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**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

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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 § 2802;**
- (5) **VIOLATION OF LABOR CODE § 226;**
- (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 Amy Cetnarowski ("Plaintiff") hereby submits this first amended class action complaint ("Complaint") against Defendant Melon Holdings, LLC and Does 1 through 50 (collectively, "Defendants"), on behalf of herself and a class of all other similarly situated current and former employees of Defendants for penalties and/or damages for failure to provide

1 off-duty meal and rest breaks, failure to pay all overtime wages for hours worked, failure to
2 reimburse business expenses, and failure to provide accurate itemized wage statements under
3 California Labor Code statutes, and restitution for unfair business practices in violation of
4 Business and Professions Code § 17200, *et seq.*, as follows:

5 **INTRODUCTION**

6 1. This Complaint is within the Court’s jurisdiction under California Labor Code
7 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, Business and Professions Code §
8 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California Industrial Welfare
9 Commission (“IWC”).

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

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

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

22 5. The policies, practices and customs of Defendants described above and below
23 have resulted in unjust enrichment of Defendants and an unfair business advantage over
24 businesses that routinely adhere to the strictures of the California Labor Code and the California
25 Business and Professions Code.

26 **JURISDICTION AND VENUE**

27 6. The Court has jurisdiction over the violations of the California Labor Code
28 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, the UCL, and the applicable Wage

1 Orders.

2 7. Venue is proper in Yuba County because Plaintiff worked for Defendants in
3 Marysville, California.

4 **PARTIES**

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

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

12 10. Plaintiff is informed and believes, and based thereon alleges, that Melon
13 Holdings, LLC was and is a Delaware limited liability company that operates skilled nursing
14 facilities, rehabilitation centers, and other healthcare facilities in the State of California,
15 including in Yuba County, California.

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

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

28 13. 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.

14. 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.

15. 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.

16. 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.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure section 382. Plaintiff proposes the following class and subclasses (collectively, "Class"):

- a. All current and former non-exempt employees of Defendants in the State of California, who worked at any time from October 19, 2017, through the present (the "Class");

- b. 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 October 19, 2017, through the present (the “Meal Period Sub-Class”); and
- c. 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 October 19, 2017, through the present (the “Rest Period Sub-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 wages for all hours worked in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failed to reimburse business expenses in violation of Labor Code § 2802; (e) failed to provide accurate, itemized wage statements in violation of Labor Code § 226; and (f) engaged in unfair business practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

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

20. Defendants uniformly administered a corporate policy, 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 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; (e) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; and (f) engaging in unfair business practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2802, the applicable IWC Wage Orders, and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class 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 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; (e) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; 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

1 off-duty meal breaks of at least 30 minutes for each shift of 5 hours or longer and off-duty rest
2 breaks of at least 10 minutes for each 3.5 hours worked. In lieu of providing proper off-duty
3 meal and rest breaks, Defendants did not pay any meal and/or rest period premium compensation
4 to Plaintiff. Additionally, as with other non-exempt employees, Plaintiff was regularly required
5 to work off-the-clock and, as a result, incurred overtime hours but was not properly compensated
6 for all hours worked. Such off-the-clock work included time spent in excess of eight hours in a
7 day cleaning and preparing food. Thus, Plaintiff is owed overtime pay. To date, Plaintiff has yet
8 to receive the underpaid and/or unpaid overtime wages and meal and rest premium compensation
9 owed to her. Thus, Defendants are liable for waiting time penalties under Labor Code § 203.
10 Moreover, given the underpayment and/or nonpayment of overtime wages and meal and rest
11 period premiums, the wage statements provided to Plaintiff displayed inaccurate total hours
12 worked, overtime hours worked, and gross and net wages earned. Lastly, Plaintiff was required
13 to incur expenses for work purposes but was not reimbursed by Defendants. For instance,
14 Defendants required Plaintiff to use her personal cell phone to download various apps to access
15 her work schedule and track her hours. Plaintiff was also required to use her own vehicle to drive
16 to and from patient appointments but was not reimbursed for mileage incurred. Therefore,
17 Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-
18 203, 226, 226.7, 510, 512, 558, 1194, and 2802, and the UCL.

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

25 25. The nature of this action and the format of laws available to Plaintiff and
26 members of the Class identified herein make the class action format a particularly efficient and
27 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
28 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable

1 advantage since it would be able to exploit and overwhelm the limited resources of each
2 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
3 member to pursue an individual remedy would also discourage the assertion of lawful claims by
4 employees who would be disinclined to file an action against their former and/or current
5 employer for real and justifiable fear of retaliation and permanent damage to their careers at
6 subsequent employment.

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

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

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

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

1 **FIRST CAUSE OF ACTION**

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

3 **(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD SUB-CLASS AGAINST ALL**
4 **DEFENDANTS)**

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

7 31. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
8 requires an employer to provide a duty-free, 30-minute meal period within the first five (5) hours
9 for shifts in excess of five (5) hours per day. Plaintiff and Class members regularly worked in
10 excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each
11 day worked in excess of five (5) hours.

12 32. 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 mandate 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 work continuously and take their lunch breaks after five hours of work. As
19 such, Plaintiff and Class members were denied legally compliant off-duty meal periods, and thus
20 Defendants are responsible for paying premium compensation pursuant to Labor Code §§ 226.7
21 and 512 and the applicable IWC Wage Order. Defendants, as a matter of corporate policy and
22 procedure, regularly failed to pay such premium compensation for each 30-minute duty-free
23 meal period Plaintiff and Class members missed.

24 33. As a pattern and practice, Defendants regularly denied Plaintiff and Class
25 members the right to take proper meal periods as required by law.

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 226.7**

10 **(BY PLAINTIFF, THE CLASS, AND THE REST PERIOD SUB-CLASS AGAINST ALL**
11 **DEFENDANTS)**

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

14 37. This cause of action is brought pursuant to Labor Code § 226.7, which requires an
15 employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major
16 fraction thereof. Plaintiff and other Class members regularly worked shifts of three and one-half
17 (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period each day.

18 38. At all relevant times, Defendants failed in their affirmative obligation to provide
19 Plaintiff and other Class members with the opportunity to take rest periods in accordance with
20 the mandate of the California Labor Code and the applicable IWC Wage Order. As a pattern and
21 practice, Defendants suffered and permitted Plaintiff and Class members to work through legally
22 required rest breaks and denied Plaintiff and Class members the opportunity to take off-duty rest
23 breaks. As a result, Plaintiff and Class members remained on-duty during these purported rest
24 breaks and Defendants are responsible for paying premium compensation for missed rest breaks
25 pursuant to Labor Code § 226.7.

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

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

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

11 **THIRD CAUSE OF ACTION**

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

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

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

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

19 44. As a pattern and practice, Defendants suffered and permitted employees to work
20 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
21 overtime pay. Defendants regularly required employees to work off-the-clock after more than
22 eight hours had elapsed in a workday. As a result of such policy and practice, Defendants owe
23 overtime wages to Plaintiff and the Class.

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

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

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2802

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

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

48. This cause of action is brought pursuant to Labor Code § 2802, which provides that employees are entitled to be indemnified for expenses and losses in discharging the duties of their employers.

49. Defendants failed to pay Plaintiff and Class members for work-related expenses, including without limitation, the costs incurred with the use of personal cell phones. As a matter of practice and policy, Defendants required Plaintiff and other Class members to download various apps to access their work schedules and track their hours. However, Defendants failed to reimburse Plaintiff and the Class for the associated costs. Defendants also required Plaintiff and Class members to use their personal vehicles to drive to and from patient appointments but did not reimburse them for the mileage incurred.

50. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 2802.

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1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226**

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

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

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

9 53. Here, Plaintiff and the Class were paid hourly. As such, the wage statements
10 should have reflected the total hours worked, number of hours worked at each applicable rate of
11 pay, and gross and net wages earned, pursuant to Labor Code § 226. However, the wage
12 statements provided to Plaintiff and other employees failed to identify such information. More
13 specifically, as a result of the underpayment and/or nonpayment of overtime wages and meal and
14 rest period premiums, the wage statements provided to Plaintiff displayed inaccurate gross and
15 net wages earned. The wage statements also failed to accurately identify the number of overtime
16 hours worked and total hours worked.

17 54. Such a pattern, practice, and uniform administration of corporate policy as
18 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
19 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
20 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
21 § 226.

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

practices outlined above, including by: (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; and (c) failing to pay employees overtime wages for all hours worked in violation of Labor Code §§ 201-203, 510, 558, and 1194.

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

58. Plaintiff seeks, individually 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.

59. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by California Business & 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 as specifically described therein.

SEVENTH CAUSE OF ACTION

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

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

61. 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, the UCL, 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

1 shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203,
2 226.7, and 512; (b) failing to provide off-duty rest periods to employees who worked 3.5 hours
3 or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code
4 §§ 201-203 and 226.7; (c) failing to pay employees overtime wages for all hours worked in
5 violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to reimburse business
6 expenses in violation of Labor Code § 2802; and (e) failing to provide accurate, itemized wage
7 statements in violation of Labor Code § 226.

8 62. On or about September 30, 2021, Plaintiff sent written notice to the California
9 Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code
10 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2698, and 2802, pursuant to Labor Code § 2698, et
11 seq., the Private Attorneys General Act (“PAGA”). Plaintiff also sent written notice of said
12 Labor Code violations to Defendant via certified mail pursuant to Labor Code § 2699.3. As of
13 the date of the filing of this Complaint, the LWDA has not provided written notice regarding
14 whether it intends to investigate the Labor Code violations set forth in Plaintiff’s written notice.

15 63. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and
16 all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 226, 226.7,
17 510, 512, 558, 1194, 2698, and 2802, for the time period described above, on behalf of herself
18 and other Aggrieved Employees.

19 **PRAYER FOR RELIEF**

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

22 2. For an order certifying the proposed Class;

23 3. For an order appointing Plaintiff as the representative of the Class as described
24 herein;

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

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

28 6. Upon the Second Cause of Action, for damages and/or penalties pursuant to

1 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

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

4 8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to
5 California Labor Code § 2802, and for costs and attorneys' fees

6 9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California
7 Labor Code § 226, and for costs and attorneys' fees;

8 10. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
9 affected members of the general public of all funds unlawfully acquired by Defendants by means
10 of any acts or practices declared by this Court to be in violation of Business & Professions Code
11 § 17200, *et seq.*, for the time periods described above;

12 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
13 to the PAGA, Labor Code Sections 2698, *et seq.*, Labor Code Section 226.3, and for costs and
14 attorneys' fees;

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

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

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19 DATED: December 7, 2021

DIVERSITY LAW GROUP, P.C.

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21 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On December 7, 2021, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

Marie Burke Kenny
Marie.kenny@procopio.com
 Clint Engleson
Clint.Engleson@procopio.com
 Procopio
 525 B. Street, Suite 2200
 San Diego, California 92101
Attorneys for Defendant Melon Holdings, LLC

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 7, 2021, at Los Angeles, California.


Olympia Pena