

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 Aggrieved Employees

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

AMY CETNAROWSKI, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

MELON HOLDINGS, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVCV21-01007

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

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

DEMAND OVER \$25,000.00

Plaintiff Amy Cetnarowski (“Plaintiff”) hereby submits this second amended representative action complaint (“Complaint”) against Defendant Melon Holdings, LLC and Does 1 through 50 (collectively, “Defendants”), on behalf of herself and all aggrieved employees of Defendant, for penalties for violations of the California Labor Code as follows:

INTRODUCTION

1. This representative action is within the Court’s jurisdiction under California Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, and the applicable

1 Wage Orders of the California Industrial Welfare Commission (“IWC”).

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

4 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
5 jointly and severally, have acted intentionally and with deliberate indifference and conscious
6 disregard to the rights of all employees by failing to provide off-duty meal and rest breaks, pay
7 all overtime wages for hours worked, reimburse business expenses, and provide accurate
8 itemized wage statements to its employees.

9 **JURISDICTION AND VENUE**

10 4. The Court has jurisdiction over the violations of the California Labor Code
11 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, and the applicable Wage Orders.

12 5. Venue is proper in Yuba County because Plaintiff worked for Defendants in
13 Marysville, California.

14 **PARTIES**

15 6. Plaintiff was employed by Defendants as a cook and aid at Defendants’ skilled
16 nursing and rehabilitation facility from about May 24, 2020, until about October 24, 2020.
17 Plaintiff worked as an hourly, non-exempt employee.

18 7. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
19 complained of in this action in ways that have deprived her of the rights guaranteed by California
20 Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, and the applicable
21 IWC Wage Orders.

22 8. Plaintiff is informed and believes, and based thereon alleges, that Melon
23 Holdings, LLC was and is a Delaware limited liability company that operates skilled nursing
24 facilities, rehabilitation centers, and other healthcare facilities in the State of California,
25 including in Yuba County, California.

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

As such and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code.

10. 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 was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

14. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times

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

FIRST CAUSE OF ACTION

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

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

16. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from September 30, 2020, through the present, for Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, and the applicable Wage Orders, as identified above for: (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 wages for all hours worked in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to reimburse business expenses in violation of Labor Code § 2802; and (e) failing to provide accurate, itemized wage statements in violation of Labor Code § 226.

17. On or about September 30, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, pursuant to Labor Code § 2698, et seq., the Private Attorneys General Act ("PAGA"). Plaintiff also sent written notice of said Labor Code violations to Defendant via certified mail pursuant to Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has not provided written notice regarding whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice.

18. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

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

2. Upon the First Cause of Action, for civil penalties according to proof pursuant to the PAGA, Labor Code Section 2698, *et seq.*, Labor Code Section 226.3, and for costs and attorneys' fees;

3. On all causes of action for attorneys' fees and costs as provided by California Code of Civil Procedure § 1021.5; and

4. For such other and further relief the Court may deem just and proper.

DATED: February 9, 2022

DIVERSITY LAW GROUP, P.C.

By:


Mary L. Williams

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Aggrieved Employees