

1 Larry W. Lee (State Bar No. 228175)
2 Kristen M. Agnew (State Bar No. 247656)
3 Nicholas Rosenthal (State Bar No. 268297)
4 **DIVERSITY LAW GROUP, P.C.**
5 515 S. Figueroa Street, Suite 1250
6 Los Angeles, CA 90071
7 (213) 488-6555
8 (213) 488-6554 facsimile

9 Attorneys for Plaintiff and the Class

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

12 DIAMOND HARRIS, as an individual and
13 on behalf of all others similarly situated,

14 Plaintiffs,

15 vs.

16 GK MANAGEMENT CO., INC, a
17 California corporation; GOLDRICH &
18 KEST INDUSTRIES, LLC, a California
19 limited liability company; GOLDRICH
20 KEST, LLC, a California limited liability
company; and DOES 1 through 50,
inclusive,

21 Defendants.

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JAN 20 2021

Sherri R. Carter, Executive Officer/Clerk of Court

Case No.:

21STCV02707

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
201, 202 AND 203;
(2) VIOLATION OF CAL. LABOR CODE §
226;
(3) VIOLATION OF LABOR CODE § 2698,
ET SEQ.

DEMAND OVER \$25,000.00

1 Plaintiff Diamond Harris ("Plaintiff") hereby submits this Class and Representative
2 Action Complaint ("Complaint") against Defendants GK Management Co., Inc., Goldrich &
3 Kest Industries, LLC, Goldrich Kest, LLC and Does 1 through 50 (hereinafter collectively
4 referred to as "Defendants") on behalf of herself and all other similarly situated current and
5 former employees of Defendants for penalties and/or damages for failure to properly calculate
6 the regular rate of pay for purposes of paying sick pay, pay all wages owed upon separation of
7 employment, and provide accurate itemized wage statements under the California Labor Code, as
8 follows:

9 **INTRODUCTION**

10 1. This class and representative action is within the Court's jurisdiction under
11 California Labor Code sections 201, 202, 203, 204, 226, 246 and 2698, *et seq.* and the applicable
12 Wage Orders of the California Industrial Welfare Commission ("IWC").

13 2. This complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code against individuals who worked for Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
18 purposes of paying sick pay wages, pay all wages owed upon separation of employment, and
19 provide accurate itemized wage statements to Plaintiff and the Class.

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

24 **JURISDICTION AND VENUE**

25 5. The Court has jurisdiction over the violations of the California Labor Code
26 sections 201, 202, 203, 204, 226, 246 and 2698, *et seq.*

27 6. Venue is proper because Defendants do business in Los Angeles County and
28 maintain a business location in Los Angeles County.

PARTIES

7. Plaintiff was employed by Defendants as a non-exempt employee from in or around January 2019 to on or about January 27, 2020.

8. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned GK Management Co., Inc. was and is a California corporation doing business in the State of California.

9. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Goldrich & Kest Industries, LLC was and is a California limited liability company doing business in the State of California.

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Goldrich Kest, LLC was and is a California limited liability company doing business in the State of California.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned GK Management Co., Inc., Goldrich & Kest Industries, LLC, Goldrich Kest, LLC and Does 1 through 50, are and were corporations, 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, Defendants are subject to California Labor Code sections 201, 202, 203, 204, 226, 246 and 2698, *et. seq.*

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, Defendants, and each of them, aided and
21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
22 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 section 382 of the following classes (collectively, "Class"):

- 26 a. All current and former non-exempt employees of Defendants in the State of
27 California who earned non-discretionary wages, including but not limited to
28 bonuses and incentives, and sick pay during the same work week, and whose

1 employment ended at any time between July 26, 2018, through the present (the
2 "Sick Pay Class" or "Sick Pay Class Members"); and

- 3 b. All current and former non-exempt employees of Defendants in the State of
4 California who earned non-discretionary wages, including but not limited to
5 bonuses and incentives, and sick pay during the same work week at any time
6 between July 26, 2020, through the present (the "Wage Statement Class" or
7 "Wage Statement Class Members").

8 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
9 that joinder of all members would be impractical, if not impossible. The identity of the members
10 of the Class is readily ascertainable by review of Defendants' records, including payroll records.
11 Plaintiff alleges that Defendants: (a) failed to pay employees sick pay at the correct regular rate
12 of pay that included all non-discretionary remuneration, in violation of Labor Code sections 201,
13 202, 203 and 246; and (b) failed to provide accurate, itemized wage statements, in violation of
14 Labor Code section 226(a).

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

21 21. **Common Question of Law and Fact:** There are predominant common questions
22 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
23 concerning Defendants' policy and practice of: (a) failing to pay employees sick pay at the
24 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
25 Code sections 201, 202, 203 and 246; and (b) failing to provide accurate, itemized wage
26 statements, in violation of Labor Code section 226(a). Plaintiff is informed and believes and
27 based thereon alleges this corporate conduct is accomplished with advance knowledge, intent
28 and willfulness.

1 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
2 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
3 as the Class Members. As with other non-exempt employees, Plaintiff earned non-discretionary
4 remuneration, including but not limited to bonuses and incentives. However, the non-
5 discretionary wages were not calculated into the regular rate of pay for the purposes of paying
6 sick pay. Rather, such wages were paid at the employee's base rate of pay. Accordingly, Plaintiff
7 is owed additional sick pay based on the correct, higher regular rate of pay. To date, Plaintiff has
8 yet to receive the underpaid sick pay wages owed to her. Thus, Defendants are liable for waiting
9 time penalties under Labor Code section 203. Furthermore, as a result of the aforementioned
10 violation, the wage statements Plaintiff received identified incorrect sick pay wage rates and net
11 and gross wages earned, in violation of Labor Code section 226(a). As such, Plaintiff is a
12 member of the Class and has suffered the alleged violations of California Labor Code sections
13 201, 202, 203 and 226, and the applicable IWC Wage Orders.

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

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

1 subsequent employment.

2 25. The prosecution of separate actions by the individual Class members, even if
3 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
4 to individual Class members against the Defendants and which would establish potentially
5 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
6 individual Class members which would, as a practical matter, be dispositive of the interest of the
7 other Class members not parties to the adjudications or which would substantially impair or
8 impede the ability of the Class Members to protect their interests. Further, the claims of the
9 individual members of the Class are not sufficiently large to warrant vigorous individual
10 prosecution considering all of the concomitant costs and expenses.

11 26. Such a pattern, practice and uniform administration of corporate policy regarding
12 illegal employee compensation described herein is unlawful and creates an entitlement to
13 recovery by Plaintiff and the Class identified herein, in a civil action, for any and all applicable
14 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
15 of California Labor Code sections 201, 202, 203 and 226, and Code of Civil Procedure section
16 1021.5.

17 27. Proof of a common business practice or factual pattern, which the named Plaintiff
18 experienced and is a representative of, will establish the right of each of the members of the
19 Plaintiff class to recovery on the causes of action alleged herein.

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

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE §§ 201, 202, 203 and 246**

26 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

27 29. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
28 though fully set forth herein.

1 30. Labor Code section 203 provides that if an employer willfully fails to pay wages
2 owed in accordance with Labor Code sections 201 and 202, then the wages of the employee shall
3 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not
4 continue for more than thirty (30) days.

5 31. Labor Code section 201 provides if an employer discharges an employee, the
6 wages earned and unpaid at the time of discharge are due and payable immediately.

7 32. Labor Code section 202 provides that an employee is entitled to receive all unpaid
8 wages no later than 72 hours after an employee quits his or her employment, unless the employee
9 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
10 employee is entitled to his or her wages at the time of quitting.

11 33. Labor Code section 246 provides that an employee is entitled to receive sick time
12 pay. The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid
13 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of
14 pay for the workweek in which the employee uses paid sick time, whether or not the employee
15 actually works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees
16 shall be calculated by dividing the employee's total wages, not including overtime premium pay,
17 by the employee's total hours worked in the full pay periods of the prior 90 days of
18 employment."

19 34. Whenever Defendants paid Plaintiff and Sick Pay Class Members sick time
20 pursuant to California Labor Code section 246, Defendants did so at the incorrect rate of pay.
21 Defendants paid Plaintiff and Sick Pay Class Members at the base hourly rate of pay, as opposed
22 to the regular rate of pay, which would take into account all non-discretionary wages such as
23 bonuses and incentive wages, as required by Labor Code section 246. This resulted in the
24 underpayment of sick time wages, and resulted in violations of California Labor Code sections
25 201, 202, and 203, and other derivative Labor Code violations, because Defendants did not pay,
26 or timely pay, Plaintiff and Sick Pay Class Members all owing and unpaid wages for work
27 performed by them during their employment and at the end of their employment.

28 //

1 35. Defendants willfully failed to pay Plaintiff and Sick Pay Class Members all their
2 wages due, as alleged hereinabove and hereinafter, upon the termination of their employment
3 within the times prescribed by Labor Code sections 201 and 202 and are therefore subject to a
4 waiting time penalty. Plaintiff and the Sick Pay Class Members are entitled to recover from
5 Defendants the statutory penalty for each day they were not paid at their regular hourly rate of
6 pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 226**

9 **(BY PLAINTIFF AND THE WAGE STATEMENT CLASS AGAINST ALL**
10 **DEFENDANTS)**

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

13 37. Defendants, as a matter of policy and practice, did not provide accurate records in
14 violation of Labor Code section 226(a) by failing to provide accurate payroll records to
15 employees.

16 38. Plaintiff and the Wage Statement Class were paid hourly. As such, the wage
17 statements should have reflected the applicable hourly rates of pay and gross and net wages
18 earned, pursuant to Labor Code section 226(a). However, the wage statements provided to
19 Plaintiff and the Wage Statement Class failed to identify such information. More specifically, as
20 a result of the aforementioned sick pay rate miscalculations, the wage statements Defendants
21 issued to Plaintiff and the Wage Statement Class identified incorrect sick pay wage rates and net
22 and gross wages earned, in violation of Labor Code section 226(a).

23 39. 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 Wage
25 Statement Class, in a civil action, for all damages or penalties pursuant to Labor Code section
26 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of
27 California Labor Code section 226.

28 //

1 **THIRD 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 40. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 41. 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 January 19, 2020,
9 through the present, for Defendants' violations of Labor Code sections 201, 202, 203, 204,
10 226(a) and 246, arising from Defendants' policy and practice of: (a) failing to pay employees
11 sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in
12 violation of Labor Code sections 201, 202, 203, 204 and 246; and (b) failing to provide accurate,
13 itemized wage statements, in violation of Labor Code section 226(a).

14 42. On or about January 19, 2021, Plaintiff sent written notice to the California Labor
15 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
16 sections 201, 202, 203, 204, 226 and 246, pursuant to Labor Code § 2698, *et seq.*, the Private
17 Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written
18 notice.

19 43. 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 sections 201, 202, 203,
21 204, 226 and 246, for the time period described above, on behalf of herself and other Aggrieved
22 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 Classes and sub-classes;
27 2. For an order appointing Plaintiff as the representative of the Classes 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 penalties pursuant to statute as set forth in
3 California Labor Code sections 201, 202 and 203, and for costs and attorneys' fees;

4 5. Upon the Second Cause of Action, for damages or penalties pursuant to statute as
5 set forth in California Labor Code section 226(a), and for costs and attorneys' fees;

6 6. Upon the Third Cause of Action, for civil penalties according to proof pursuant to
7 Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

8 7. On all causes of action, for attorneys' fees and costs as provided by California
9 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and

10 8. For such other and further relief as the Court may deem just and proper.
11

12 DATED: January 20, 2021

DIVERSITY LAW GROUP, P.C.

13
14 By: _____

Larry W. Lee

Kristen M. Agnew

Attorneys for Plaintiffs and the Class
15
16
17
18
19
20
21
22
23
24
25
26
27
28