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Superior Court of California,
County of San Diego

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**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

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (2) **VIOLATION OF LABOR CODE § 226.7;**
- (3) **VIOLATION OF LABOR CODE §§ 510
AND 1194;**
- (4) **VIOLATION OF LABOR CODE §§ 201,
202, AND 203;**
- (5) **VIOLATION OF LABOR CODE § 226(a);**
- (6) **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (7) **VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

Plaintiff Lolita Buckmaster ("Plaintiff"), hereby submits this Class Action Complaint against Defendant Pepperbush Holdings, LLC ("Defendant"), and Does 1-50 (hereinafter collectively referred to as "Defendants"), as an individual and on behalf of the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages 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

1 accurate, itemized wage statement under California Labor Code statutes, and restitution for
2 unfair business practices in violation of Business and Professions Code § 17200, *et seq.*, as
3 follows:

4 **INTRODUCTION**

5 1. This class action is within the Court’s jurisdiction under California Labor Code
6 §§ 201-203, 212-213, 226, 226.7, 510, 512, 1194, and 2698, *et seq.*, the California Industrial
7 Welfare Commission’s (“IWC”) Wage Orders, and the California Unfair Competition Law (the
8 “UCL”), codified at California Business and Professions Code § 17200, *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code and Business and Professions Code against employees of
11 Defendants.

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

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

23 5. The policies, practices and customs of defendants described above and below
24 have resulted in unjust enrichment of Defendants and an unfair business advantage over
25 businesses that routinely adhere to the strictures of the California Labor Code and the California
26 Business and Professions Code.

27 **JURISDICTION AND VENUE**

28 6. The Court has jurisdiction over the violations of the California Labor Code §§

201-203, 212-213, 226, 226.7, 510, 512, 1194, and 2698, *et seq.*, and the UCL.

7. Venue is proper in San Diego County because Defendants are located in San Diego County.

PARTIES

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

9. Plaintiff was and is the 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 California Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512, 1194, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

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

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

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

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

1 14. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
3 Defendants, and each of them, were the agents, servants and employees of each of the other
4 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
5 acting within the course and scope of said agency and employment.

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

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

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

23 **CLASS ACTION ALLEGATIONS**

24 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure § 382, of all current and former non-exempt employees of
26 Defendants in the State of California at any time from April 6, 2016, through the present. (the
27 “Class”). Plaintiff also seeks to certifying the following sub-classes:

28 a. All current and former non-exempt employees of Defendants in the State

1 of California, who worked more than 5 hours in any shift at any time from
2 April 6, 2016, through the present (the “Meal Period Class”);

3 b. All current and former non-exempt employees of Defendants in the State
4 of California, who worked more than 10 hours in any shift at any time
5 from April 6, 2016, through the present, (“Second Meal Period Class”);

6 c. All current and former non-exempt employees of Defendants in the State
7 of California, who worked 3.5 hours or more in any shift at any time from
8 April 6, 2016, through the present (the “Rest Period Class”);

9 d. All current and former non-exempt employees of Defendants in the State
10 of California, who earned overtime and non-discretionary wages,
11 including, but not limited to, incentives/bonuses, in the same workweek
12 during their employment at any time during April 6, 2016, to the present
13 (the “Overtime Regular Rate Class”);

14 e. All employees of Defendants in the State of California, who received their
15 final wages in the form of a pay card upon separation of employment, at
16 any time from April 6, 2017, through the present (the “Pay Card Class”).

17 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
18 that joinder of all members would be impractical, if not impossible. The identity of the members
19 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
20 Plaintiff alleges that Defendants: (a) failed to provide an off-duty 30-minute meal break to
21 employees who worked 5 hours or longer in one shift, and a second off-duty 30-minute meal
22 breaks to employees who worked more than 10 hours in one shift, in violation of Labor Code
23 §§ 226.7 and 512; (b) failed to provide off-duty 10-minute rest breaks to employees who worked
24 3.5 hours or longer in one shift, in violation of Labor Code § 226.7; (c) failed to pay overtime
25 wages for all hours worked and at the correct rate of pay, in violation of Labor Code §§ 510 and
26 1194; (d) failed to pay all wages owed upon separation of employment, in violation of Labor
27 Code §§ 201-203; (e) failed to provide accurate, itemized wage statements, in violation of Labor
28 Code § 226(a); and (f) engaged in Unfair Business Practices in violation of the UCL, the

California Labor Code, including without limitation California Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512, and 1194, and the applicable IWC Wage Orders.

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

21. Defendants uniformly administered a corporate policy, practice of: (a) failing to provide an off-duty 30-minute meal break to employees who worked 5 hours or longer in one shift, and a second off-duty 30-minute meal breaks to employees who worked more than 10 hours in one shift, in violation of Labor Code §§ 226.7 and 512; (b) failing to provide off-duty 10-minute rest breaks to employees who worked 3.5 hours or longer in one shift, in violation of Labor Code § 226.7; (c) failing to pay overtime wages for all hours worked and at the correct rate of pay, in violation of Labor Code §§ 510 and 1194; (d) failing to pay all wages owed upon separation of employment, in violation of Labor Code §§ 201-203; (e) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation California Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512, and 1194, and the applicable IWC Wage Orders.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants: (a) failing to provide an off-duty 30-minute meal break to employees who worked 5 hours or longer in one shift, and a second off-duty 30-minute meal breaks to employees who worked more than 10 hours in one shift, in violation of Labor Code §§ 226.7 and 512; (b) failing to provide off-duty 10-minute rest breaks to employees who worked 3.5 hours or longer in one shift, in violation of Labor Code § 226.7; (c) failing to pay overtime wages for all hours worked and at the correct rate of pay, in violation of Labor Code §§ 510 and 1194; (d)

1 failing to pay all wages owed upon separation of employment, in violation of Labor Code §§
2 201-203; (e) failing to provide accurate, itemized wage statements, in violation of Labor Code §
3 226(a); and (f) engaging in Unfair Business Practices in violation of the UCL, the California
4 Labor Code, including without limitation California Labor Code §§ 201-203, 212-213, 226,
5 226.7, 510, 512, and 1194, and the applicable IWC Wage Orders.

6 **23. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
7 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
8 manner as the Class members. As with other non-exempt employees, Plaintiff was regularly
9 denied off-duty meal and rest breaks during her employment. As a pattern and practice,
10 Defendants regularly required employees to take meal breaks after the 5th hour of work, and a
11 second meal break after the 10th hour of work. When Plaintiff was able to take a 30-minute
12 meal break, Plaintiff was required to remain on-premises and said meal breaks were often
13 interrupted and shortened by requests to perform work. Likewise, Plaintiff was regularly
14 required to work shifts of 3.5 hours or more without being provided an off-duty rest break. As
15 such, Plaintiff is owed meal and rest period premiums. Like other non-exempt employees,
16 Plaintiff regularly received non-discretionary incentive wages and bonuses. During weeks when
17 Plaintiff earned both overtime and non-discretionary wages, the non-discretionary wages were
18 not calculated into the regular rate of pay for purposes of paying overtime. The overtime wages
19 were paid at a rate that did not incorporate the non-discretionary wages into the regular rate, and
20 as such Plaintiff did not receive all wages owed to her. Furthermore, due to Defendants' pattern
21 and practice of requiring Plaintiff to work off-the-clock, Plaintiff is owed additional overtime
22 wages. Additionally, upon separation of employment, Defendants issued Plaintiff her final
23 wages in the form of a pay card. Plaintiff did not authorize or consent to receive her wages in
24 this manner. The pay card required Plaintiff to incur fees with use, was not fully cashable, and
25 was not usable at all financial institutions. Given that Defendants willfully failed to pay Plaintiff
26 and Class members all wages owed, Defendants are liable for waiting time penalties pursuant to
27 Labor Code §§ 201, 202, and 203. Furthermore, Plaintiff was not provided proper and accurate
28 itemized wage statements identifying accurate overtime rates of pay, and gross and net wages

1 earned. As such, Plaintiff is a member of the Class and has suffered the alleged violations of
2 California Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512, and 1194, and the applicable
3 IWC Wage Orders.

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

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

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

1 27. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation described herein is unlawful and creates an entitlement to
3 recovery by the Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
4 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
5 according to the mandate of California Labor Code §§ 201-203, 218.5, 226, and 1194, the
6 applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

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

10 29. The Class is commonly entitled to a specific fund with respect to the
11 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
12 restitution of those funds being improperly withheld by Defendants. This action is brought for
13 the benefit of the entire class and will result in the creation of a common fund.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

16 **(BY PLAINTIFF, THE CLASS, THE MEAL PERIOD CLASS, AND THE SECOND**
17 **MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)**

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

20 31. At all relevant times, Defendants failed in their affirmative obligation to ensure
21 that Plaintiff and Class members, had the opportunity to take and were provided with off-duty
22 meal periods in accordance with the mandates of the California Labor Code and the applicable
23 IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and
24 permitted to work through legally required meal breaks and were denied the opportunity to take
25 their off-duty meal breaks. This included, without limitation, Defendants requiring Plaintiff and
26 Class members to remain on premises, clock out but continue to work on-duty meal periods, take
27 meal breaks after the 5th hour of work, take a second meal break after the 10th hour of work, and
28 respond to work requests during breaks and/or immediately return to work if requested. As such,

1 Defendants are responsible for paying premium compensation for missed meal periods pursuant
2 to Labor Code § 226.7 and the applicable IWC Wage Order. Defendants, as a matter of
3 corporate policy and procedure, regularly failed to pay such premium compensation for each
4 meal period Plaintiff and the Class members missed.

5 32. At all relevant times, Plaintiff and Class members regularly worked in excess of
6 five (5) hours per day and accordingly had a right to take a 30-minute meal period each day
7 worked in excess of five (5) hours. Furthermore, Plaintiff and Class members who worked in
8 excess of ten (10) hours per day had a right to take a second 30-minute meal period each day
9 worked in excess of ten (10) hours. Plaintiff is informed and believes, and based thereon alleges,
10 that Defendants failed to provide this second meal period to non-exempt employees in the State
11 of California.

12 33. As a pattern and practice, Defendants regularly required employees to work
13 through their meal periods without proper compensation and denied Plaintiff and other
14 employees the right to take proper meal periods as required by law.

15 34. Such a pattern, practice and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
17 members identified herein, in a civil action, for the unpaid balance of the unpaid premium
18 compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order,
19 including interest thereon, penalties, and costs of suit.

20 35. Plaintiff is informed and believes, and based thereon allege, that Defendants'
21 willful failure to provide all meal period premium wages due and owing to Plaintiff and Class
22 Members upon separation from employment results in a continued payment of wages up to thirty
23 (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class
24 who have separated from employment are entitled to compensation pursuant to Labor Code
25 § 203.

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1 members upon separation from employment results in a continued payment of wages up to thirty
2 (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class
3 who have separated from employment are entitled to compensation pursuant to Labor Code
4 § 203.

5 **THIRD CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE §§ 510 AND 1194**

7 **(BY PLAINTIFF, THE CLASS, AND THE OVERTIME REGULAR RATE CLASS**
8 **AGAINST ALL DEFENDANTS)**

9 42. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
10 though fully set forth herein.

11 43. This cause of action is brought pursuant to Labor Code section 510, which
12 requires an employer to pay employees overtime at a rate of one and one-half the employee's
13 regular rate of pay for any work in excess of eight hours in a workday or forty hours in a
14 workweek.

15 44. As a pattern and practice, Defendants suffered and permitted employees to work
16 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
17 overtime pay. During workweeks when Plaintiff and Class members worked overtime and
18 earned non-discretionary remuneration (such as incentive wages and bonuses), in the same
19 workweek, Defendants failed to properly calculate the regular rate of pay for purposes of paying
20 overtime. Specifically, Defendants failed to factor any non-discretionary remuneration earned
21 into the calculation of the regular rate of pay for purposes of paying overtime wages. As a result
22 of such policy and practice, Defendants underpaid overtime wages to Plaintiff and the Class and
23 thus owe additional overtime wages. In addition, due to Defendants' pattern and practice of
24 requiring employees to work off-the-clock, Plaintiff and the Class are owed additional overtime
25 wages.

26 45. Such a pattern, practice, and uniform administration of corporate policy regarding
27 illegal employee compensation as described herein is unlawful and creates an entitlement to
28 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of

1 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
2 to the mandate of California Labor Code sections 218.5, 510, 558, and 1194.

3 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
4 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
5 separation from employment results in a continued payment of wages up to thirty (30) days from
6 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
7 separated from employment from Defendants are entitled to compensation pursuant to Labor
8 Code section 203.

9 **FOURTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 201, 202, AND 203**

11 **(BY PLAINTIFF, THE CLASS, AND THE PAY CARD CLASS AGAINST ALL**
12 **DEFENDANTS)**

13 47. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 48. Labor Code § 201 provides that all wages earned and unpaid at the time of an
16 employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the
17 case of an employee who resigns or quits, such wages must be paid not later than 72 hours
18 thereafter, unless the employee has given 72 hours previous notice, in which case the employee
19 must be paid all wages due and earned at the time of quitting. Labor Code § 203 further provides
20 that an employer who willfully fails to pay such wages due to an employee who is discharged or
21 quits must pay that employee waiting-time penalties in the form of a day's wages up to 30 days
22 until all of the wages owed are paid.

23 49. As a pattern and practice, Defendants violated Labor Code §§ 201, 202 and 203
24 by issuing pay cards as final payment of wages to employees who have been discharged and/or
25 resigned. As alleged herein, the pay card required Plaintiff and Class members to incur fees to
26 use, was not fully cashable, and was not usable at all financial institutions. Thus, the pay card
27 did not actually compensate separated employees for all wages owed upon separation.

28 50. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation as described herein is unlawful and creates an entitlement to
2 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
3 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
4 to the mandate of California Labor Code §§ 201, 202, and 203.

5 **FIFTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 226(a)**

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

8 51. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set forth herein.

10 52. Defendants failed in their affirmative obligation to provide accurate itemized
11 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
12 records in violation of Labor Code § 226(a) by failing to provide accurate payroll records for
13 Plaintiff and the Class.

14 53. Here, Plaintiff and the Class were paid hourly. As such, the wage statements
15 should have reflected the applicable number of hours worked, hourly rates of pay, and gross and
16 net wages earned, pursuant to Labor Code § 226(a)(1), (5), and (9). However, the wage
17 statements provided to Plaintiff and the Class failed to identify such information, including the
18 number of hours worked and the applicable hourly rates for all off-the-clock time work, accurate
19 rates of pay for overtime wages, and gross and net wages earned.

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

25 **SIXTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

27 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

28 55. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as

1 though fully set forth herein.

2 56. Defendants, and each of them, have engaged and continue to engage in unfair and
3 unlawful business practices in California by practicing, employing and utilizing the employment
4 practices outlined above, include, to wit, by: (a) failing to provide an off-duty 30-minute meal
5 break to employees who worked 5 hours or longer in one shift, and a second off-duty 30-minute
6 meal breaks to employees who worked more than 10 hours in one shift, in violation of Labor
7 Code §§ 226.7 and 512; (b) failing to provide off-duty 10-minute rest breaks to employees who
8 worked 3.5 hours or longer in one shift, in violation of Labor Code § 226.7; (c) failing to pay
9 overtime wages for all hours worked and at the correct rate of pay, in violation of Labor Code
10 §§ 510 and 1194; (d) failing to pay all wages owed upon separation of employment, in violation
11 of Labor Code §§ 201-203; and (e) failing to provide accurate, itemized wage statements, in
12 violation of Labor Code § 226(a).

13 57. Defendants' utilization of such unfair and unlawful business practices constitutes
14 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

15 58. Plaintiff seeks, individually and on behalf of other members of the Class similarly
16 situated, full restitution of monies, as necessary and according to proof, to restore any and all
17 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
18 complained of herein.

19 59. Plaintiff is informed and believes, and based thereon alleges, that at all times
20 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
21 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
22 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
23 working condition standards and conditions due to them under the California laws and the
24 applicable IWC Wage Orders as specifically described therein.

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1 **SEVENTH CAUSE OF ACTION**

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

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

5 60. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 61. Plaintiff brings this cause of action as a proxy for the State of California and in
8 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 19, 2019, through
9 the present, for Defendant's violations of Labor Code §§ 201-203, 212-213, 226(a), 226.7, 510,
10 512, and 1194, arising from Defendant's failure to provide off-duty meal and rest periods, pay
11 overtime wages for hours worked and at the correct rate of pay, pay all wages upon separation of
12 employment, issuance of wages on pay cards without consent of employees, and provide proper
13 payroll records.

14 62. On or about June 19, 2020, Plaintiff sent written notice to the California Labor &
15 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code §§ 201-
16 203, 212-213, 226(a), 226.7, 510, 512, and 1194, pursuant to Labor Code section 2698, *et seq.*,
17 the Private Attorney General Act ("PAGA"). To date, the LWDA has not responded to
18 Plaintiff's written notice.

19 63. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
20 and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 212-213,
21 226(a), 226.7, 510, 512, and 1194, for the time period described above, on behalf of herself and
22 other Aggrieved Employees.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
25 that this suit is brought against Defendants, jointly and severally, as follows:

- 26 1. For an order certifying the proposed Class and sub-classes;
27 2. For an order appointing Plaintiff as the representative of the Class as described
28 herein;

- 1 3. For an order appointing counsel for Plaintiff as Class counsel;
- 2 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
- 3 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
- 4 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
- 5 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
- 6 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to statute
- 7 as set forth in California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and
- 8 attorneys' fees;
- 9 7. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to
- 10 California Labor Code §§ 201-203, and for costs and attorneys' fees;
- 11 8. Upon the Fifth Cause of Action, for damages or penalties pursuant to statute as set
- 12 forth in California Labor Code § 226(a), and for costs and attorneys' fees;
- 13 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
- 14 affected members of the general public of all funds unlawfully acquired by Defendants by means
- 15 of any acts or practices declared by this Court to be in violation of Business and Professions
- 16 Code § 17200, *et seq.*, for the time periods described above;
- 17 10. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
- 18 to Labor Code § 2698, *et seq.*, 226.3, and for costs and attorneys' fees;
- 19 11. On all causes of action, for attorneys' fees and costs as provided by California
- 20 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and
- 21 12. For such other and further relief as the Court may deem just and proper.
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23 DATED: July 6, 2020

DIVERSITY LAW GROUP, P.C.

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25 By: 

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26 Max W. Gavron

27 Attorneys for Plaintiff and the Class

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