

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

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

LOLITA BUCKMASTER, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

PEPPERBUSH HOLDINGS, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00023125-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
COMPLAINT FOR:**

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

DEMAND OVER \$25,000.00

Pursuant to the Private Attorney General Act (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*, Plaintiff Lolita Buckmaster (“Plaintiff”), hereby submits this First Amended Representative Complaint against Defendant Pepperbush Holdings, LLC (“Defendant”), and Does 1-50 (hereinafter collectively referred to as “Defendants”), as an individual and on behalf of Aggrieved Employees of Defendants for penalties for failure to provide off-duty meal and rest periods, pay overtime wages owed for all hours worked and at the correct rate of pay, pay all wages owed upon separation of employment, and provide accurate, itemized wage statement under California Labor Code statutes, as follows:

1 **INTRODUCTION**

2 1. This action is within the Court's jurisdiction under California Labor Code
3 §§ 2698, *et seq.*

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

6 3. Plaintiff is informed and believes and based thereon alleges that Defendants
7 jointly and severally have acted intentionally and with deliberate indifference and conscious
8 disregard to the rights of all employees by failing to provide off-duty meal and rest breaks,
9 failing to pay overtime wages for all hours worked and at the correct rate of pay, failing to pay
10 all wages owed upon separation of employment, and failing to keep accurate records as to
11 Plaintiff and the Class.

12 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
13 engaged in, among other things a system of willful violations of the California Labor Code, and
14 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
15 knowingly deny employees the above stated rights and benefits.

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the violations of the California Labor Code §§
18 201-203, 212-213, 226, 226.7, 510, 512, 1194, pursuant to the PAGA, Cal. Lab. Code § 2698, *et*
19 *seq.*

20 6. Venue is proper in San Diego County because Defendants are located in San
21 Diego County.

22 **PARTIES**

23 7. Plaintiff was employed by Defendants as a Certified Nurse Assistant from about
24 August 2018 until on or about July 2, 2019. Plaintiff worked as an hourly, non-exempt
25 employee.

26 8. Plaintiff was and is the victim of the policies, practices, and customs of
27 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
28 by California Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512, 1194, and 2698, *et seq.*,

1 the applicable IWC Wage Orders.

2 9. Plaintiff is informed and believes and based thereon alleges that Defendant
3 Pepperbush Holdings, LLC was and is a Delaware limited liability company doing business in
4 the State of California operating a skilled nursing facility.

5 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
6 mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and
7 partnerships, licensed to do business and actually doing business in the State of California.

8 11. As such, and based upon all the facts and circumstances incident to Defendants'
9 business in California, Defendants are subject to California Labor Code §§ 201-203, 212-213,
10 226, 226.7, 510, 512, 1194, and 2698, *et seq.*, and the IWC Wage Orders.

11 12. Plaintiff does not know the true names or capacities, whether individual, partner
12 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
13 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
14 complaint when the true names and capacities are known. Plaintiff is informed and believes and
15 based thereon alleges that each of said fictitious Defendants were responsible in some way for
16 the matters alleged herein and proximately caused Plaintiff and members of the general public
17 and class to be subject to the illegal employment practices, wrongs and injuries complained of
18 herein.

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

24 14. Plaintiff is informed and believes and based thereon alleges that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity.
28 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of

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

3 15. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 16. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
11 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
12 the damages as herein alleged.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

15 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
16 **AGAINST ALL DEFENDANTS)**

17 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
18 though fully set forth herein.

19 18. Plaintiff brings this cause of action as a proxy for the State of California and in
20 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through
21 the present, for Defendant's violations of Labor Code §§ 201-203, 212-213, 226(a), 226.7, 510,
22 512, and 1194, arising from Defendant's failure to provide off-duty meal and rest periods, pay
23 overtime wages for hours worked and at the correct rate of pay, pay all wages upon separation of
24 employment, issuance of wages on pay cards without consent of employees, and provide proper
25 payroll records.

26 19. On or about June 19, 2020, Plaintiff sent written notice to the California Labor &
27 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code §§ 201-
28 203, 212-213, 226(a), 226.7, 510, 512, and 1194, pursuant to Labor Code section 2698, *et seq.*,

1 the Private Attorney General Act (“PAGA”). To date, the LWDA has not responded to
2 Plaintiff’s written notice.

3 20. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
4 and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 212-213,
5 226(a), 226.7, 510, 512, and 1194, for the time period described above, on behalf of herself and
6 other Aggrieved Employees.

7 21. With respect to the particular violations committed by Defendants, Plaintiff
8 alleges:

9 a. At all relevant times, Defendants failed in their affirmative obligation to
10 ensure that Plaintiff and the Aggrieved Employees had the opportunity to take and were
11 provided with off-duty meal periods in accordance with the mandates of the California
12 Labor Code and the applicable IWC Wage Order. At all relevant times, Plaintiff and
13 Aggrieved Employees were suffered and permitted to work through legally required meal
14 breaks and were denied the opportunity to take their off-duty meal breaks. This included,
15 without limitation, Defendants requiring Plaintiff and Aggrieved Employees to remain on
16 premises, clock out but continue to work on-duty meal periods, take meal breaks after the
17 5th hour of work, take a second meal break after the 10th hour of work, and respond to
18 work requests during breaks and/or immediately return to work if requested. As such,
19 Defendants were responsible for paying premium compensation for missed meal periods
20 pursuant to Labor Code § 226.7 and the applicable IWC Wage Order. Defendants, as a
21 matter of corporate policy and procedure, regularly failed to pay such premium
22 compensation for each meal period Plaintiff and the Aggrieved Employees missed.

23 b. At all relevant times, Plaintiff and Aggrieved Employees regularly worked
24 in excess of five (5) hours per day and accordingly had a right to take a 30-minute meal
25 period each day worked in excess of five (5) hours. Furthermore, Plaintiff and Aggrieved
26 Employees who worked in excess of ten (10) hours per day had a right to take a second
27 30-minute meal period each day worked in excess of ten (10) hours. Plaintiff is informed
28 and believes, and based thereon alleges, that Defendants failed to provide this second

1 meal period to non-exempt employees in the State of California.

2 c. Plaintiff and the Aggrieved Employees regularly worked shifts of three
3 and one-half hours (3.5) hours or more per day, and accordingly had a right to take a 10-
4 minute rest period each day. Furthermore, Plaintiff and the Aggrieved Employees who
5 worked shifts of seven and one-half (7.5) hours or more per day had a right to take a
6 second 10-minute rest period.

7 d. Defendants failed in their affirmative obligation to provide all of their
8 employees, including Plaintiff and the Aggrieved Employees, the opportunity to take rest
9 periods in accordance with the mandates of the California Labor Code and the applicable
10 IWC Wage Order. Plaintiff and other members of Class were suffered and permitted to
11 work through legally required rest breaks and were denied the opportunity to take their
12 rest breaks. Again, Plaintiff and the Aggrieved Employees were required to remain on-
13 duty and on the premises throughout their shifts. As such, Defendants are responsible for
14 paying premium compensation for missed rest periods pursuant to Labor Code § 226.7.

15 e. As a pattern and practice, Defendants suffered and permitted employees to
16 work in excess of eight hours in a workday and/or over forty hours in a workweek
17 without proper overtime pay. During workweeks when Plaintiff and the Aggrieved
18 Employees worked overtime and earned non-discretionary remuneration (such as
19 incentive wages and bonuses), in the same workweek, Defendants failed to properly
20 calculate the regular rate of pay for purposes of paying overtime. Specifically,
21 Defendants failed to factor any non-discretionary remuneration earned into the
22 calculation of the regular rate of pay for purposes of paying overtime wages. As a result
23 of such policy and practice, Defendants underpaid overtime wages to Plaintiff and the
24 Aggrieved Employees and are subject to civil penalties.

25 f. Labor Code § 201 provides that all wages earned and unpaid at the time of
26 an employee's discharge are due and payable immediately. Labor Code § 202 provides
27 that, in the case of an employee who resigns or quits, such wages must be paid not later
28 than 72 hours thereafter, unless the employee has given 72 hours previous notice, in

1 which case the employee must be paid all wages due and earned at the time of quitting.
2 Labor Code § 203 further provides that an employer who willfully fails to pay such
3 wages due to an employee who is discharged or quits must pay that employee waiting-
4 time penalties in the form of a day's wages up to 30 days until all of the wages owed are
5 paid.

6 g. As a pattern and practice, Defendants violated Labor Code §§ 201, 202
7 and 203 by issuing pay cards as final payment of wages to employees who have been
8 discharged and/or resigned. The pay card required Plaintiff and the Aggrieved
9 Employees to incur fees to use, was not fully cashable, and was not usable at all financial
10 institutions. Thus, the pay card did not actually compensate separated employees for all
11 wages owed upon separation. Defendants also violated Labor Code § 203 by not paying
12 all wages due and owing at the time of separation because of the other violations of the
13 Labor Code described above. As a result of these practices, Defendants are liable for
14 civil penalties under the PAGA.

15 h. Here, Plaintiff and the Aggrieved Employees were paid hourly. As such,
16 the wage statements should have reflected the applicable number of hours worked, hourly
17 rates of pay, and gross and net wages earned, pursuant to Labor Code § 226(a)(1), (5),
18 and (9). However, the wage statements provided to Plaintiff and the Aggrieved
19 Employees failed to identify such information, including the number of hours worked and
20 the applicable hourly rates for all off-the-clock time work, accurate rates of pay for
21 overtime wages, and gross and net wages earned. As a result of these practices,
22 Defendants are liable for civil penalties under the PAGA.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of the State
25 and Aggrieved Employees against Defendants, jointly and severally, as follows:

26 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
27 Labor Code § 2698, *et seq.*, 226.3, and for costs and attorneys' fees;

28 //

2. For such other and further relief as the Court may deem just and proper.

DATED: August 26, 2020

DIVERSITY LAW GROUP, P.C.

By: _____



Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On August 26, 2020, I served the following document(s) described as: **FIRST AMENDED REPRESENTATIVE COMPLAINT FOR** on the interested parties in this action as follows:

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.


Erika Mejia