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Case #21CV384595
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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

AIREEN BONWELL, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

SILVERADO SENIOR LIVING
MANAGEMENT, INC., A Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV384595

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE § 226;**
- (2) VIOLATION OF LABOR CODE §§
226.7 and 512;**
- (3) VIOLATION OF BUS. & PROF. CODE
§ 17200, ET SEQ.; AND**
- (4) VIOLATION OF LABOR CODE §2698,
ET SEQ.**

DEMAND OVER \$25,000

1 Plaintiff AIREEN BONWELL (“Plaintiff”) hereby submits this Second Amended Class
2 Action Complaint against Defendants SILVERADO SENIOR LIVING MANAGEMENT, INC., a
3 Corporation (“Defendant” or the “Company”), and Does 1-50 (hereinafter collectively referred to as
4 “Defendants”), individually and on behalf of a class of all other similarly situated current and former
5 employees of Defendants for penalties and/or damages for failure to provide accurate itemized wage
6 statements and for failure to pay meal and rest break premium wages at the regular rate of pay as
7 follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code §§201-
10 203, 226, 226.7, and 512 and the applicable Wage Orders of the Industrial and Welfare Commission
11 (the “IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against Defendant’s employees.

14 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly and
15 severally have acted intentionally and with deliberate indifference and conscious disregard to the
16 rights of all employees by failing to provide accurate itemized wage statements to these employees.

17 **JURISDICTION AND VENUE**

18 4. The Court has jurisdiction over the violations of the California Labor Code §§201-203,
19 226, 226.7, and 512.

20 5. Venue is proper in Santa Clara County because Plaintiff worked for Defendant in the
21 City of San Jose, California.

22 **PARTIES**

23 6. On or about November 13, 2020, Plaintiff was hired by Defendant and worked as a RN
24 Case Manager. Plaintiff’s employment ended on or about June 28, 2021.

25 7. Plaintiff is informed and believes, and based thereon alleges, that Defendant
26 SILVERADO SENIOR LIVING MANAGEMENT, INC. (“Defendant” or “SILVERADO”) was and
27 is a corporation that does business throughout the State of California.

28 8. Plaintiff is informed and believes and based thereon alleges that at all times herein

1 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
2 partnerships, licensed to do business and actually doing business in the State of California.

3 9. As such, and based upon all the facts and circumstances incident to Defendants'
4 business in California, Defendants are subject to Labor Code §§201-203, 226, 226.7, and 512 and the
5 applicable Wage Orders.

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

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

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

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

27 14. At all times herein mentioned, the acts and omissions of various Defendants, and each
28 of them, concurred and contributed to the various acts and omissions of each and all of the other

1 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
2 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
3 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
4 and omissions of each and all of the other Defendants in proximately causing the damages as herein
5 alleged.

6 **CLASS ACTION ALLEGATIONS**

7 15. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
8 California Code of Civil Procedure § 382, of the following classes:

9 a. All of Defendant's current and former California non-exempt employees who
10 signed arbitration agreements after January 1, 2020 and have been paid overtime incentive
11 wages, at any time from July 22, 2020 through the present (the "Overtime Class").

12 b. All current and former non-exempt employees of Defendants in the State of
13 California who signed arbitration agreements after January 1, 2020 and at any time during July
14 27, 2017 to the present, who were earned non-discretionary incentive wages in the same period
15 Break Premium and/or Meal Premium wages were earned (the "Meal and Rest Break Class").

16 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
17 joinder of all members would be impractical, if not impossible. The identity of the members of the
18 Class is readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
19 informed and believes and based thereon alleges that Defendants failed to provide accurate itemized
20 wage statements in violation of Labor Code § 226 and failed to pay meal and rest break premium
21 wages at the regular rate of pay in violation of Labor Code §226.7.

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

27 18. Defendants uniformly administered a corporate policy, practice of failing to provide
28 accurate itemized wage statements in violation of Labor Code § 226 and failing to pay meal and rest

1 break premium wages at the regular rate of pay in violation of Labor Code §226.7.

2 19. **Common Question of Law and Fact:** There are predominant common questions of
3 law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
4 Defendants failing to provide accurate itemized wage statements in violation of Labor Code § 226 and
5 failing to pay meal and rest break premium wages at the regular rate of pay in violation of Labor Code
6 §226.7.

7 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
8 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner
9 as the Class members. Plaintiff is a victim of Defendant's violation of Labor Code §§201-203, 226,
10 226.7, and 512. Specifically, whenever overtime incentive wages were paid, the wage statements
11 failed to identify the correct rates of pay and applicable number of hours for such wages. Whenever
12 meal and rest break premium wages were paid, the meal and rest break premium wages were paid at
13 the base hourly rate of pay, which did not include the non-discretionary incentive wages received
14 during the same period. As such, Plaintiff is a member of the Class and has suffered the alleged
15 violations of California Labor Code §§201-203, 226, 226.7, and 512 and the applicable Wage Orders.

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

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

1 permanent damage to their careers at subsequent employment.

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

11 24. Such a pattern, practice and uniform administration of corporate policy regarding
12 illegal employee compensation described herein is unlawful and creates an entitlement to recovery by
13 the Plaintiff and the Class identified herein of a common fund, including interest thereon, applicable
14 penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor
15 Code § 226 and Code of Civil Procedure § 1021.5.

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

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 226**

21 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE**
22 **OVERTIME AND MEAL AND REST BREAK CLASSES)**

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

25 27. Defendants failed in their affirmative obligation to provide accurate itemized wage
26 statements. Labor Code § 226 requires that an employer provide an itemized wage statement every
27 time wages are paid to an employee. Specifically, whenever overtime incentive wages were paid, the
28 wage statements failed to identify the correct rates of pay and applicable number of hours for such

1 wages. While such payments are overtime wage payments, the wage statements do not identify what
2 applicable rates and hours were applied to such payments. Furthermore, as a result of the meal and
3 rest break violations set forth herein, the wage statements failed to accurately identify the meal and
4 rest premium rates of pay, as well as the accurate gross and net wages earned.

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

9 **SECOND CAUSE OF ACTION**

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

11 **(AGAINST ALL DEFENDANTS BY PLAINTIFF**

12 **AND THE MEAL AND REST BREAK CLASS)**

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

15 30. Defendants failed in their affirmative obligation to pay meal and rest break premium
16 wages at the regular rate of pay. Specifically, whenever meal and rest break premium wages were
17 paid, the meal and rest break premium wages were paid at the base hourly rate of pay, which did not
18 include the non-discretionary incentive wages earned during the same period. Thus, the meal and rest
19 break premium wages were not paid at the regular rate of pay.

20 31. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful
21 failure to provide all meal and rest period premium pay and/or wages due and owing them upon
22 separation from employment results in a continued payment of wages up to thirty (30) days from the
23 time the wages were due. Therefore, Plaintiff and other members of the Class who have separated
24 from employment are entitled to compensation pursuant to Labor Code §§ 201-203.

25 32. Such a pattern, practice and uniform administration of corporate policy as described
26 herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class Members identified
27 herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor
28 Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC Wage Order, including interest

thereon, penalties, and costs of suit.

THIRD CAUSE OF ACTION

VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*

(AGAINST ALL DEFENDANTS BY PLAINTIFF

AND THE MEAL AND REST BREAK CLASS)

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

34. Defendant has engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by failing to pay proper meal and rest premium wages in violation of the California Labor Code and applicable IWC Wage Orders.

35. Defendant's utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

36. Plaintiff seeks as an individual and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Plaintiff also seeks injunctive relief to enjoin the unfair business practices alleged herein.

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL**
4 **DEFENDANTS)**

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

7 39. Plaintiff seeks penalties on behalf of the State of California for violations of Labor
8 Code §§201-203, 226 and 226.7 committed against all similarly aggrieved non-exempt employees
9 who were paid any wages at any time from July 15, 2020, through the present, that signed arbitration
10 agreements.

11 40. On or about July 15, 2021, Plaintiff sent written notice to the California Labor &
12 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code § 226, pursuant
13 to PAGA.

14 41. On July 26, 2021, Plaintiff sent an amendment to her July 15, 2021 PAGA notice to the
15 LWDA of Defendant’s violations of Labor Code §201-203, 226, and 226.7.

16 42. As of the date of the filing of this Complaint, the LWDA has yet to provide notice to
17 Plaintiff as to whether it intends to investigate the violations provided for in the written notice. In
18 addition to the LWDA, Plaintiff also sent his written notice to Defendant via certified mail according
19 to Labor Code section 2699.3.

20 43. Such a pattern, practice and uniform administration of corporate policy as described
21 herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of the State of
22 California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3 and 2699(a),
23 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of PAGA for
24 Defendant’s violations of Labor Code §§201-203, 226, 226.7, as well as attorneys’ fees and costs.

25 **PRAYER FOR RELIEF**

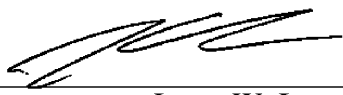
26 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf this
27 suit is brought against Defendants, jointly and severally, as follows:

28 1. For an order certifying the proposed Class;

- 1 2. For an order appointing Plaintiff as the representative of the Class as described herein;
2 3. For an order appointing counsel for Plaintiff as Class counsel;
3 4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set
4 forth in California Labor Code § 226, and for costs and attorneys' fees;
5 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to statute as
6 set forth in California Labor Code § 226.7, and for costs and attorneys' fees;
7 6. Upon the Third Cause of Action, for restitution in the form of unpaid meal and rest
8 period premium wages, and for costs;
9 7. Upon the Fourth Cause of Action, for civil penalties, costs and attorneys' fees pursuant
10 to Labor Code §§ 226.3 and 2699;
11 8. On all causes of action, for attorneys' fees and costs as provided by California Labor
12 Code §§ 226 and 2699 and Code of Civil Procedure § 1021.5; and
13 9. For such other and further relief as the Court may deem just and proper.
14

15 DATED: August 3, 2022

DIVERSITY LAW GROUP, P.C.

16
17 By: 
18 Larry W. Lee
19 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St. Suite 1250, Los Angeles, California 90071.

On August 11, 2022, I served the foregoing document(s) described as: **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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SMITH LLP**

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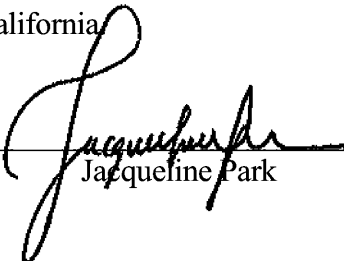
 X **BY ELECTRONIC SERVICE**

I caused such document to be uploaded to **Odyssey** to be served on the offices of the addressees.

 X **(State)** I declare under penalty of perjury that the foregoing is true and correct.

 (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 11, 2022, at Los Angeles, California



Jacqueline Park