

03/04/2022

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Ramirez, Taylor

DEPUTY CLERK



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 MENDOCINO**

ROSALINDA POOLE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

NIGHTSHADE HOLDINGS, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21CV00856

**JOINT STIPULATION AND REQUEST FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT; DECLARATION OF MAX W.
GAVRON; [PROPOSED] ORDER**

Complaint Filed: October 29, 2021

FAC Filed: December 3, 2021

1 Plaintiff Rosalinda Poole (“Plaintiff”) and Defendant Nightshade Holdings, LLC,
2 (“Defendant”) (collectively, “Parties”), by and through their respective counsel of record, herein
3 stipulate as follows:

4 WHEREAS, on October 1, 2021, Plaintiff sent written notice to the California Labor &
5 Workforce Development Agency of Defendant’s alleged violation of Labor Code §§ 201-204,
6 212, 213, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 2802, pursuant to Labor Code
7 section 2698, *et seq.*, the Private Attorneys General Act (“PAGA”);

8 WHEREAS, on October 29, 2021, Plaintiff filed a Class Action Complaint for: (1)
9 violation of Labor Code §§ 1194, 1197, and 1197.1; (2) violation of Labor Code §§ 510, 558,
10 and 1194; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code § 226.7; (5)
11 violation of Labor Code §§ 201-203; (6) violation of Labor Code § 2802; (7) violation of Labor
12 Code §226; and (8) violation of Business and Professions Code § 17200, *et seq.*;

13 WHEREAS, on December 3, 2021, Plaintiff filed her First Amended Class and
14 Representative Action Complaint (“FAC”) adding an additional violation of Labor Code §2698,
15 *et seq.*, the Private Attorney Attorneys General Act (“PAGA”);

16 WHEREAS, Defendant filed its answer to Plaintiff’s FAC on or about January 3, 2022;

17 WHEREAS, Defendant’s counsel informed Plaintiff’s counsel of the existence of an
18 arbitration agreement containing a class action waiver signed by Plaintiff;

19 WHEREAS, Defendant contends the arbitration agreement is applicable to Plaintiff’s
20 employment;

21 WHEREAS, after reviewing the arbitration agreement and class action waiver, Plaintiff
22 wishes to dismiss her individual claims and putative class action claims without prejudice;

23 WHEREAS, concurrent with this Request, Plaintiff’s counsel provides the declaration
24 required by California Rule of Court 3.770(a) detailing the facts leading to the request for
25 dismissal of the putative class claims;

26 WHEREAS, the dismissal of the class action allegations without prejudice will not
27 prejudice the rights and remedies of any of the putative class members because no class has been
28 certified, and no notice has been sent to the putative class;

1 WHEREAS, pursuant to California Rules of Court, Rule 3.770(c), “if the court has not
2 ruled on class certification, or if notice of the pendency of the action has not been provided to
3 class members in a case in which such notice was required...the action may be dismissed
4 without notice to the class members if the court finds that the dismissal will not prejudice them;”

5 WHEREAS, the putative class members have not yet been provided any notice, there has
6 been no determination on the merits of the class action, and no class has been certified;

7 WHEREAS, the Parties agreed to the filing of a Second Amended Representative PAGA
8 Action Complaint (“Second Amended Complaint”) to allege a single cause of action for
9 violation of Labor Code §2698, *et seq.*, the Private Attorney Attorneys General Act (“PAGA”);

10 WHEREAS, the Parties, through their counsel of record, have met and conferred
11 regarding the filing of a Second Amended Complaint, a copy of which is attached hereto as
12 **Exhibit A**; and

13 WHEREAS, Defendant has no objection to the filing of the Second Amended Complaint,
14 without prejudice to and without waiving any defenses thereto.

15 NOW THEREFORE, the Parties STIPULATE and REQUEST as follows:

16 1. That Plaintiff’s individual claims and allegations be dismissed without prejudice;
17 2. That the class claims and allegations be dismissed without prejudice;
18 3. That Plaintiff be granted leave to file the Second Amended Complaint, a true and
19 correct copy of which is attached hereto as **Exhibit A**;

20 4. That the Second Amended Complaint be deemed filed and served as of the date of
21 execution of the [Proposed] Order filed herewith; and

22 5. That Defendant shall have thirty (30) days from the date the Order is executed by
23 the Court to file a pleading that is responsive to the Second Amended Complaint.
24
25
26
27
28

1 DATED: March 2, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee

5 Max W. Gavron

6 Attorneys for Plaintiff and the Aggrieved
7 Employees

8 DATED: March 2, 2022

FISHER & PHILLIPS LLP

9 By: 

10 Grace Y. Horoupian

11 Gregory L. Blueford

12 Attorneys for Defendant Nightshade Holdings, LLC
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and an attorney with the law firm Diversity Law Group, P.C., attorneys of record for Plaintiff Rosalinda Poole (“Plaintiff”) in the instant action (“Action”). All the matters stated in this declaration are made of my own personal knowledge.

3. On October 29, 2021, Plaintiff filed a Class Action Complaint for: (1) violation of Labor Code §§ 1194, 1197, and 1197.1; (2) violation of Labor Code §§ 510, 558, and 1194; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code § 226.7; (5) violation of Labor Code §§ 201-203; (6) violation of Labor Code § 2802; (7) violation of Labor Code §226; and (8) violation of Business and Professions Code § 17200, *et seq.*

5. Defendant filed its answer to Plaintiff's FAC on or about January 3, 2022.

7. Defendant contends the arbitration agreement is applicable to Plaintiff's employment.

9. The dismissal of the class action allegations without prejudice will not prejudice the rights and remedies of any of the putative class members because no class has been certified, and no notice has been sent to the putative class

1 10. California Rules of Court, Rule 3.770(c) states, “if the court has not ruled on class
2 certification, or if notice of the pendency of the action has not been provided to class members in
3 a case in which such notice was required...the action may be dismissed without notice to the
4 class members if the court finds that the dismissal will not prejudice them.” Here, no class
5 certification motion has been filed, no class has been certified, and notice of the pendency of this
6 Action has not been provided to any putative class member the putative class members have not
7 yet been provided any notice, there has been no determination on the merits of the class action,
8 and no class has been certified.

9 11. No consideration has been received in exchange for Plaintiff dismissing her
10 individual and putative class claims.

11 12. The Parties agreed to the filing of a Second Amended Representative PAGA
12 Action Complaint (“Second Amended Complaint”) to allege a single cause of action for
13 violation of Labor Code §2698, *et seq.*, the Private Attorney Attorneys General Act (“PAGA”)

14 13. The Parties, through their counsel of record, have met and conferred regarding the
15 filing of a Second Amended Complaint, a copy of which is attached hereto as **Exhibit A**.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed this on February 24, 2022, at Los Angeles, California.

19
20 

21 _____
Max W. Gavron
22
23
24
25
26
27
28

[PROPOSED] ORDER

THE COURT, having received and reviewed the Joint Stipulation for Leave to File Second Amended Complaint (“Stipulation”), and GOOD CAUSE appearing, herein orders as follows:

1. Plaintiff Rosalinda Poole’s (“Plaintiff”) individual claims and allegations in the First Amended Complaint are DISMISSED WITHOUT PREJUDICE;

2. The class claims and allegations in the First Amended Complaint are DISMISSED WITHOUT PREJUDICE;

3. Plaintiff is granted leave to file the Second Amended Complaint, attached as **Exhibit A** to the Stipulation;

4. The Second Amended Complaint shall be deemed filed as of the date of execution of this Order;

5. Defendant shall have thirty (30) days from the date of this Order to answer the Second Amended Complaint.

3/4/2022 12:10:04 PM

IT IS SO ORDERED.

DATED: 3/4/2022



HONORABLE JEANINE NADEL
SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

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 MENDOCINO**

ROSALINDA POOLE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

NIGHTSHADE HOLDINGS, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21CV00856

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

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

DEMAND OVER \$25,000.00

Plaintiff Rosalinda Poole (“Plaintiff”) hereby submits this second amended representative action complaint (“Complaint”) against Defendant Nightshade 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 §§ 201-204, 212, 213, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698, and 2802, and the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

2. This Complaint challenges systemic illegal employment practices resulting in

violations of the California Labor Code against individuals who worked for Defendants.

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

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

JURISDICTION AND VENUE

5. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 212, 213, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698, and 2802, and the applicable Wage Orders.

6. Venue is proper in Mendocino County because Plaintiff worked for Defendants in Ukiah, California.

PARTIES

7. Plaintiff was employed by Defendants as a Certified Nursing Assistant at Defendants' skilled nursing and rehabilitation facility from about June 8, 2015, until about July 12, 2021. Plaintiff worked as an hourly, non-exempt employee.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 201-204, 212, 213, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698, and 2802, and the applicable IWC Wage Orders.

9. Plaintiff is informed and believes, and based thereon alleges, that Nightshade Holdings, LLC was and is a California limited liability company that operates skilled nursing facilities, rehabilitation centers, and other healthcare facilities in the State of California,

1 including in Mendocino County, California.

2 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
4 and partnerships, licensed to do business and actually doing business in the State of California.
5 As such and based upon all the facts and circumstances incident to Defendants' business,
6 Defendants are subject to the California Labor Code.

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

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

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

27 14. At all times herein mentioned, Defendants, and each of them, were members of,
28 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

2 15. At all times herein mentioned, the acts and omissions of various Defendants, and
3 each of them, concurred and contributed to the various acts and omissions of each and all of the
4 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
5 herein mentioned, Defendants, and each of them, ratified each and every act or omission
6 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
7 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
8 damages as herein alleged.

9 **FIRST CAUSE OF ACTION**

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

11 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

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

14 17. Plaintiff brings this cause of action as a proxy for the State of California and in
15 this capacity, seeks penalties on behalf of all Aggrieved Employees from October 1, 2020,
16 through the present, for Defendants' violations of Labor Code §§ 201-204, 212, 213, 226, 226.7,
17 510, 512, 558, 1194, 1197, 1197.1, 2698, and 2802, and the applicable IWC Wage Orders, as
18 identified above for: (a) failing to pay employees minimum and/or overtime wages for time spent
19 undergoing check in/out procedures, including COVID temperature checks and screenings, in
20 violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, 1197.1; (b) failing to provide off-
21 duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal
22 period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (c)
23 failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift
24 and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and
25 226.7; (d) failing to reimburse business expenses in violation of Labor Code § 2802; (e) failing
26 to pay all wages owed to separated employees by issuing payment of final wages to separated
27 employees in the form of a pay card, which required employees to incur fees to use, was not fully
28 cashable, and not usable at all financial institutions and, thus, did not actually compensate

employees for all wages owed upon their separation in violation of Labor Code §§ 201-203; and
(f) failing to provide accurate, itemized wage statements in violation of Labor Code § 226.

18. On or about October 1, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-204, 212, 213, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 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.

19. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-204, 212, 213, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 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 Sections 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: March 2, 2022

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff and the Aggrieved
Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

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

10 On March 2, 2022, I served the following document(s) described as: **JOINT**
11 **STIPULATION AND REQUEST FOR LEAVE TO FILE SECOND AMENDED**
12 **COMPLAINT; DECLARATION OF MAX W. GAVRON; [PROPOSED] ORDER** on the
13 interested parties in this action as follows:

14 Grace Y. Horoupian
15 FISHER & PHILLIPS LLP
16 2050 Main Street, Suite 1000
17 Irvine, CA 92614
18 ghoroupian@fisherphillips.com
19 amiranda@fisherphillips.com
20 *Agent for Defendant Nightshade Holdings,*
21 *LLC*

22 Gregory L. Blueford
23 FISHER & PHILLIPS LLP
24 621 Capitol Mall, Suite 1400
25 Sacramento, CA 95814
26 gblueford@fisherphillips.com
27 amalerbi@fisherphillips.com
28 *Agent for Defendant Nightshade Holdings,*
LLC

29 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
30 the above-described document(s) to the party(ies) listed above or on the attached mailing list
31 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
32 indicated above or on the attached mailing list. I certify that said electronic transmission was
33 completed and that all pages were received by the party(ies) identified herein or on the attached
34 mailing list.

35 I declare under penalty of perjury under the laws of the State of California that the above
36 is true and correct. Executed on March 2, 2022, at Los Angeles, California.

37 
38 Linda Lee