

To: Alameda Court Page 3 of 36

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From: Shaun Setareh

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ALAMEDA COUNTY

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THE SUPERIOR COURT
By Lanette Buffin, Deputy

CASE NUMBER:

HG20053462

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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ALAMEDA

11 UNLIMITED JURISDICTION
12

13 GIOVANNI MIMS, on behalf of himself, all
14 others similarly situated, and the general
public,

15 *Plaintiff,*

16 vs.

17 AMLI MANAGEMENT COMPANY, an
Illinois corporation; AMLI RESIDENTIAL
18 PARTNERS, LLC; a Delaware Limited
Liability Company; AMLI RESIDENTIAL
19 PROPERTIES, L.P., a Delaware Limited
Partnership; and DOES 1 through 50,
20 inclusive,

21 *Defendants.*
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Case No.: HG20053462

FIRST AMENDED COMPLAINT

1. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
2. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
3. Failure to Pay Vacation Wages (Lab. Code § 227.3);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Civil Penalties (Lab. Code § 2698 *et seq.*).

JURY TRIAL DEMANDED

COMES NOW, Plaintiff GIOVANNI MIMS (“Plaintiff”), on behalf of himself, all others similarly situated, and the general public, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action against Defendant AMLI MANAGEMENT COMPANY, an Illinois corporation; AMLI RESIDENTIAL PARTNERS, LLC, a Delaware Limited Liability Company; AMLI RESIDENTIAL PROPERTIES, L.P., a Delaware Limited Partnership; and DOES 1 through 50, inclusive (collectively referred to as “Defendants”) for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have

- (1) failed to provide Plaintiff and other aggrieved employees with rest periods;
- (2) failed to pay them premium wages for missed rest periods;
- (3) failed to pay them premium wages for missed rest periods at the regular rate of pay;
- (4) failed to pay them at least minimum wage for all hours worked;
- (5) failed to pay them overtime and/or double time wages by failing to include all applicable remuneration in calculating the regular rate of pay;
- (6) failed to pay them for all vested vacation pay;
- (7) failed to provide them with accurate written wage statements; and
- (8) failed to pay them all of their final wages following separation of employment.

Based on these alleged Labor Code violations, Plaintiff now brings this class and representative action to recover unpaid wages, restitution and related relief on behalf of himself, all others similarly situated, and the general public.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because the monetary damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction of the Superior Court of the State of California.

3. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure

1 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
2 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
3 maintains offices, transacts business and/or has an agent therein.

4 **PARTIES**

5 4. Plaintiff GIOVANNI MIMS is, and at all relevant times mentioned herein, an
6 individual residing in the State of California.

7 5. Plaintiff is informed and believes, and thereupon alleges that Defendant AMLI
8 MANAGEMENT COMPY is, and at all relevant times mentioned herein, an Illinois corporation
9 doing business in the State of California.

10 6. Plaintiff is informed and believes, and thereupon alleges that Defendant AMLI
11 RESIDENTIAL PARTNERS, LLC, is and at all relevant times mentioned herein, a Delaware
12 Limited Liability Company doing business in the State of California

13 7. Plaintiff is informed and believes, and thereupon alleges that Defendant AMLI
14 RESIDENTIAL PROPERTIES, L.P., is and at all relevant times mentioned herein, a Delaware
15 Limited Partnership doing business in the State of California.

16 8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
17 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
18 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
19 when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the
20 fictitiously named defendants are responsible in some manner for the occurrences, acts and
21 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
22 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
23 capacities of the DOE defendants when ascertained.

24 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
25 mentioned herein, some or all of the defendants were the representatives, agents, employees,
26 partners, directors, associates, joint venturers, principals or co-participants of some or all of the
27 other defendants, and in doing the things alleged herein, were acting within the course and scope of
28 such relationship and with the full knowledge, consent and ratification by such other defendants.

10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

CLASS ALLEGATIONS

11. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

12. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

Vacation Pay Class: All persons employed by Defendants in California who earned paid vacation days, including but not limited to, "Floating Holidays," without receiving compensation for each vested paid vacation day during the **Relevant Time Period**.

13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

14. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number

1 of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
2 exceeds the minimum required for numerosity under California law.

3 15. **Commonality and Predominance:** Common questions of law and fact exist as to
4 all class members and predominate over any questions which affect only individual class members.
5 These common questions include, but are not limited to:

- 6 A. Whether Defendants maintained a policy or practice of failing to provide
7 aggrieved employees with their rest periods;
- 8 B. Whether Defendants failed to pay premium wages to class members when
9 they have not been provided with required rest periods;
- 10 C. Whether Defendants used payroll formulas that systematically fail to account
11 for non-discretionary bonuses and/or other applicable remuneration when
12 calculating regular rates of pay for class members;
- 13 D. Whether Defendants failed to pay premium wages to aggrieved employees
14 based on their respective “regular rates of compensation” by not including
15 commissions and/or other applicable remuneration in calculating the rates at
16 which those wages are paid;
- 17 E. Whether Defendants failed to provide proportionate accruals for vested
18 vacation time for aggrieved employees as required by California law;
- 19 F. Whether Defendants subjected the vacation time and/or floating holidays they
20 offer to class members to forfeiture;
- 21 G. Whether Defendants failed to provide class members with accurate written
22 wage statements as a result of providing them with written wage statements
23 with inaccurate entries for, among other things, amounts of gross and net
24 wages, and total hours worked;
- 25 H. Whether Defendants applied policies or practices that result in late and/or
26 incomplete final wage payments;
- 27 I. Whether Defendants are liable to class members for waiting time penalties
28 under Labor Code section 203;

J. Whether aggrieved employees are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

16. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

19. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS

20. Plaintiff worked for Defendants as a non-exempt, hourly employee from approximately April 2018 through July 2019.

21. All allegations are outlined in the attached PAGA letter as EXHIBIT A and are

1 incorporated by reference herein.

2 **Missed Rest Periods**

3 22. Plaintiff and the aggrieved employees were not provided with rest periods of at least
4 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
5 Defendants' policy of not scheduling each rest period as part of each work shift; (2) understaffing
6 each work shift with not enough workers; (3) Defendant's policies which required that employees
7 work through the entirety of their shifts outside of their hour long meal periods (4) employees
8 being overwhelmed with so much work by Defendants that even if employees wanted to take rest
9 periods, that they were unable to do so out of fear of adverse actions and (5) Defendants placing
10 immense pressure on employees to complete all of their assigned tasks within the timeframe of
11 their scheduled shifts with threats of adverse employment actions should they fail to do so.

12 23. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
13 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
14 hours worked due to complying with Defendants' productivity requirements that required Plaintiff
15 and the putative class to work through their rest periods in order to complete their assignments on
16 time.

17 **Vacation Pay**

18 24. Plaintiff and the aggrieved employees accrued vacation wages during their
19 employment with Defendants.

20 25. Under California law, vacation wages are considered a form of wages under Labor
21 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on
22 labor performed are considered wages that cannot be subject to forfeiture without compensation for
23 forfeited days at the applicable rates required by law.

24 26. At all relevant times, Defendants maintained policies that provide for the unlawful
25 forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suarez v. Plastic*
26 *Dress-Up Co.*, (1982) 31 Cal. 3d 774.

27 27. Plaintiff and the aggrieved employees are entitled to vacation accrued during their
28 employment with Defendants. Upon termination, Plaintiff and the putative class were not paid out

1 all accrued vacation pay.

2 **Regular Rate of Pay**

3 28. The regular rate of pay under California law includes all remuneration for
4 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
5 commissions, non-discretionary bonuses, and rest break premium wages.

6 29. During the applicable limitations period, Defendants violated the rights of Plaintiff
7 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
8 them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and
9 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
10 remuneration, including, but not limited to, non-discretionary bonuses and rest break premium
11 wages.

12 **Wage Statements**

13 1. Plaintiff and the aggrieved employees were not provided with accurate wage
14 statements as mandated by law pursuant to Labor Code section 226.

15 2. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
16 earned” were not accurately reflected in that: all hours worked, including overtime and rest break
17 premiums, were not included.

18 3. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
19 worked by the employee” were not accurately reflected in that: all hours worked, including
20 overtime and rest break premiums, were not included.

21 4. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
22 earned” were not accurately reflected in that: all hours worked, including overtime and rest break
23 premiums, were not included.

24 5. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
27 overtime and rest break premiums, were not included.

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2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST PERIODS**

4 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

5 **(Plaintiff and Rest Period Sub-Class)**

6 6. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
7 herein.

8 7. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
9 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
10 Code and the applicable Wage Order.

11 8. Section 12 of the applicable Wage Order imposes an affirmative obligation on
12 employers to permit and authorize employees to take required rest periods at a rate of no less than
13 ten minutes of net rest time for each four hour work period, or major fraction thereof, that must be
14 in the middle of each work period insofar as practicable.

15 9. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
16 employers from requiring employees to work during required rest periods and require employers to
17 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on
18 each workday that the employee is not provided with the required rest period(s).

19 10. Compensation for missed rest periods constitutes wages within the meaning of Labor
20 Code section 200.

21 11. Labor Code section 1198 makes it unlawful to employ a person under conditions that
22 violate the Wage Order.

23 12. Plaintiff alleges that, at all relevant times during the applicable limitations period,
24 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
25 with net rest period of at least ten minutes for each four hour work period, or major fraction thereof,
26 as required by the applicable Wage Order.

27 13. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-**
28 **Class** members additional premium wages when required rest periods were not provided.

1 14. Specifically, Defendants written policies do not provide that employees may take a
2 rest period for each four hours worked, or major fraction thereof, and that rest periods should be
3 taken in the middle of each work period insofar as practicable.

4 15. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
5 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
6 costs of suit.

7 16. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
8 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
9 **Rest Period Sub-Class** members, seek to recover reasonable attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

12 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

13 **(Plaintiff and Hourly Employee Class)**

14 17. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 18. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have
17 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
18 applicable Wage Order.

19 19. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
20 which an employee is subject to the control of the employer, and includes all the time the employee
21 is suffered or permitted to work, whether or not required to do so."

22 20. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
23 employees at least the minimum wage set forth therein for all hours worked, which consist of all
24 hours that an employer has actual or constructive knowledge that employees are working.

25 21. Labor Code section 1194 invalidates any agreement between an employer and an
26 employee to work for less than the minimum or overtime wage required under the applicable Wage
27 Order.

28 22. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated

1 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in
2 addition to the underlying unpaid minimum wages and interest thereon.

3 23. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
4 than the minimum wage required under the applicable Wage Order for all hours worked during a
5 payroll period.

6 24. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
7 person acting either individually or as an officer, agent or employee of another person, to pay an
8 employee, or cause an employee to be paid, less than the applicable minimum wage.

9 25. Labor Code section 1198 makes it unlawful for employers to employ employees
10 under conditions that violate the applicable Wage Order.

11 26. Labor Code section 204 requires employers to pay non-exempt employees their
12 earned wages for the normal work period at least twice during each calendar month on days the
13 employer designates in advance and to pay non-exempt employees their earned wages for labor
14 performed in excess of the normal work period by no later than the next regular payday.

15 27. Labor Code section 223 makes it unlawful for employers to pay their employees
16 lower wages than required by contract or statute while purporting to pay them legal wages.

17 28. Labor Code section 510 and Section 3 of the applicable Wage Order require
18 employees to pay non-exempt employees overtime wages of no less than one and one-half times
19 their respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
20 hours worked in excess of forty hours in one workweek, and/or for the first eight hours worked on
21 the seventh consecutive day of one workweek.

22 29. Labor Code section 510 and Section 3 of the applicable Wage Order also require
23 employers to pay non-exempt employees overtime wages of no less than two times their respective
24 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
25 worked in excess of eight hours on a seventh consecutive workday during the workweek.

26 30. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
27 centrally devised policies and practices to he and **Hourly Employee Class** members with respect to
28 working conditions and compensation arrangements.

1 31. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
2 **Employee Class** members for all time worked, including but not limited to, overtime hours and rest
3 period premiums at statutory and/or agreed rates.

4 32. At all relevant times, Defendants paid Plaintiff failed to pay premium wages based
5 on a rate of compensation that did not reflect, among other things, rest break premiums, as required
6 by Labor Code section 226.7(b) and Sections 11 and 12 of the applicable Wage Order on the
7 occasions when Defendants should have paid Plaintiff and the putative class premium wages in lieu
8 of rest periods.

9 33. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
10 during the applicable limitations period, Defendants maintained a policy or practice of failing to pay
11 **Hourly Employee Class** members premium wages based on rates of compensation that reflect rest
12 break premiums as required by Labor Code section 226.7(b) and Sections 11 and 12 of the
13 applicable Wage Order on the occasions when Defendants failed to pay them premium wages in
14 lieu of rest periods.

15 34. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
16 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
17 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY VACATION WAGES**

20 **(Lab. Code § 227.3)**

21 **(Plaintiff and Vacation Pay Class)**

22 35. Plaintiffs incorporates the preceding paragraphs of the Complaint as if fully alleged
23 herein.

24 36. California Labor Code section 227.3 provides:

25 Unless otherwise provided by a collective-bargaining agreement,
26 whenever a contract of employment or employer policy provides for
27 paid vacations, and an employee is terminated without having taken
28 off his vested vacation time, all vested vacation shall be paid to him
 as wages at his final rate in accordance with such contract of
 employment or employer policy respecting eligibility or time served;
 provided, however, that an employment contract or employer policy

1 shall not provide for forfeiture of vested vacation time upon
2 termination. The Labor Commissioner or a designated representative,
3 in the resolution of any dispute with regard to vested vacation time,
4 shall apply the principles of equity and fairness.

5 37. At all relevant times during the applicable limitations period, Plaintiffs and
6 members of the **Vacation Pay Class** accrued vacation time during their employment with
7 Defendants.

8 38. As a result of their reimbursement policies and practices, Plaintiffs are informed
9 and believes and thereon alleges that Defendants failed to reimburse him and **Vacation Pay**
10 **Class** members for all accrued vacation wages.

11 39. By reason of the above, Plaintiffs and the members of the **Vacation Pay Class** are
12 entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of
13 the filing of the Complaint until the date of entry of judgment.

14 40. Plaintiffs, on behalf of themselves and the members of the **Vacation Pay Class**,
15 seeks interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California
16 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil
17 Procedure section 1021.5.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

20 **(Lab. Code § 226)**

21 **(Plaintiff and Wage Statement Penalties Sub-Class)**

22 41. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
23 herein.

24 42. Labor Code section 226(a) states:

25 "An employer, semimonthly or at the time of each payment of wages, shall furnish to
26 his or her employee, either as a detachable part of the check, draft, or voucher paying
27 the employee's wages, or separately if wages are paid by personal check or cash, an
28 accurate itemized statement in writing showing (1) gross wages earned, (2) total
hours worked by the employee, except as provided in subdivision (j), (3) the number
of piece-rate units earned and any applicable piece rate if the employee is paid on a
piece-rate basis, (4) all deductions, provided that all deductions made on written
orders of the employee may be aggregated and shown as one item, (5) net wages
earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and only the last four digits of his or her social security

1 number or an employee identification number other than a social security number,
2 (8) the name and address of the legal entity that is the employer and, if the employer
3 is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
4 and address of the legal entity that secured the services of the employer, and (9) all
5 applicable hourly rates in effect during the pay period and the corresponding number
6 of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if
7 the employer is a temporary services employer as defined in Section 201.3, the rate
8 of pay and the total hours worked for each temporary services assignment. The
9 deductions made from payment of wages shall be recorded in ink or other indelible
10 form, properly dated, showing the month, day, and year, and a copy of the statement
11 and the record of the deductions shall be kept on file by the employer for at least
12 three years at the place of employment or at a central location within the State of
13 California. For purposes of this subdivision, ‘copy’ includes a duplicate of the
14 itemized statement provided to an employee or a computer-generated record that
15 accurately shows all of the information required by this subdivision.”

16 43. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize
17 the “detachable part of the check” provision and the “accurate itemized statement in writing”
18 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
19 employee retains the right to elect to receive a written paper stub or record and that those who are
20 provided with electronic wage statements retain the ability to easily access the information and
21 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
22 Letter July 6, 2006).

23 44. Plaintiff is informed and believes that, at all relevant times during the applicable
24 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
25 members with written wage statements as described above.

26 45. Plaintiff is informed and believes that Defendants’ failure to provide he and **Wage**
27 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
28 that Defendants have the ability to provide them with accurate wage statements but have
intentionally provided them with written wage statements that Defendants have known do not
comply with Labor Code section 226(a).

46. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
in that Defendants have violated their legal rights to receive accurate wage statements and have
misled them about their actual rates of pay and wages earned. In addition, inaccurate information
on their wage statements have prevented immediate challenges to Defendants’ unlawful pay
practices, has required discovery and mathematical computations to determine the amount of wages

1 owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or
2 has led to the submission of inaccurate information about wages and deductions to federal and state
3 government agencies.

4 47. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
5 **Statement Penalties Sub-Class** members, seek the greater of actual damages or \$50.00 for the
6 initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each
7 subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an
8 aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees
9 and costs.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

12 **(Lab. Code §§ 201-203)**

13 **(Plaintiff and Waiting Time Penalties Sub-Class)**

14 48. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 49. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
17 have been entitled, upon the end of their employment with Defendants, to timely payment of all
18 wages earned and unpaid before termination or resignation.

19 50. At all relevant times, pursuant to Labor Code section 201, employees who have been
20 discharged have been entitled to payment of all final wages immediately upon termination.

21 51. At all relevant times, pursuant to Labor Code section 202, employees who have
22 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
23 payment of all final wages at the time of resignation.

24 52. At all relevant times, pursuant to Labor Code section 202, employees who have
25 resigned after giving less than seventy-two (72) hours notice of resignation have been entitled to
26 payment of all final wages within seventy-two (72) hours of giving notice of resignation.

27 53. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
28 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

1 54. Plaintiff is informed and believes that, at all relevant time during the applicable
2 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
3 members all of their final wages in accordance with the Labor Code.

4 55. Plaintiff is informed and believes that, at all relevant times during the applicable
5 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
6 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
7 sections 201 or 202 by failing to timely pay them all final wages.

8 56. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
9 timely pay all final wages to he and **Waiting Time Penalties Sub-Class** members have been willful
10 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
11 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
12 requirements.

13 57. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
14 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
15 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

16 58. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
17 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-**
18 **Class** members, seek awards of reasonable attorneys' fees and costs.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

22 **(Plaintiff and UCL Class)**

23 59. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
24 herein.

25 60. Business and Professions Code section 17200 defines "unfair competition" to
26 include any unlawful business practice.

27 61. Business and Professions Code section 17203-17204 allow a person who has lost
28 money or property as a result of unfair competition to bring a class action in accordance with Code

1 of Civil Procedure section 382 to recover money or property that may have been acquired from
2 similarly situated persons by means of unfair competition.

3 62. Federal and California laws require certain disclosures and proper authorization
4 before conducting background checks and obtaining information from credit and background
5 reports in connection with a hiring process.

6 63. California law requires employers to pay hourly, non-exempt employees for all hours
7 they are permitted or suffered to work, including hours that the employer knows or reasonable
8 should know that employees have worked.

9 64. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST and
10 SECOND causes of action herein.

11 65. Plaintiff lost money or property as a result of the aforementioned unfair competition.

12 66. Defendants have or may have acquired money by means of unfair competition.

13 67. Plaintiff is informed and believes and thereupon alleges that by committing the
14 Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215,
15 216, 225, 226.6, 354, 408, 553, 1175, and 1199, which make it a misdemeanor to commit the Labor
16 Code violations alleged herein.

17 68. Defendants have committed criminal conduct through their policies and practices of,
18 *inter alia*, failing to comport with their affirmative obligations as an employer to provide employees
19 with duty free uninterrupted 10-15 minute rest periods every four hours work, pay them all accrued
20 vacation wages upon separation, and provide accurate written wage statements.

21 69. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
22 employees and entitled to the full protections of both the Labor Code and the applicable Wage
23 Order.

24 70. Defendants' unlawful conduct as alleged in this Complaint amounts to and
25 constitutes unfair competition within the meaning of Business and Professions Code section 17200
26 *et seq.* Business and Professions Code sections 17200 *et seq.* protects against unfair competition
27 and allows a person who has suffered an injury-in-fact and has lost money or property as a result of
28 an unfair, unlawful or fraudulent business practice to seek restitution on his own behalf and on

1 behalf of similarly situated persons in a class action proceeding.

2 71. As a result of Defendants' violations of the Labor Code during the applicable
3 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
4 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
5 conduct.

6 72. Plaintiff is informed and believes that other similarly situated persons have been
7 subject to the same unlawful policies or practices of Defendants.

8 73. Due to the unfair and unlawful business practices in violation of the Labor Code,
9 Defendants have gained a competitive advantage over other comparable companies doing business
10 in the State of California that comply with their legal obligations.

11 74. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
12 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
13 violates or is considered unlawful under any other state or federal law.

14 75. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
15 request the issuance of temporary, preliminary and permanent injunctive relief enjoining
16 Defendants, and each of them, and their agents and employees, from further violations of the Labor
17 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek
18 an order permanently enjoining Defendants, and each of them, and their respective agents and
19 employees, from further violations of the Labor Code and applicable Industrial Welfare
20 Commission Wage Orders.

21 76. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
22 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
23 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
24 and unfair business practices.

25 77. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
26 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
27 reasonable attorneys' fees in connection with their unfair competition claims.

28 78. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of

1 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
2 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
3 and unfair business practices.

4 79. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
5 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
6 reasonable attorneys' fees in connection with their unfair competition claims.

7 **SEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES**

9 **(Lab. Code §§ 2698, *et seq.*)**

10 80. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 81. During the applicable limitations period, Defendants have violated Labor Code §§
13 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198.

14 82. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of
15 himself and other current and former employees, to bring a representative civil action to recover
16 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need
17 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

18 83. Plaintiff, as a former employee against whom Defendants committed one or more of
19 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
20 employee within the meaning of Labor Code section 2699(c).

21 84. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
22 section 2699.3.

23 85. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
24 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
25 510, 512, 1194, 1197, and 1198:

- 26 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1194, and
27 1198, \$100 for each employee per pay period for each initial violation and
28 \$200 for each employee per pay period for each subsequent violation

(penalties set by Labor Code section 2699(f)(2));

- B. For violations of Labor Code section 203, a penalty in an amount not exceeding 30 days pay as waiting time (penalties set by Labor Code section 256).
- C. For violations of Labor Code section 204, \$100 for each employee for each initial violation that was neither willful nor intentional, \$200 for each employee, plus 25% of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and \$200 for each employee, plus 25% of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code section 210);
- D. For violations of Labor Code section 223, \$100 for each employee for each initial violation that was neither willful nor intentional, \$200 for each employee, plus 25% of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and \$200 for each employee, plus 25% of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code section 225.5);
- E. For violations of Labor Code section 226(a), if this action is deemed to be an initial citation, \$250 for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, \$1,000 for each employee for each violation (penalties set by Labor Code section 226.3);
- F. For violations of Labor Code sections 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee

1 was underpaid (penalties set by Labor Code section 558); and

2 G. For violations of Labor Code section 1197, \$100 for each aggrieved
3 employee for each initial violation of Labor Code section 1197 that was
4 intentional, and \$250 for each aggrieved employee per pay period for each
5 subsequent violation of Labor Code section 1197, regardless of whether the
6 initial violation was intentional (penalties set by Labor Code section 1197.1).

7 86. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs
8 and attorneys' fees in connection with his claims for civil penalties.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
11 public, prays for relief and judgment against Defendants as follows:

- 12 (1) An order that the action be certified as a class action;
13 (2) An order that Plaintiff be appointed class representative;
14 (3) An order that counsel for Plaintiff be appointed class counsel;
15 (4) Unpaid wages;
16 (5) Actual damages;
17 (6) Liquidated damages;
18 (7) Restitution;
19 (8) Declaratory relief;
20 (9) Pre-judgment interest;
21 (10) Statutory penalties;
22 (11) Costs of suit;
23 (12) Reasonable attorneys' fees;
24 (13) Civil penalties; and
25 (14) Such other relief as the Court deems just and proper.

26 ///

27 ///

28 **DEMAND FOR JURY TRIAL**

1 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
2 demands a jury trial on all issues so triable.

3
4 Dated: May 13, 2020

SETAREH LAW GROUP

5
6 /s/ Farrah Grant

7 SHAUN SETAREH
8 THOMAS SEGAL
9 FARRAH GRANT
Attorneys for Plaintiff
GIOVANNI MIMS

EXHIBIT A



315 SOUTH BEVERLY DRIVE
SUITE 315
BEVERLY HILLS, CA 90212
TEL: (310) 888-7771
FAX: (310) 888-0109

WWW.SETAREHLAW.COM

February 4, 2020

BY ONLINE SUBMISSION

PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612

BY CERTIFIED MAIL

AMLI Management Company
c/o C T Corporation System
208 South Lasalle Street, Suite 814
Chicago, IL 60604

BY CERTIFIED MAIL

AMLI Residential Partners, LLC
c/o C T Corporation System
28 Liberty Street
New York, NY 10005

BY CERTIFIED MAIL

AMLI Residential Properties, L.P.
c/o C T Corporation System
28 Liberty Street
New York, NY 10005

Re: Mims v. AMLI Residential Partners, LLC, et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Giovanni Mims (“Mims”) hereby provides notice on behalf of himself and on behalf of all similarly situated current and former employees in California (the “aggrieved employees”) who were employed by AMLI Residential Partners, LLC, AMLI Residential Properties, L.P., AMLI Management Company, and/or any staffing agencies and/or any other third parties (collectively referred to as “Defendants”) who worked in hourly, non-exempt positions for alleged violations of Labor Code sections 201, 202, 203, 223, 226, 226.7, 227.3, 256, 558, 1197, 1197.1, 1198, and 1199.

Giovanni Mims is an individual who was employed by Defendants in an hourly, non-exempt position as a Leasing Consultant from approximately April 2018 through July 16, 2019. At all relevant times, Defendants employed persons, conducted business in, and engaged in illegal labor and payroll practices and policies in California.

Mims and aggrieved employees are “employees” within the meaning of Section 2 of the

applicable Industrial Welfare Commission Wage Order (the “Wage Order”) and “aggrieved employees” within the meaning of Labor Code section 2699(c). At all relevant times, Mims and aggrieved employees have been non-exempt employees entitled to the full protections of both the Labor Code and the Wage Order.

As set forth below, Defendants failed to comply with the Labor Code sections as described herein below. Accordingly, Mims now seeks civil penalties for Defendants’ alleged violations of the Labor Code.

FAILURE TO PROVIDE REST PERIODS
(Lab. Code §§ 204, 223, 226.7 and 1198)

Labor Code section 204 provides that all wages (except as provided for under Labor Code sections 201 and 202) earned by any person in any employment become due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays, except that wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Labor Code section 223 states:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

Section 2 of the applicable Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Section 12 of the applicable Wage Order states:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than

three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provision of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Defendants' written policies failed to advise Mims and the aggrieved employees of their legal right to take rest period in accordance with California law. Specifically, Defendants have a policy of requiring Mims and the aggrieved employees to stay on premises and work through rest periods. Mims and the aggrieved employees are granted one hour to take their meal periods in the middle of their shifts. Outside of this hour meal period, Defendants do not allow Mims and the aggrieved employees to take any duty-free uninterrupted rest periods during their shifts. At no point during Mims' employment with Defendants did he and the aggrieved employees ever receive a rest break.

Accordingly, Mims and the aggrieved employees were not provided with legally mandated rest periods of at least ten minutes for every four hours worked or major fraction thereof.

As a result of these policies and practices, Defendants failed to provide Mims and the aggrieved employees with net rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and have failed to pay them premium wages at their regular rates of pay on workdays they failed to provide them with required rest periods. Defendants' policies and practices lack adequate safeguards to ensure that employees are relieved of their duties for all required rest periods and are paid additional wages when rest periods are not provided.

Accordingly, Mims now seeks civil penalties for these Labor Code violations that Defendants have committed against him and aggrieved employees as follows:

- (1) For all initial violation of Labor Code section 204, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 210);
- (2) For all subsequent violation of Labor Code section 204, \$200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 210);
- (3) For all initial violations of Labor Code section 223, that are deemed to be neither willful nor intentional, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 225.5);
- (4) For all initial violation of Labor Code section 223 that are deemed to be either willful or intentional, \$200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);
- (5) For all subsequent violations of Labor Code section 223, regardless of whether he initial violation of Labor Code section 223 is deemed to be either willful or intentional, \$200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);
- (6) For all initial violations of Labor Code sections 226.7 and 1198, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));
- (7) For all subsequent violations of Labor Code sections 226.7 and 1198, \$200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2)).

FAILURE TO PAY VACATION WAGES
(Lab. Code §§ 200, 227.3)

Vacation pay is considered a form of wages under Labor Code section 200. Pursuant to the California Supreme Court's decision in *Suastez v. Plastic Dress Up Co.*, 31 Cal. 3d 774 (1982) and Labor Code section 227.3, vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

Labor Code section 227.3 states, in relevant part:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time shall apply the principles of equity and fairness.

At all relevant times during the applicable limitations period, Defendants maintained a policy or practice that provide for the unlawful forfeiture of vested vacation pay in violation of *Suastez* and Labor Code section 227.3. Specifically, Mims and the aggrieved employees were not provided with any accrued vacation pay at the time of their separation with the company.

Accordingly, Mims now seeks civil penalties for these Labor Code violations that Defendants committed against him and aggrieved employees as follows:

- (1) For all initial violations of Labor Code section 227.3, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));
- (2) For all subsequent violations of Labor Code section 227.3, \$200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2)).

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS
(Lab. Code § 226)

Labor Code section 226(a) states, in pertinent part:

- (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or him employee either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or him social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a

farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

At all relevant time during the applicable limitations period, Defendants failed to provide accurate itemized wage statements that shows:

- (1) gross wages earned;
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3,

the rate of pay and the total hours worked for each temporary services assignment.

By failing to accurately record all hours worked, by failing to pay employees rest period premiums in accordance with California law, and by subjecting vested vacation pay to unlawful forfeiture, Defendants have failed to provide Mims and the aggrieved employees with written wage statements that comply with the requirements of Labor Code section 226(a). The wage statements of Mims and the aggrieved employees have not accurately reflected their applicable rates of pay, hours worked, and the amounts of their gross and net wages.

Accordingly, Mims now seeks civil penalties for Defendants' violations of the Labor Code as follows:

- (1) For all violations of Labor Code section 226(a) if a civil action filed in accordance with the procedures set forth in Labor Code section 2699.3 results in an initial citation or its equivalent, \$250 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 226.3);
- (2) For all violations of Labor Code section 226(a) if a civil action filed in accordance with the procedures set forth in Labor Code section 2699.3 results in a subsequent citation or its equivalent, \$1000 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 226.3).

LATE OR PARTIAL PAYMENT OF FINAL WAGES FOLLOWING SEPARATION
(Lab. Code §§ 201, 202 and 203)

Labor Code section 201 requires an employer to pay all earned and unpaid wages to a discharged employee immediately at the time of discharge.

Labor Code section 202 requires an employer to pay all earned and unpaid wages to an employee who quits after giving at least seventy-two hours notice at the time of quitting.

Labor Code section 202 requires an employer to pay all earned and unpaid wages to an employee who quits after giving less than seventy-two hours notice within seventy-two hours of giving notice of quitting.

Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first became due at the same rate until paid for up to thirty days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code sections 201 or 202.

By failing to timely furnish Mims and the aggrieved employees with any final paycheck and/or with final paychecks that include all earned and unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation and/or premium wages, Defendants have violated Labor Code sections 201 and/or 202.

Accordingly, Mims now seeks civil penalties for Defendants' violations of the Labor Code as follows:

- (1) For all initial violations of Labor Code sections 201, 202 and 203, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));
- (2) For all subsequent violations of Labor Code sections 201, 202 and 203, \$200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2)).

VIOLATIONS OF LABOR CODE SECTION 256

Mims is an individual who was employed by Defendants in a non-exempt, hourly position within the past year. At all relevant times, Defendants employed persons, conducted business in, and engaged in illegal labor and payroll practices and policies in California.

Pursuant to Labor Code section 256, the Labor Commissioner shall impose a civil penalty in an amount not exceeding thirty days pay as waiting time under the terms of Section 203. Defendants willfully failed to timely furnish Mims and aggrieved employees with any final paycheck timely and/or with final paychecks that include all earned and unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation, and/or premium wages.

Accordingly, Mims now seeks to recover the wages and penalties provided in Labor Code section 256 on behalf of himself and the aggrieved employees.

VIOLATIONS OF LABOR CODE SECTION 558

Mims is an individual who was employed by Defendants in a non-exempt, hourly position within the past year. At all relevant times, Defendants employed persons, conducted business in, and engaged in illegal labor and payroll practices and policies in California.

Pursuant to Labor Code section 558, any person acting on behalf of an employer who violates or causes to be violated a provision of the Labor Code regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to civil penalties and be ordered to pay all unpaid wages. Defendants failed to provide Mims and the aggrieved employees rest periods, minimum and overtime wages, and other Labor Code violations.

Accordingly, Mims now seeks to recover the wages and penalties provided in Labor Code section 558 on behalf of himself and the aggrieved employees.

VIOLATIONS OF LABOR CODE SECTION 1199

Labor Code section 1199 states:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

By failing to timely furnish Mims and aggrieved employees with unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation and/or premium wages at the regular rate of pay, Defendants criminal conduct has violated Labor Code section 1199.

Accordingly, for all violations of Labor Code section 1199, Defendants are liable for a misdemeanor and are punishable by a fine of \$100 or by imprisonment for not less than thirty days or by both.

VIOLATIONS OF LABOR CODE SECTIONS 221-223

Labor Code § 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

Labor Code § 222 states:

It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either willfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.

Labor Code § 223 states:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

By subjecting vacation wages to unlawful forfeiture, Defendants violated Labor Code §§ 221-223.

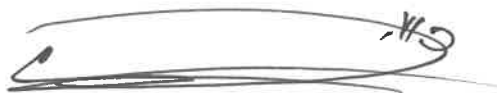
- 1) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:
 - (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
 - (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

CONCLUSION

As noted above, this letter constitutes the required notice under the Private Attorneys General Act of 2004 (Lab. Code §§ 2698 *et seq.*). Insofar as this letter is directed to Defendants, please be advised that Mims will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the Labor and Workforce Development Agency decline to pursue this matter.

Very truly yours,

SETAREH LAW GROUP

A handwritten signature in dark ink, appearing to read 'Shaun Setareh', is written over a horizontal line.

Shaun Setareh, Esq.

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in the County of Los Angeles, State
3 of California. I am over the age of 18 and not a party to the within action. My business address
4 is 315 South Beverly Dr., Suite 315 Beverly Hills, CA 90212.

5 On May 13, 2020, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as
8 follows:

9 Kerri H. Sakaue
10 ksakaue@mcguirewoods.com

11 Michael Phillips
12 mphillips@mcguirewoods.com

13 Matthew Whitney
14 mwhitney@mcguirewoods.com

15 David Boyd
16 dboyd@mcguirewoods.com

17 MCGUIRE WOODS LLP
18 1800 Century Park East, 7th Floor
19 Los Angeles, CA 90067

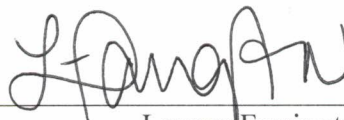
20 **Counsel for defendant AMLI**
21 **MANAGEMENT COMPANY, AMLI**
22 **RESIDENTIAL PARTNERS, LLC, and**
23 **AMLI RESIDENTIAL PROPERTIES, L.P.**

24 **[X] ONLY BY ELECTRONIC TRANSMISSION**

25 Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based
26 on notice provided on May 13, 2020 that, during the Coronavirus (COVID-19) pandemic, this
27 office will be working remotely, not able to send physical mail as usual, and is therefore using
28 only electronic mail. No electronic message or other indication that the transmission was
unsuccessful was received within a reasonable time after the transmission.

[X] STATE I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed on May 13, 2020, at Beverly Hills, California.



Lauren Farrington