Delaware  
18 citizens.

19 2. This Complaint challenges systemic illegal employment practices  
20 resulting in violations of the California Labor Code against employees of  
21 Defendants.

22 3. Plaintiff is informed and believes, and based thereon alleges, that  
23 Defendants jointly and severally have acted intentionally and with deliberate  
24 indifference and conscious disregard to the rights of all employees by failing to  
25 provide proper meal breaks. Specifically, employees did not receive the first meal  
26 break within the first five (5) hours of work.

27 4. Plaintiff is informed and believes, and based thereon alleges, that  
28 Defendants jointly and severally have acted intentionally and with deliberate

1 indifference and conscious disregard to the rights of all employees by failing to  
2 provide accurate itemized wage statements identifying all required information,  
3 including without limitation, the correct amount of gross and net pay and  
4 applicable hourly rates for all non-exempt employees.

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

9 **JURISDICTION AND VENUE**

10 6. The Court has jurisdiction over the violations of the California Labor  
11 Code §§ 226, 226.7, and 2698, pursuant to the CAFA, 28 U.S.C. § 1332(d), as set  
12 forth above.

13 7. Venue is proper in this Court because Defendants operate retail stores  
14 in this County and Plaintiff performed work for Defendants' store located in  
15 Orange County.

16 **PARTIES**

17 8. Plaintiff was previously employed by Defendants until on or about  
18 February 7, 2017, when his employment was terminated.

19 9. During his employment, Plaintiff was routinely not provided with  
20 proper meal breaks. Specifically, Plaintiff was required to work past the first five  
21 hours of work before allowed with a meal break or was not given a meal break at  
22 all.

23 10. During his employment, Plaintiff was routinely provided with  
24 itemized wage statements along with the payment of wages. However, as a result  
25 of the meal break violations, the wage statements failed to accurately identify the  
26 gross and net wages earned. Further, whenever Plaintiff was paid overtime wages,  
27 the respective itemized wage statements failed to accurately identify the applicable  
28 overtime rate of pay.

1 11. Defendants operate fast casual restaurants in California.

2 12. Plaintiff was and is the victim of the policies, practices, and customs  
3 of Defendants complained of in this action in ways that have deprived him of the  
4 rights guaranteed by California Labor Codes §§ 226, and 226.7.

5 13. Plaintiff is informed and believes, and based thereon alleges, that at  
6 all times herein mentioned Defendants and DOES 1 through 100 are and were  
7 business entities, individuals, and partnerships, licensed to do business and actually  
8 doing business in the State of California.

9 14. As such, and based upon all the facts and circumstances incident to  
10 Defendants' business in California, Defendants are subject to California Labor  
11 Codes §§ 226, and 226.7.

12 15. Plaintiff does not know the true names or capacities, whether  
13 individual, partner or corporate, of the Defendants sued herein as DOES 1 through  
14 100, inclusive, and for that reason, said Defendants are sued under such fictitious  
15 names, and Plaintiff prays for leave to amend this complaint when the true names  
16 and capacities are known. Plaintiff is informed and believes, and based thereon  
17 alleges, that each of said fictitious Defendants was responsible in some way for the  
18 matters alleged herein and proximately caused Plaintiff and members of the  
19 general public and class to be subject to the illegal employment practices, wrongs  
20 and injuries complained of herein.

21 16. At all times herein mentioned, each of said Defendants participated in  
22 the doing of the acts hereinafter alleged to have been done by the named  
23 Defendants; and furthermore, the Defendants, and each of them, were the agents,  
24 servants and employees of each of the other Defendants, as well as the agents of all  
25 Defendants, and at all times herein mentioned, were acting within the course and  
26 scope of said agency and employment.

27 17. Plaintiff is informed and believes, and based thereon alleges, that at  
28 all times material hereto, each of the Defendants named herein was the agent,

1 employee, alter ego and/or joint venturer of, or working in concert with each of the  
2 other co- Defendants and was acting within the course and scope of such agency,  
3 employment, joint venture, or concerted activity. To the extent said acts, conduct,  
4 and omissions were perpetrated by certain Defendants, each of the remaining  
5 Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
6 Defendants.

7 18. At all times herein mentioned, Defendants, and each of them, were  
8 members of, and engaged in, a joint venture, partnership and common enterprise,  
9 and acting within the course and scope of, and in pursuance of, said joint venture,  
10 partnership and common enterprise.

11 19. At all times herein mentioned, the acts and omissions of various  
12 Defendants, and each of them, concurred and contributed to the various acts and  
13 omissions of each and all of the other Defendants in proximately causing the  
14 injuries and damages as herein alleged. At all times herein mentioned, Defendants,  
15 and each of them, ratified each and every act or omission complained of herein. At  
16 all times herein mentioned, the Defendants, and each of them, aided and abetted  
17 the acts and omissions of each and all of the other Defendants in proximately  
18 causing the damages as herein alleged.

19 **CLASS ACTION ALLEGATIONS**

20 20. **Definition:** The named individual Plaintiff seeks class certification of  
21 the following classes:

22 a. All current and former California non-exempt employees of  
23 Defendants who worked more than 5 hours in any work shift at any time  
24 during the period of time from April 14, 2013 through the present (the “Meal  
25 Break Class”); and

26 b. All current and former non-exempt California employees of  
27 Defendants who received overtime wages at any time from April 14, 2016  
28 through the present (the “Wage Statement Class”).

1           21.   **Numerosity and Ascertainability:** The members of the Class are so  
2 numerous that joinder of all members would be impractical, if not impossible. The  
3 identity of the members of the Class is readily ascertainable by review of  
4 Defendants' records, including payroll records. Plaintiff is informed and believes,  
5 and based thereon alleges, that Defendants failed to provide proper meal breaks  
6 and required itemized wage statements to employees in violation of Labor Code §§  
7 226 and 226.7.

8           22.   **Adequacy of Representation:** The named Plaintiff is fully prepared  
9 to take all necessary steps to represent fairly and adequately the interests of the  
10 class defined above. Plaintiff's attorneys are ready, willing and able to fully and  
11 adequately represent the class and the named Plaintiff. Plaintiff's attorneys have  
12 prosecuted and settled wage-and-hour class actions in the past and currently have a  
13 number of wage-and-hour class actions pending in California courts.

14           23.   Defendant uniformly administered a corporate policy, practice of  
15 failing to provide meal breaks and required itemized wage statements to employees  
16 in violation of Labor Code §§ 226 and 226.7.

17           24.   **Common Question of Law and Fact:** There are predominant  
18 common questions of law and fact and a community of interest amongst Plaintiff  
19 and the claims of the Class concerning Defendants' failure to provide meal breaks  
20 and required itemized wage statements to employees in violation of Labor Code §§  
21 226 and 226.7.

22           25.   **Typicality:** The claims of the named Plaintiff are typical of the  
23 claims of all members of the Class in that Plaintiff has suffered the harm alleged in  
24 this Complaint in a similar and typical manner as the Class members. For  
25 example, Plaintiff did not receive his first meal break within the first five hours of  
26 work. Plaintiff was required to work past the first five hours before the meal break  
27 or more often, he was not provided with meal breaks at all in violation of Labor  
28 Code § 226.7. Secondly, as a result of the meal break violations, Defendants failed

1 to provide itemized wage statement containing the accurate amount of gross and  
2 net wages earned. Further, whenever overtime wages were paid, the applicable  
3 overtime rate of pay was not accurately identified. Therefore, Defendants violated  
4 Labor Code § 226 by not providing the required itemized wage statements to  
5 named Plaintiff. Thus, Plaintiff is member of the Class and has suffered the  
6 alleged violations of California Labor Code §§ 226 and 226.7.

7 26. The California Labor Code and upon which Plaintiff bases his claims  
8 is broadly remedial in nature. These laws and labor standards serve an important  
9 public interest in establishing minimum working conditions and standards in  
10 California. These laws and labor standards protect the average working employee  
11 from exploitation by employers who may seek to take advantage of superior  
12 economic and bargaining power in setting onerous terms and conditions of  
13 employment.

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

25 28. The prosecution of separate actions by the individual class members,  
26 even if possible, would create a substantial risk of (a) inconsistent or varying  
27 adjudications with respect to individual Class members against Defendants and  
28 which would establish potentially incompatible standards of conduct for

1 Defendants, and/or (b) adjudications with respect to individual Class members  
2 which would, as a practical matter, be dispositive of the interest of the other Class  
3 members not parties to the adjudications or which would substantially impair or  
4 impede the ability of the Class members to protect their interests. Further, the  
5 claims of the individual members of the Class are not sufficiently large to warrant  
6 vigorous individual prosecution considering all of the concomitant costs and  
7 expenses.

8 29. Such a pattern, practice and uniform administration of corporate  
9 policy regarding illegal employee compensation described herein is unlawful and  
10 creates an entitlement to recovery by Plaintiff and the Class identified herein, in a  
11 civil action any and all applicable penalties and/or damages, reasonable attorneys'  
12 fees, and costs of suit according to the mandate of California Labor Codes §§ 201-  
13 203, 226, 226.7, and 2699.

14 30. Proof of a common business practice or factual pattern, which the  
15 named Plaintiff experienced and is representative of, will establish the right of each  
16 of the members of the Class to recovery on the causes of action alleged herein.

17 31. The Class is commonly entitled to a specific fund with respect to the  
18 compensation illegally and unfairly retained by Defendants. The Class is  
19 commonly entitled to restitution of those funds being improperly withheld by  
20 Defendants. This action is brought for the benefit of the entire class and will result  
21 in the creation of a common fund.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226.7**

24 **(AGAINST DEFENDANTS BY PLAINTIFF AND THE CLASS)**

25 32. Plaintiff re-alleges and incorporates by reference paragraphs 1  
26 through 31 as though fully set forth herein.

27 33. Defendants failed in their affirmative obligation to provide all of their  
28 employees, including Plaintiff and other members of Class, the opportunity to take



1 meal periods in accordance with the mandates of the California Labor Code and  
2 the applicable IWC Wage Order. Plaintiff and other members of Class were not  
3 provided timely meal periods and/or were denied the opportunity to take their meal  
4 breaks. As such, Defendants are responsible for paying premium compensation for  
5 missed meal periods pursuant to Labor Code § 226.7 and IWC Wage Order No. 5 §  
6 11(B).

7 34. Plaintiff and other members of Class regularly worked in excess of  
8 five (5) hours per day and accordingly had a right to take a 30-minute meal period  
9 each day worked in excess of five (5) hours.

10 35. As a pattern and practice, Defendants regularly provided meal  
11 periods in an untimely manner, without proper compensation and/or denied  
12 Plaintiff and their employees the right to take proper meal periods as required by  
13 law.

14 36. This policy of providing untimely meal periods and/or not allowing  
15 them to take proper meal periods is a violation of California law.

16 37. Plaintiff is informed and believes and based thereon alleges that  
17 Defendants willfully failed to pay employees who were not provided the  
18 opportunity to take proper meal breaks the premium compensation set out in Labor  
19 Code § 226.7 and IWC Wage Order No. 5 § 11(B) and that Plaintiff and those  
20 employees similarly situated as him are owed wages for the meal period violations  
21 set forth above. Plaintiff is informed and believes and based thereon alleges  
22 Defendants' willful failure to provide Plaintiff and other members of Class the  
23 wages due and owing them upon separation from employment results in a  
24 continued payment of wages up to thirty (30) days from the time the wages were  
25 due. Therefore, Plaintiff and other members of Class who have separated from  
26 employment are entitled to compensation pursuant to Labor Code § 203.

27 38. Such a pattern, practice and uniform administration of corporate  
28 policy as described herein is unlawful and creates an entitlement to recovery by the

1 Plaintiff and other members of Class identified herein, in a civil action, for the  
2 unpaid balance of the unpaid premium compensation pursuant to Labor Code §  
3 226.7 and IWC Wage Order No. 5 § 11(B), including interest thereon, penalties,  
4 reasonable attorneys' fees, and costs of suit.

5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 226**

7 **(AGAINST DEFENDANTS BY PLAINTIFF AND THE CLASS)**

8 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through  
9 38 as though fully set forth herein.

10 40. Defendants failed in its affirmative obligation to provide accurate  
11 itemized wage statements. Defendants, as a matter of policy and practice, did not  
12 provide accurate records in violation of Labor Code § 226(a). Specifically, as a  
13 result of the meal break violations alleged above, the wage statements failed to  
14 accurately identify the gross and net wages earned. Further, whenever employees  
15 were paid overtime wages, the wage statements failed to accurately identify the  
16 applicable overtime rate of pay.

17 41. Such a pattern, practice and uniform administration of corporate  
18 policy as described herein is unlawful and creates an entitlement to recovery by  
19 Plaintiff and the Class identified herein, in a civil action, for all damages or  
20 penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees,  
21 and costs of suit according to the mandate of California Labor Code § 226.

22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 FOR**  
24 **UNFAIR BUSINESS PRACTICES**

25 **(AGAINST DEFENDANTS BY PLAINTIFF AND THE CLASS)**

26 42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through  
27 41 as though fully set forth herein.

28 43. Defendants, and each of them, have engaged and continue to engage

1 in unfair and unlawful business practices in California by practicing, employing  
2 and utilizing the employment practices outlined above, inclusive, to wit, by not  
3 providing proper meal breaks and by failing to pay the appropriate premium pay  
4 for such violations.

5 44. Defendants' utilization of such unfair and unlawful business practices  
6 constitutes unfair, unlawful competition and provides an unfair advantage over  
7 Defendants' competitors.

8 45. Plaintiff seeks, on his own behalf, and on behalf of other members of  
9 the class similarly situated, full restitution of monies, as necessary and according to  
10 proof, to restore any and all monies withheld, acquired and/or converted by the  
11 Defendants by means of the unfair practices complained of herein.

12 46. The acts complained of herein occurred within the last four years  
13 preceding the filing of the complaint in this action.

14 47. Plaintiff is informed and believes and on that basis allege that at all  
15 times herein mentioned Defendants have engaged in unlawful, deceptive and unfair  
16 business practices, as proscribed by California Business and Professions Code §  
17 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff  
18 and other members of the class the minimum working condition standards and  
19 conditions due to them under the California laws and Industrial Welfare  
20 Commission wage orders as specifically described therein.

21 **FOURTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 2698**

23 **(AGAINST DEFENDANTS BY PLAINTIFF AND THE STATE OF**  
24 **CALIFORNIA AND THE AGGRIEVED EMPLOYEES)**

25 48. Plaintiff re-alleges and incorporates by reference paragraphs 1 through  
26 47 as though fully set forth herein.

27 49. On or about February 13, 2017, Plaintiff provided written notice to the  
28 California Labor & Workforce Development Agency ("LWDA") and to

1 Defendants of Defendants' violation of California Labor Code § 226(a) pursuant to  
2 Labor Code § 2698, *et seq.* (the Private Attorney General Act ("PAGA")). The  
3 LWDA has not provided written notice within 60 calendar days of Plaintiff's  
4 written notice as to whether the LWDA intends to investigate Plaintiff's said  
5 allegations. As such, Plaintiff has complied with all notice and exhaustion  
6 requirements pursuant to PAGA.

7 50. The named individual Plaintiff seeks penalties pursuant to PAGA for  
8 violations of Labor Code §§ 226.7, 226, and 201-203 committed against the  
9 following employees:

10 a. All non-exempt employees who worked for Defendant from  
11 February 13, 2016 to the present (the "PAGA Aggrieved  
12 Employees");

13 b. All non-exempt employees who worked for Defendant from  
14 February 13, 2016 to the present who worked more than 5 hours in  
15 any work shift (the "PAGA Meal Break Sub-Class");

16 c. All non-exempt employees who worked for Defendant from  
17 February 13, 2016 to the present who were not paid all of their earned  
18 meal break premium wages at termination (the "PAGA Waiting Time  
19 Sub-Class")

20 51. Pursuant to Labor Code § 2699(a), Plaintiff seek recovery of all  
21 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203,  
22 226, and 226.7.

23 **PRAYER FOR RELIEF**

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

- 27 1. For an order certifying the proposed Class;  
28 2. For an order appointing Plaintiff as the representative of the Class as

1 described herein;

2 3. For an order appointing counsel for Plaintiff as Class counsel;

3 4. Upon the First Cause of Action, for damages and/or penalties pursuant  
4 to California Labor Code § 226.7 for damages and/or penalties pursuant to  
5 California Labor Code §§ 201-203, and for costs;

6 5. Upon the Second Cause of Action, for damages and/or penalties  
7 pursuant to California Labor Code § 226, and for costs and attorneys' fees;

8 6. Upon the Third Cause of Action, for restitution to Plaintiff and other  
9 similarly effected members of the general public of all funds unlawfully acquired  
10 by Defendants by means of any acts or practices declared by this Court to be in  
11 violation of Business and Professions Code § 17200, *et seq.*;

12 7. Upon the Fourth Cause of Action, for civil penalties pursuant to  
13 California Labor Code § 2699, *et seq.*, and for costs and attorneys' fees;

14 8. On all causes of action, for attorneys' fees and costs as provided by  
15 California Labor Code §§ 226, 2699, and Code of Civil Procedure § 1021.5; and

16 9. For such other and further relief as the Court may deem just and  
17 proper.

18  
19 Dated: April 14, 2017

DIVERSITY LAW GROUP, P.C.

20  
21 By: /s/ Larry W. Lee

Larry W. Lee

Attorneys for Plaintiff and the Class

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pei Wei Asian Diner Sued Over Alleged Wage Violations](#)

---