

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

**FILED**  
Superior Court of California  
County of Los Angeles

AUG 31 2020

Sherri R. Carter, Executive Officer/Clerk of Court  
By Kristina Vargas Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

KADAY ALLEN, as an individual and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

KUMQUAT HOLDINGS, LLC, a Delaware  
limited liability company doing business as  
PRIMROSE POST-ACUTE; and DOES 1  
through 50, inclusive,

Defendants.

Case No.: **20STCV33311**

**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 Kaday Allen ("Plaintiff"), hereby submits this Class Action Complaint against  
Defendant Kumquat Holdings, LLC, a Delaware limited liability company doing business as  
Primrose Post-Acute ("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

BY FAX

1 pay, pay all wages owed upon separation of employment, and provide accurate, itemized wage  
2 statement under California Labor Code statutes, and restitution for unfair business practices in  
3 violation of Business and Professions Code § 17200, *et seq.*, as 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 Los Angeles County because Defendants are located in Los Angeles County.

### **PARTIES**

8. Plaintiff was employed by Defendants as a laundry attendant from about September 2017 until on or about March 27, 2020. 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 Kumquat Holdings, LLC was and is a Delaware limited liability company doing business in the State of California as Primrose Post-Acute. Plaintiff is informed and believes and based thereon alleges that Defendant operates 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

1 herein.

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

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

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

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

#### 24 **CLASS ACTION ALLEGATIONS**

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

- a. All current and former non-exempt employees of Defendants in the State of California, who worked more than 5 hours in any shift at any time from April 6, 2016, through the present (the “Meal Period Class”);
- b. All current and former non-exempt employees of Defendants in the State of California, who worked 3.5 hours or more in any shift at any time from April 6, 2016, through the present (the “Rest Period Class”);
- c. All current and former non-exempt employees of Defendants in the State of California, who earned overtime and non-discretionary wages, including but not limited to incentives/bonuses, in the same workweek during their employment at any time during April 6, 2016, to the present (the “Overtime Regular Rate Class”);
- d. All employees of Defendants in the State of California, who received their final wages in the form of a pay card upon separation of employment, at any time from April 6, 2017, through the present (the “Pay Card Class”).

19. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff alleges that Defendants: (a) failed to provide an off-duty 30-minute meal break to employees who worked 5 hours or longer in one shift, in violation of Labor Code §§ 226.7 and 512; (b) failed 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) failed to pay overtime wages for all hours worked and at the correct rate of pay, in violation of Labor Code §§ 510 and 1194; (d) failed to pay all wages owed upon separation of employment, in violation of Labor Code §§ 201-203; (e) failed to provide accurate, itemized wage statements, in violation of Labor 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

1 necessary steps to represent fairly and adequately the interests of the Class defined above.  
2 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and  
3 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions  
4 in the past and currently have a number of wage-and-hour class actions pending in California  
5 courts.

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

17 22. **Common Question of Law and Fact:** There are predominant common questions  
18 of law and fact and a community of interest amongst Plaintiff and the claims of the Class  
19 concerning Defendants: (a) failing to provide an off-duty 30-minute meal break to employees  
20 who worked 5 hours or longer in one shift, in violation of Labor Code §§ 226.7 and 512; (b)  
21 failing to provide off-duty 10-minute rest breaks to employees who worked 3.5 hours or longer  
22 in one shift, in violation of Labor Code § 226.7; (c) failing to pay overtime wages for all hours  
23 worked and at the correct rate of pay, in violation of Labor Code §§ 510 and 1194; (d) failing to  
24 pay all wages owed upon separation of employment, in violation of Labor Code §§ 201-203; (e)  
25 failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and  
26 (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code,  
27 including without limitation California Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512,  
28 and 1194, and the applicable IWC Wage Orders.

1           23.     **Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
2 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical  
3 manner as the Class members. As with other non-exempt employees, Plaintiff was regularly  
4 denied off-duty meal and rest breaks during her employment. As a pattern and practice,  
5 Defendants controlled the schedule of Plaintiff's work shifts and break times. Plaintiff was only  
6 allowed to take meal breaks when they were scheduled by her supervisors. Due to staffing and  
7 operational needs, Plaintiff was not allowed to take off-duty meal breaks of at least 30 minutes  
8 within the first 5 hours of work. Likewise, Plaintiff was unable to take off-duty rest breaks of at  
9 least 10 minutes during work shifts of 3.5 hours or longer. Thus, Plaintiff is owed meal and rest  
10 period premiums. Moreover, like other non-exempt employees, Plaintiff regularly received non-  
11 discretionary incentive wages and bonuses. During weeks when Plaintiff earned both overtime  
12 and non-discretionary wages, the non-discretionary wages were not calculated into the regular  
13 rate of pay for purposes of paying overtime. The overtime wages were paid at the base hourly  
14 rate, and as such Plaintiff did not receive all wages owed to her. Additionally, upon separation of  
15 employment, Defendants issued Plaintiff her final wages in the form of a pay card. Plaintiff did  
16 not authorize or consent to receive her wages in this manner. The pay card required Plaintiff to  
17 incur fees with use, was not fully cashable, and was not usable at all financial institutions. Given  
18 that Defendants willfully failed to pay Plaintiff and Class members all wages owed, Defendants  
19 are liable for waiting time penalties pursuant to Labor Code §§ 201, 202, and 203. Furthermore,  
20 Plaintiff was not provided proper and accurate itemized wage statements identifying accurate  
21 overtime rates of pay, and gross and net wages earned. As such, Plaintiff is a member of the  
22 Class and has suffered the alleged violations of California Labor Code §§ 201-203, 212-213,  
23 226, 226.7, 510, 512, and 1194, and the applicable IWC Wage Orders.

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

1 conditions of employment.

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

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

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

27         28.     Proof of a common business practice or factual pattern, which the named Plaintiff  
28 experienced and is representative of, will establish the right of each of the members of the Class

1 to recovery on the causes of action alleged herein.

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

6 **FIRST CAUSE OF ACTION**

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

8 **(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD CLASS AGAINST ALL**  
9 **DEFENDANTS)**

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

12 31. At all relevant times, Defendants failed in their affirmative obligation to ensure  
13 that Plaintiff and Class members had the opportunity to take and were provided with off-duty  
14 meal periods in accordance with the mandates of the California Labor Code and the applicable  
15 IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and  
16 permitted to work through legally required meal breaks and were denied the opportunity to take  
17 their off-duty meal breaks. This included, without limitation, Defendants requiring Plaintiff and  
18 Class members to take meal breaks after the 5th hour of work. As such, Defendants are  
19 responsible for paying premium compensation for missed meal periods pursuant to Labor Code §  
20 226.7 and the applicable IWC Wage Order. Defendants, as a matter of corporate policy and  
21 procedure, regularly failed to pay such premium compensation for each meal period Plaintiff and  
22 the Class members missed.

23 32. At all relevant times, Plaintiff and Class members regularly worked in excess of  
24 five (5) hours per day and accordingly had a right to take a 30-minute meal period each day  
25 worked in excess of five (5) hours.

26 33. Such a pattern, practice and uniform administration of corporate policy as  
27 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class  
28 members identified herein, in a civil action, for the unpaid balance of the unpaid premium

1 compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order,  
2 including interest thereon, penalties, and costs of suit.

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

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 226.7**

11 **(BY PLAINTIFF, THE CLASS, AND THE REST PERIOD CLASS AGAINST ALL**  
12 **DEFENDANTS)**

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

15 36. Plaintiff and other members of Class regularly worked shifts of three and one-half  
16 hours (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period  
17 each day. Furthermore, Plaintiff and other members of Class who worked shifts of seven and  
18 one-half (7.5) hours or more per day had a right to take a second 10-minute rest period.

19 37. Defendants failed in their affirmative obligation to provide all of their employees,  
20 including Plaintiff and other members of Class, the opportunity to take rest periods in accordance  
21 with the mandates of the California Labor Code and the applicable IWC Wage Order. Plaintiff  
22 and other members of Class were suffered and permitted to work through legally required rest  
23 breaks and were denied the opportunity to take their rest breaks. As such, Defendants are  
24 responsible for paying premium compensation for missed rest periods pursuant to Labor Code §  
25 226.7.

26 38. As a pattern and practice, Defendants regularly required employees to work  
27 through their rest periods without proper compensation and denied Plaintiff and their employees  
28 the right to take proper rest periods as required by law.

1           39.     Such a pattern, practice and uniform administration of corporate policy as  
2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and other  
3 members of Class identified herein, in a civil action, for the unpaid balance of the unpaid  
4 premium compensation pursuant to Labor Code § 226.7, including interest thereon, penalties,  
5 and costs of suit.

6           40.     Plaintiff is informed and believes, and based thereon allege, that Defendants'  
7 willful failure to provide all rest period premium wages due and owing to Plaintiff and Class  
8 members upon separation from employment results in a continued payment of wages up to thirty  
9 (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class  
10 who have separated from employment are entitled to compensation pursuant to Labor Code  
11 § 203.

12                               **THIRD CAUSE OF ACTION**

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

14                               **(BY PLAINTIFF, THE CLASS, AND THE OVERTIME REGULAR RATE CLASS**  
15                               **AGAINST ALL DEFENDANTS)**

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

18           42.     This cause of action is brought pursuant to Labor Code § 510, which requires an  
19 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of  
20 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

21           43.     As a pattern and practice, Defendants suffered and permitted employees to work  
22 in excess of eight hours in a workday and/or over forty hours in a workweek without proper  
23 overtime pay. During workweeks when Plaintiff and Class members worked overtime and  
24 earned non-discretionary remuneration (such as incentive wages and bonuses), in the same  
25 workweek, Defendants failed to properly calculate the regular rate of pay for purposes of paying  
26 overtime. Specifically, Defendants failed to factor any non-discretionary remuneration earned  
27 into the calculation of the regular rate of pay for purposes of paying overtime wages. As a result  
28 of such policy and practice, Defendants underpaid overtime wages to Plaintiff and the Class and

1 thus owe additional overtime wages.

2 44. Such a pattern, practice, and uniform administration of corporate policy regarding  
3 illegal employee compensation as described herein is unlawful and creates an entitlement to  
4 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of  
5 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according  
6 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

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

13 **FOURTH CAUSE OF ACTION**

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

15 **(BY PLAINTIFF, THE CLASS, AND THE PAY CARD CLASS AGAINST ALL**  
16 **DEFENDANTS)**

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

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

27 48. As a pattern and practice, Defendants violated Labor Code §§ 201, 202, and 203  
28 by issuing pay cards as final payment of wages to employees who have been discharged and/or

1 resigned. As alleged herein, the pay card required Plaintiff and Class members to incur fees to  
2 use, was not fully cashable, and was not usable at all financial institutions. Thus, the pay card did  
3 not actually compensate separated employees for all wages owed upon separation.

4 49. Such a pattern, practice and uniform administration of corporate policy regarding  
5 illegal employee compensation as described herein is unlawful and creates an entitlement to  
6 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of  
7 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according  
8 to the mandate of California Labor Code §§ 201, 202, and 203.

9 **FIFTH CAUSE OF ACTION**

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

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

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

14 51. Defendants failed in their affirmative obligation to provide accurate itemized  
15 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records  
16 in violation of Labor Code § 226(a) by failing to provide accurate payroll records for Plaintiff  
17 and the Class.

18 52. Here, Plaintiff and the Class were paid hourly. As such, the wage statements  
19 should have reflected the applicable hourly rates of pay, and gross and net wages earned,  
20 pursuant to Labor Code § 226(a)(1), (5), and (9). However, the wage statements provided to  
21 Plaintiff and the Class failed to identify such information, including accurate rates of pay for  
22 overtime wages and gross and net wages earned.

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

1 **SIXTH CAUSE OF ACTION**

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

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

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

6 55. Defendants, and each of them, have engaged and continue to engage in unfair and  
7 unlawful business practices in California by practicing, employing and utilizing the employment  
8 practices outlined above, include, to wit, by: (a) failing to provide an off-duty 30-minute meal  
9 break to employees who worked 5 hours or longer in one shift, in violation of Labor Code §§  
10 226.7 and 512; (b) failing to provide off-duty 10-minute rest breaks to employees who worked  
11 3.5 hours or longer in one shift, in violation of Labor Code § 226.7; and (c) failing to pay  
12 overtime wages for all hours worked and at the correct rate of pay, in violation of Labor Code  
13 §§ 510 and 1194.

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

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

20 58. Plaintiff is informed and believes, and based thereon alleges, that at all times  
21 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,  
22 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set  
23 forth herein above thereby depriving Plaintiff and other members of the Class the minimum  
24 working condition standards and conditions due to them under the California laws and the  
25 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 59. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
6 though fully set forth herein.

7 60. 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 April 6, 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, failure  
11 to pay overtime wages for hours worked and at the correct rate of pay, failure to pay all wages  
12 upon separation of employment, issuance of wages on pay cards without consent of employees,  
13 and failure to provide proper payroll records.

14 61. On or about August 26, 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 § 2698, *et seq.*, the  
17 Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's  
18 written notice.

19 62. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all  
20 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 212-213, 226(a),  
21 226.7, 510, 512, and 1194, for the time period described above, on behalf of herself and other  
22 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 §§ 226.3 and 2698, *et seq.*, 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.
- 22

23 DATED: August 31, 2020

DIVERSITY LAW GROUP, P.C.

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25 By: 

Larry W. Lee

26 Max W. Gavron

27 Attorneys for Plaintiff and the Class

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