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FILED BY FAX

ALAMEDA COUNTY

March 02, 2021

CLERK OF
THE SUPERIOR COURT
By Keisha Ghee, Deputy

CASE NUMBER:

RG21090402

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MARY JANE HINKLE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

ALAMEDA HEALTHCARE &
WELLNESS CENTER, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

**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,
558, AND 1194;**
- (4) VIOLATION OF LABOR CODE § 226;**
- (5) VIOLATION OF LABOR CODE §§ 201-
203;**
- (6) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, ET SEQ.;
AND**
- (7) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Mary Jane Hinkle (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Alameda Healthcare & Wellness Center, LLC and Does 1
3 through 50 (collectively, “Defendants”), on behalf of herself and a class of all other similarly
4 situated current and former employees of Defendants for penalties and/or damages for failure to
5 provide off-duty meal and rest breaks, failure to pay all overtime and/or double time wages for
6 hours worked, failure to provide accurate itemized wage statements, and failure to pay all wages
7 owed upon separation of employment under California Labor Code statutes, and restitution for
8 unfair business practices in violation of Business and Professions Code § 17200, *et seq.*, as
9 follows:

10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under California Labor Code
12 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, Business and Professions Code §
13 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California Industrial Welfare
14 Commission (“IWC”).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against individuals
17 who worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of all employees by failing to provide off-duty meal and rest breaks, pay
21 all overtime and/or double time wages for hours worked, provide accurate itemized wage
22 statements, and pay all wages owed upon separation of employment to Plaintiff and the Class.

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

27 5. The policies, practices and customs of Defendants described above and below
28 have resulted in unjust enrichment of Defendants and an unfair business advantage over

1 businesses that routinely adhere to the strictures of the California Labor Code and the California
2 Business and Professions Code.

3 **JURISDICTION AND VENUE**

4 6. The Court has jurisdiction over the violations of the California Labor Code
5 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, the UCL, and the applicable
6 Wage Orders.

7 7. Venue is proper in Alameda County because Plaintiff worked for Defendants in
8 Alameda, California.

9 **PARTIES**

10 8. Plaintiff was employed by Defendants as a Certified Nursing Assistant at
11 Defendants' rehabilitation center from about February 2017 to about February 23, 2020. Plaintiff
12 worked as an hourly, non-exempt employee.

13 9. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
14 complained of in this action in ways that have deprived her of the rights guaranteed by California
15 Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, the applicable IWC
16 Wage Orders, and the UCL.

17 10. Plaintiff is informed and believes, and based thereon alleges, that Alameda
18 Healthcare & Wellness Center, LLC was and is a California limited liability company that
19 operates skilled nursing facilities, rehabilitation centers, and other healthcare facilities in the
20 State of California, including in Alameda County, California.

21 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
23 and partnerships, licensed to do business and actually doing business in the State of California.
24 As such and based upon all the facts and circumstances incident to Defendants' business,
25 Defendants are subject to the California Labor Code and the UCL.

26 12. Plaintiff does not know the true names or capacities, whether individual, partner
27 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
28 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes and
2 based thereon alleges that each of said fictitious defendants was responsible in some way for the
3 matters alleged herein and proximately caused Plaintiff and members of the general public and
4 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

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

27 **CLASS ACTION ALLEGATIONS**

28 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to

California Code of Civil Procedure section 382. Plaintiff proposes the following classes (collectively, “Class”):

- 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 September 5, 2017, 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 September 5, 2017, 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/or double time wages at any time from September 5, 2017, through the present (the “Overtime Class”);
- d. All former non-exempt employees of Defendants in the State of California, who earned wages at any time from September 5, 2018, through the present (the “Separated Employee Class”); and
- e. All current and former non-exempt employees of Defendants in the State of California, who earned overtime and/or double time wages at any time from September 5, 2019, through the present (the “Wage Statement Class”).

18. **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 is informed and believes, and based thereon alleges, that Defendants: (a) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failed to pay employees overtime and/or double time wages for all hours worked in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failed to provide accurate,

1 itemized wage statements in violation of Labor Code § 226; (e) failed to pay all wages owed
2 upon separation of employment in violation of Labor Code § 201-203; and (f) engaged in Unfair
3 Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC
4 Wage Orders.

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

11 20. Defendants uniformly administered a corporate policy, practice of: (a) failing to
12 provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or
13 pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and
14 512; (b) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in
15 one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203
16 and 226.7; (c) failing to pay employees overtime and/or double time wages for all hours worked
17 in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate,
18 itemized wage statements in violation of Labor Code § 226; (e) failing to pay all wages owed
19 upon separation of employment in violation of Labor Code § 201-203; and (f) engaging in Unfair
20 Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC
21 Wage Orders.

22 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
23 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
24 Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, and 1194, the applicable IWC Wage Orders,
25 and the UCL.

26 22. **Common Question of Law and Fact:** There are predominant common questions
27 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
28 concerning Defendants' policy and practice of: (a) failing to provide off-duty meal periods to

employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failing to pay employees overtime and/or double time wages for all hours worked in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; (e) failing to pay all wages owed upon separation of employment in violation of Labor Code § 201-203; and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical manner as the Class Members. As a pattern and practice, Defendants routinely denied off-duty meal and rest breaks to Plaintiff and other non-exempt employees. Because of the staffing and other operational needs of the employer, Plaintiff and other employees were not allowed to take off-duty meal breaks of at least 30 minutes for each shift of 5 hours or longer and off-duty rest breaks of at least 10 minutes for each 3.5 hours worked. In lieu of providing proper off-duty meal and rest breaks, Defendants did not pay any meal and/or rest period premium compensation to Plaintiff. Additionally, as with other non-exempt employees, Plaintiff regularly worked overtime and/or double time hours but was not properly compensated for all hours worked. For example, Plaintiff worked 5.87 double time hours at the regular hourly rate of \$18.52 during the pay period ending November 15, 2019. As such, Plaintiff was owed \$217.42 ($18.52 \times 2 \times 5.87$); however, Plaintiff was paid \$217.30. Thus, Plaintiff is owed additional overtime pay. To date, Plaintiff has yet to receive the underpaid and/or unpaid overtime and/or double time wages and meal and rest premium compensation owed to her. Thus, Defendants are liable for waiting time penalties under Labor Code § 203. Moreover, given the underpayment and/or nonpayment of overtime and/or double time wages and meal and rest period premiums, the wage statements provided to Plaintiff displayed inaccurate net and gross wages earned. As a separate violation, Plaintiff's wage statements displayed inaccurate overtime and double time rates of pay. When

1 overtime and double time wages were paid, Plaintiff's wage statements displayed multiple line
2 items showing a base rate of pay and other rates of pay, rather than a single, correct hourly rate
3 of pay. As a result, Plaintiff's wage statements also displayed inaccurate total hours worked, as
4 adding up all work hours does not correlate to the correct total number of hours worked during
5 the pay period. Finally, Defendants failed to pay Plaintiff all earned wages upon termination of
6 employment. Despite being terminated on February 22, 2020, Plaintiff's final wages were not
7 paid until three or four days later. Therefore, Plaintiff is a member of the Class and has suffered
8 the alleged violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, and 1194, and the
9 UCL.

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

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

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

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

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

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

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

20 **FIRST CAUSE OF ACTION**

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

22 **(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD CLASS AGAINST ALL**
23 **DEFENDANTS)**

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

26 31. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
27 requires an employer to provide a duty-free, 30-minute meal period within the first five (5) hours
28 for shifts in excess of five (5) hours per day. Plaintiff and Class members regularly worked in

1 excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each
2 day worked in excess of five (5) hours.

3 32. At all relevant times, Defendants failed in their affirmative obligation to ensure
4 that Plaintiff and Class members had the opportunity to take and were provided with off-duty
5 meal periods in accordance with the mandate of the California Labor Code and the applicable
6 IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and
7 permitted to work through legally required meal breaks and were denied the opportunity to take
8 their off-duty meal breaks. This included, without limitation, Defendants requiring Plaintiff and
9 Class members to work continuously and either forgo their lunch breaks or take them after five
10 hours of work. As such, Plaintiff and Class members were denied legally compliant off-duty
11 meal periods, and thus Defendants are responsible for paying premium compensation pursuant to
12 Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Defendants, as a matter of
13 corporate policy and procedure, regularly failed to pay such premium compensation for each 30-
14 minute duty-free meal period Plaintiff and Class members missed.

15 33. As a pattern and practice, Defendants regularly required employees to work
16 through their meal periods without proper compensation and denied Plaintiff and Class members
17 the right to take proper meal periods as required by law.

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

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

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

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

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

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

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

13 44. As a pattern and practice, Defendants suffered and permitted employees to work
14 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
15 overtime pay. Despite clearly setting forth specific numbers of hours worked and hourly rates of
16 pay on Plaintiff and Class member wage statements, the amount of overtime and double time
17 wages actually paid was less than the calculations warrant. As a result of such policy and
18 practice, Defendants underpaid overtime wages to Plaintiff and the Class and thus owe additional
19 overtime wages.

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

25 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
26 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
27 separation from employment results in a continued payment of wages up to thirty (30) days from
28 the time the wages were due. Therefore, Plaintiff and other members of the Class who have

1 separated from employment from Defendants are entitled to compensation pursuant to Labor
2 Code § 203.

3 **FOURTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 226**

5 **(BY PLAINTIFF, THE CLASS, AND THE WAGE STATEMENT CLASS AGAINST**
6 **ALL DEFENDANTS)**

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

9 48. Defendants failed in their affirmative obligation to provide accurate itemized
10 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
11 in violation of Labor Code § 226 by failing to provide accurate payroll records to employees.

12 49. Here, Plaintiff and the Class were paid hourly. As such, the wage statements
13 should have reflected the applicable hourly rates of pay, total hours worked, and gross and net
14 wages earned, pursuant to Labor Code section 226. However, the wage statements provided to
15 Plaintiff and other employees failed to identify such information. More specifically, as a result of
16 the underpayment and/or nonpayment of overtime and double time wages and meal and rest
17 period premiums, the wage statements provided to Plaintiff displayed net and gross wages
18 earned. Moreover, whenever overtime and/or double time wages were paid, the wage statements
19 failed to identify the correct rates of pay and total hours worked.

20 50. 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 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
23 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
24 § 226.

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1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 201-203**

3 **(BY PLAINTIFF, THE CLASS, AND THE SEPARATED EMPLOYEE CLASS**

4 **AGAINST ALL DEFENDANTS)**

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

7 52. Labor Code § 201 provides that all wages earned and unpaid at the time of an
8 employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the
9 case of an employee who resigns or quits, such wages must be paid not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice, in which case the employee
11 must be paid all wages due and earned at the time of quitting. Labor Code § 203 further provides
12 that an employer who willfully fails to pay such wages due to an employee who is discharged or
13 quits must pay that employee waiting-time penalties in the form of a day's wages up to 30 days
14 until all of the wages owed are paid.

15 53. As a pattern and practice, Defendants violated Labor Code §§ 201, 202, and 203
16 by issuing final payment of wages more than 72 hours after termination of employment.

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

22 **SIXTH CAUSE OF ACTION**

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

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

25 55. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
26 though fully set forth herein.

27 56. Defendants, and each of them, have engaged and continue to engage in unfair and
28 unlawful business practices in California by practicing, employing, and utilizing the employment

1 practices outlined above, including by: (a) failing to pay employees overtime and/or double time
2 wages for all hours worked in violation of Labor Code §§ 510, 558, and 1194; and (b) failing to
3 provide proper meal and rest breaks in violation of Labor Code §§ 226.7 and 512.

4 57. Defendants' utilization of such unfair and unlawful business practices constitutes
5 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

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

10 59. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
12 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
13 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
14 working condition standards and conditions due to them under the California laws as specifically
15 described therein.

16 **SEVENTH CAUSE OF ACTION**

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

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

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

22 61. Plaintiff brings this cause of action as a proxy for the State of California and in
23 this capacity, seeks penalties on behalf of all Aggrieved Employees from August 15, 2020,
24 through the present, for Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 510, 512,
25 558, and 1194, arising from Defendants' policy and practice of: (a) failing to provide off-duty
26 meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period
27 premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to
28 provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or

1 pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c)
2 failing to pay employees overtime and/or double time wages for all hours worked in violation of
3 Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate, itemized wage
4 statements in violation of Labor Code § 226; and (e) failing to pay all wages owed upon
5 separation of employment in violation of Labor Code § 201-203.

6 62. On or about February 9, 2021, Plaintiff sent written notice to the California Labor
7 & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
8 203, 226, 226.7, 510, 512, 558, and 1194, pursuant to Labor Code § 2698, *et seq.*, the Private
9 Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written
10 notice.

11 63. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
12 and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 226,
13 226.7, 510, 512, 558, and 1194, for the time period described above, on behalf of herself and
14 other Aggrieved Employees.

15 **PRAYER FOR RELIEF**

16 1. WHEREFORE, Plaintiff prays for judgment for herself and all others on whose
17 behalf this suit is brought against Defendants, jointly and severally, as follows:

18 2. For an order certifying the proposed Class;

19 3. For an order appointing Plaintiff as the representative of the Class as described
20 herein;

21 4. For an order appointing counsel for Plaintiff as class counsel;

22 5. Upon the First Cause of Action, for damages and/or penalties pursuant to
23 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys’ fees;

24 6. Upon the Second Cause of Action, for damages and/or penalties pursuant to
25 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys’ fees;

26 7. Upon the Third Cause of Action, for damages and/or penalties pursuant to
27 California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;

28 8. Upon the Fourth Cause of Action, for damages or penalties pursuant to California

1 Labor Code § 226, and for costs and attorneys' fees;

2 9. Upon the Fifth Cause of Action, for damages and/or penalties pursuant to
3 California Labor Code §§ 201-203, and for costs and attorneys' fees;

4 10. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
5 affected members of the general public of all funds unlawfully acquired by Defendants by means
6 of any acts or practices declared by this Court to be in violation of Business & Professions Code
7 § 17200, *et seq.*, for the time periods described above;

8 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
9 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

10 12. On all causes of action for attorneys' fees and costs as provided by California
11 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

12 13. For such other and further relief the Court may deem just and proper.
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14 DATED: March 2, 2021

DIVERSITY LAW GROUP, P.C.

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16 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class
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