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9 JENNIFER CARDWELL
10

FILED
Superior Court of California
County of Los Angeles
10/06/2020
Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Flores Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 JENNIFER CARDWELL, an individual, Case No.: 20STCV17244

12 Plaintiff,

FIRST AMENDED COMPLAINT FOR:

13 vs.
14

**1. Violation of Labor Code §§ 2698 et seq.
(Private Attorney General Act of 2004)**

15 AVANTSTAY, Inc., a Delaware
16 Corporation; and DOES 1-100,

17 Defendant(s).
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24 Plaintiff JENNIFER CARDWELL ("Plaintiff"), in her representative capacity under
25 the California Private Attorney General Act ("THE PAGA"), files this complaint
26 against Defendants AVANTSTAY, Inc. and DOES 1 through 100, inclusive
27 ("Defendants"). Plaintiff's allegations are based upon information and belief and
28 upon investigation of Plaintiff's counsel.

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2. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred in the County of Los Angeles.

3. Pursuant to California Labor Code §2699 *et seq.*, Plaintiff JENNIFER CARDWELL (hereinafter, “Plaintiff”) brings this Complaint as a Private Attorney General on behalf of the State of California and all aggrieved employees. Plaintiff only seeks relief recoverable under the PAGA through this Complaint. Plaintiff is, and at all times relevant to this Complaint was, an individual with a place of residence in the City of Menifee, County of Riverside, California. Plaintiff was employed in the housekeeping and hospitality operations of Defendant AVANTSTAY, Inc. (“AVANTSTAY”) from August 2018 until April 2020.

4. Defendant AVANTSTAY is, and at all times relevant to this Complaint was, a corporation organized under the laws of Delaware, employing numerous employees based throughout California. AVANTSTAY provides customers with short-term vacation rentals of residential properties throughout California that it owns and/or rents. In order to manage and operate these rentals, AVANTSTAY employs, *inter alia*, numerous housekeepers and “hospitality managers” who live in and work throughout California.

5. The true names and capacities of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff. Therefore, Plaintiff sues those Defendants by such fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff further alleges that each fictitious Defendant is in some manner responsible for the acts and occurrences alleged herein. If necessary, Plaintiff will seek leave of Court to amend this Complaint to state the real

1 names and capacities of these fictitiously named Defendants when they have
2 been ascertained. Plaintiff is informed and believes, and on that basis
3 alleges, that the fictitiously named Defendants proximately caused Plaintiff's
4 harm.

5 6. Plaintiff is informed and believes, and thereupon alleges, that at all times
6 relevant to this Complaint, each Defendant was the agent, servant, manager,
7 representative, officer, director, partner, or employee of AVANTSTAY, and,
8 in doing the things herein alleged, was at all times relevant hereto acting
9 within the course and scope of such agency, management, officership,
10 directorship, service, employment, partnership, and/or enterprise, with the
11 permission, consent, authorization, approval, and/or ratification of each
12 other Defendant.

13 7. Plaintiff is informed and believes, and on that basis alleges, that at all times
14 relevant to this Complaint, each Defendant, in proximate connection with all
15 others, was an agent, joint venture, integrated enterprise and/or alter ego of
16 each other Defendant, that each co-conspired in the acts and the wrongful
17 conduct herein alleged, and that, accordingly, each Defendant is liable to
18 Plaintiff under legal theories and doctrines including, *inter alia*, joint
19 employer, integrated enterprise, agency, and/or alter ego.

20 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

21 8. Plaintiff was at all times relevant herein employed in California by
22 Defendants and was an "employee" as defined by the Labor Code, and Wage
23 Order 5 of the Industrial Welfare Commission ("IWC").

24 9. Defendants are "employers" as defined by the Labor Code and IWC Wage
25 Order 5.

26 10. Plaintiff is informed and believes, and on that basis alleges, that at all times
27 relevant to this Complaint, Defendant AVANTSTAY's chief executive officer
28 was Sean Breuner. Plaintiff is further informed and believes, and on that

1 basis alleges, that at all times relevant to this Complaint, Defendant
2 AVANTSTAY's director of operations was Josh Breuner (hereinafter, "Josh").

3 11. Defendant AVANTSTAY employs housekeepers and "hospitality managers"
4 who work to service the company's vacation rental properties located in
5 California. Housekeepers' job duties consist primarily of driving to multiple
6 AVANTSTAY rental properties each workday, cleaning all surfaces and areas
7 of each property rented to guests, and doing laundry.

8 12. Throughout the majority of Plaintiff's employment with Defendant
9 AVANTSTAY, she worked primarily as a housekeeper and was misclassified
10 as an independent contractor. However, for approximately the final six
11 months of Plaintiff's employment, she was formally classified as an
12 employee in Defendant AVANTSTAY's "Operations, Housekeeping"
13 department. As a formal employee, Plaintiff's regular duties shifted
14 significantly so that her duties were generally split between housekeeping
15 and hospitality management duties.

16 13. Plaintiff is informed and believes, and on that basis alleges, that at all times
17 relevant to this complaint, the vast majority of the housekeepers who
18 serviced Defendant AVANTSTAY's properties were misclassified as
19 independent contractors. Plaintiff is further informed and believes, and on
20 that basis alleges, that at all times relevant to this complaint, the
21 housekeepers who serviced Defendant AVANTSTAY's properties generally
22 worked more than 40 hours each week. However, Plaintiff is informed and
23 believes, and on that basis alleges, that at all times relevant to this
24 complaint, Defendant AVANTSTAY did not pay these housekeepers any
25 overtime wages, regardless of whether they were misclassified as
26 independent contractors or formally classified as employees. Furthermore,
27 Plaintiff is informed and believes, and on that basis alleges, that at all times
28 relevant to this complaint, Defendant AVANTSTAY did not pay housekeepers

1 even the minimum wage for numerous work duties, including time spent
2 doing laundry, driving between properties to perform scheduled duties,
3 time spent waiting for guests or other vendors, and driving to properties *ad*
4 *hoc* to deal with unforeseen issues.

5 14. Plaintiff is informed and believes, and on that basis alleges, that at all times
6 relevant to this complaint, the housekeepers who serviced Defendant
7 AVANTSTAY's properties used personal vehicles, cell phones, laundry
8 facilities, and other personal property to carry out their work duties.
9 However, Plaintiff is informed and believes, and on that basis alleges, that at
10 all times relevant to this complaint, Defendant AVANTSTAY did not
11 reimburse its housekeepers for any necessary expenses.

12 15. Hospitality managers are tasked with a variety of duties related to the
13 maintenance of Defendant AVANTSTAY's properties, including responding
14 to customer questions and service requests regarding each property,
15 performing routine maintenance and repairs, purchasing and stocking
16 supplies, and coordinating with property owners and other contractors as
17 necessary to carry out their maintenance and repair functions. Plaintiff is
18 informed and believes, and on that basis alleges, that at all times relevant to
19 this complaint, hospitality managers were required to remain on call at all
20 hours of the day and night to respond to questions from customers and
21 management or to perform any required emergency services or repairs.

22 16. Plaintiff is informed and believes, and on that basis alleges, that at all times
23 relevant to this complaint, the vast majority of the hospitality managers who
24 serviced Defendant AVANTSTAY's properties were misclassified as
25 independent contractors. Plaintiff is further informed and believes, and on
26 that basis alleges, that at all times relevant to this complaint, the hospitality
27 managers who serviced Defendant AVANTSTAY's properties generally
28 worked more than 40 hours each week. However, Plaintiff is informed and

1 believes, and on that basis alleges, that at all times relevant to this
2 complaint, Defendant AVANTSTAY did not pay hospitality managers any
3 overtime wages. Furthermore, Plaintiff is informed and believes, and on that
4 basis alleges, that at all times relevant to this complaint, Defendant
5 AVANTSTAY did not pay hospitality managers even the minimum wage for
6 numerous other work duties, including time spent remaining on call
7 throughout the day and night.

8 17. Plaintiff is informed and believes, and on that basis alleges, that at all times
9 relevant to this complaint, the hospitality managers who serviced Defendant
10 AVANTSTAY's properties used personal vehicles, cell phones, and other
11 personal property to carry out their work duties. However, Plaintiff is
12 informed and believes, and on that basis alleges, that at all times relevant to
13 this complaint, Defendant AVANTSTAY did not reimburse hospitality
14 managers for necessary expenses.

15 18. Plaintiff is informed and believes, and on that basis alleges, that at all times
16 relevant to this complaint, Defendant AVANTSTAY misclassified and
17 continues to misclassify the vast majority of its housekeepers and
18 hospitality managers as independent contractors in order to minimize costs
19 and unduly maximize profits at the expense of their primary workforce.
20 Housekeepers and hospitality managers are under the control and direction
21 of Defendant AVANTSTAY in connection with the performance of their work,
22 perform work duties that are part of the usual course of Defendant
23 AVANTSTAY's business, and are not customarily engaged in an
24 independently established trade, occupation, or business in the same nature
25 of the work performed for Defendant AVANTSTAY.

26 19. Through its unlawful misclassification scheme, Defendant AVANTSTAY
27 avoids the costs of providing workers compensation to its housekeepers and
28 hospitality managers, denying them much needed protection if work-related

1 injuries or illnesses occur. Defendant AVANTSTAY also unlawfully passes on
2 operation costs to its housekeepers and hospitality managers.

3 20. Defendant AVANTSTAY's unlawful conduct of misclassifying housekeepers
4 and hospitality managers also allows it to deprive Plaintiff and other
5 housekeepers and hospitality managers of fundamental employment rights,
6 such as the right to minimum, overtime, and double-time wages; the right to
7 mandated meal breaks; the right to mandated rest breaks; the right to
8 premium wages for missed meal and/or rest breaks; the right to accurate
9 itemized wage statements; the right to the prompt payment of full wages
10 within time limits designated by law; the right to timely reimbursement of
11 employment-related expenses; and the right to workers compensation
12 protection as guaranteed to employees under various provisions of the
13 Labor Code and applicable wage order.

14 21. Throughout her employment with Defendant AVANTSTAY, Plaintiff and
15 other aggrieved employees reported to Josh that the company's
16 management, hiring, and payment systems – particularly its
17 misclassification of housekeepers and hospitality managers as independent
18 contractors – were not compliant with California and federal law. Plaintiff
19 and other aggrieved employees also repeatedly reported to Josh that these
20 systemic legal violations were exposing the company's housekeeping and/or
21 hospitality management staff to unnecessary hardships, including unpaid
22 wages. Plaintiff herself objected numerous times to such violations,
23 including Defendant AVANTSTAY's refusal to formally treat housekeepers as
24 employees, pay them all regular and overtime wages earned, provide them
25 with safe working conditions, and/or reimburse them for necessary
26 business expenses incurred. On April 17, 2020, Josh terminated Plaintiff's
27 employment because she continued to object to such treatment.
28 Whereupon, Plaintiff prays for relief, as set forth below.

PAGA REPRESENTATIVE ALLEGATIONS

22. Under Labor Code sections 2699.3 and 2699.5, an aggrieved employee may pursue a PAGA representative civil action arising under Labor Code section 2699 after (a) giving written notice (“the Employee’s Notice”) by filing a letter online with the LWDA and by certified mail to the employer specifying the provisions of the Labor Code alleged to have been violated, including the facts and theories supporting the alleged violations; and (b) either receiving a response from the LWDA within sixty (60) calendar days that it does intend to investigate these allegations or waiting sixty-five (65) calendar days after the Employee’s Notice if no such response is provided.
23. On May 19, 2019, Plaintiff gave proper notice under Labor Code 2699.3(a) of the facts and theories supporting Plaintiff’s allegations in this Complaint that Defendant AVANTSTAY violated various provisions of the Labor Code. A true and correct copy of the New PAGA Claim letter filed online with the Labor and Workforce Development Agency (“LWDA”) and mailed certified to Defendants on May 19, 2019 is attached hereto as Exhibit A.
24. On October 6, 2020, Plaintiff filed an Amended PAGA Claim letter online with the LWDA and by certified mail to the employer specifying additional provisions of the Labor Code alleged to have been violated, as well as the facts and theories supporting these additional allegations. A true and correct copy of Plaintiff’s Amended Claim letter filed online with the Labor and Workforce Development Agency (“LWDA”) and mailed certified to Defendants on October 6, 2020 is attached hereto as Exhibit B.
25. As of the filing of this First Amended Complaint, Plaintiff has not received any response to her New Claim letter filed on May 19, 2019 from the LWDA or Defendant AVANTSTAY.

FIRST CAUSE OF ACTION

(Violation of Labor Code sections 2698 et seq.)

26. Plaintiff hereby repeats, realleges, and incorporates all allegations from all paragraphs before and after this one, as though set forth in full herein.

27. At all relevant times, the PAGA provided and continues to provide that any civil penalty under the Labor Code that may be assessed and collected by the LWDA may, as an alternative, be recovered by an aggrieved employee through a civil action under Labor Code section 2699.3. A civil action under the PAGA may be brought by any “aggrieved employee” employed during the relevant period by the alleged violator and against whom one or more of the alleged violations was committed.

28. Violations alleged in this complaint were committed against Plaintiff during the relevant statutory period while she was employed by Defendant AVANTSTAY. Plaintiff is therefore an “aggrieved employee” as defined by Labor Code section 2699 (c).

29. Having satisfied the administrative prerequisites under Labor Code section 2699.3 (a) Plaintiff seeks to recover civil penalties as an aggrieved employee and Private Attorney General for all of Defendant AVANTSTAY’s violations of the Labor Code and Wage Order 5-2001, including its:

Willful Misclassification

30. Labor Code section 226.8 and Wage Order 5-2001 make it unlawful to (1) willfully misclassify an individual as an independent contractor or (2) charge an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment where the acts described in this paragraph would have violated the law if the individual had not been misclassified.

1 31. Despite being advised by skilled attorneys, Defendant AVANTSTAY has
2 willfully misclassified and continues to willfully misclassify as independent
3 contractors numerous housekeepers and hospitality managers working
4 throughout California who work exclusively for AVANSTAY and/or are
5 subject to its control and direction in the performance of their duties;
6 regularly work seven days each workweek; regularly perform work in
7 excess of eight hours each workday and forty hours each workweek; and
8 perform work that is in the usual course of Defendant's business.

9 **Failure to Pay Minimum Wage**

10 32. Labor Code sections 1194, 1197, and 1197.1 require employers to pay their
11 employees at least the minimum wage for each hour worked.

12 33. By classifying housekeepers and hospitality managers as independent
13 contractors instead of employees, Defendant AVANTSTAY has systematically
14 failed and continues to fail to pay them at least the minimum wage for each
15 hour worked.

16 **Failure to Pay Overtime or Double-time Wages**

17 34. Under the applicable Wage Order 5-2001 and Labor Code section 510,
18 Defendants were required to pay all employees earned overtime wages,
19 including one and one-half times her regular rate for all hours worked after
20 the eighth hour of work on any workday and for every hour worked after
21 the 40th hour of work in any workweek. For every hour worked in excess of
22 12 hours in any workday, or in excess of 8 hours on the seventh consecutive
23 day of work, Defendants were obligated to pay employees at double pay
24 rate.

25 35. By classifying housekeepers and hospitality managers as independent
26 contractors instead of employees, Defendant AVANTSTAY systematically
27 failed and continues to fail to pay them overtime and/or double-time

1 compensation for time worked in excess of eight hours in any workday
2 and/or over 40 hours in any workweek.

3 **Failure to Provide Meal Periods**

4 36. Labor Code sections 226.7 and 512 require employers to pay their
5 employees one additional hour of pay at the employee's regular rate of pay
6 for each workday that a meal period is not provided when it should have
7 been.

8 37. By classifying housekeepers and hospitality managers as independent
9 contractors instead of employees, Defendant AVANTSTAY systematically
10 failed and continues to fail to provide them with meal periods of no less than
11 thirty (30) minutes free from all work duties, or, alternatively, premium pay
12 for any such meal periods not provided.

13 **Failure to Timely Pay Wages During Employment**

14 38. Labor Code section 204 requires that all wages earned by any person in any
15 employment between the 1st and the 15th days, inclusive, of any calendar
16 month, other than those wages due upon termination of an employee, are
17 due and payable between the 16th and the 26th day of the month during
18 which the labor was performed, and that all wages earned by any person in
19 any employment between the 16th and the last day, inclusive, of any
20 calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the 1st and the 10th day of the
22 following month. Labor Code section 204 also requires that all wages earned
23 for labor over the normal work period shall be paid by the payday for the
24 next regular payroll period.

25 39. Defendant AVANTSTAY systematically failed and continues to fail to pay
26 housekeepers and hospitality managers at least the minimum wage for each
27 hour of work they performed, overtime when they worked over eight hours
28 in one day and/or over 40 hours in a week, and one additional hour of pay at

1 their regular rate of pay when they were not provided meal periods free
2 from all work duty. All such wages were not and continue not to be timely
3 paid to housekeepers and hospitality managers during their employment.

4 **Failure to Timely Pay Wages Upon Separation**

5 40. Labor Code sections 201-203 require that all wages earned by any person
6 during employment must be paid at separation. Specifically, Section 201
7 requires that all unpaid wages due to any discharged employee be paid at
8 the time of discharge. Section 202 requires that all unpaid wages due to any
9 quitting employee be paid not later than 72 hours after quitting.

10 41. Defendant AVANTSTAY systematically failed and continues to fail to keep
11 required employment records, including records of all hours worked as well
12 as missed meal and missed rest breaks. Accordingly, AVANTSTAY has
13 systemically failed to pay Plaintiff and other aggrieved employees all
14 outstanding compensation owed at separation.

15 **Retaliation Based on Exercise of Employee Rights Under the Labor Code**

16 42. Labor Code § 98.6(a) requires every employer to refrain from discharging or
17 otherwise discriminating, retaliating, or taking any other adverse
18 employment action because the employee has exercised rights under the
19 Labor Code on behalf of herself or other aggrieved employees. Under Labor
20 Code § 98.6(b)(3) an employer who violates this section is liable for a civil
21 penalty not exceeding ten thousand dollars (\$10,000) per employee for each
22 violation of this section, to be awarded to the employee or employees who
23 suffered the violation.

24 43. Throughout her employment, Plaintiff tried repeatedly to address directly
25 with her superiors the systemic Labor Code violations inherent in
26 AVANTSTAY's misclassification scheme. However, Plaintiff's attempts to
27 mitigate Defendant's violations affecting herself and other aggrieved
28 employees were repeatedly met with warnings from her supervisors that

1 such legal issues were not her concern and that she should cease all
2 communications with them regarding those issues. Ultimately, because
3 Plaintiff and other aggrieved employees repeatedly and explicitly opposed
4 and refused to participate in Defendant's willful misclassification scheme,
5 they suffered retaliation, including termination.

6 **Failure to Reimburse Necessary Business Expenses**

7 44. Labor Code § 2802(a) requires every employer to indemnify employees for
8 all necessary business expenditures or losses incurred as a result of their
9 employment.

10 45. Defendant consistently failed to reimburse Plaintiff and other aggrieved
11 employees for, among other things, their use of personal vehicles, cell
12 phones, internet, cleaning equipment, and cleaning supplies. Accordingly,
13 Defendant systematically failed and continues to fail to reimburse Plaintiff
14 and other aggrieved employees for all necessary expenditures or losses
15 incurred in direct discharge of their duties.

16 **Failure to Provide Complete and Accurate Wage Statements**

17 46. Labor Code section 226 requires employers to make, keep, and provide true,
18 accurate, timely, and complete wage statement.

19 47. By classifying housekeepers and hospitality managers as independent
20 contractors instead of employees, Defendant AVANTSTAY systematically
21 failed and continues to fail to provide them with true, accurate, timely, and
22 complete wage statements.

23 **Failure to Keep Accurate Business Records**

24 48. Labor Code section 1174, subdivision (d) requires employers to keep, at a
25 central location in the state or at the plants or establishments at which
26 employees are employed, payroll records showing the hours worked daily
27 by and the wages paid to, and the number of piece-rate units earned by and
28 any applicable piece rate paid to, employees employed at the respective

plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

49. Defendant AVANTSTAY systematically, intentionally, and willfully failed and continues to fail to keep accurate and complete payroll records, including but not limited to, failing to keep at a central location in the State of California payroll records showing the hours worked daily by and the wages paid to, or the number of piece rate units earned by or any applicable piece rate paid to housekeepers and hospitality managers. Defendant further AVANTSTAY fails to pay its housekeepers and hospitality managers at least the minimum wage for all work performed, overtime when they worked over eight hours in one day and/or over 40 hours in a week, and one additional hour of pay at their regular rate of pay for each meal period not provided.

Periodic Rest Days

50. Labor Code section 551 and Wage Order 5-2001 require employers to provide all employees with at least one day's rest each seven-day workweek.

51. Defendant AVANTSTAY systematically failed and continues to fail to provide housekeepers and hospitality managers with periodic rest days. Many such aggrieved employees have worked and continue to regularly work weeks or months consecutively without a single day off.

Whereupon, Plaintiff prays for relief, as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

1. Under Labor Code section 2699, Plaintiff requests and may recover civil penalties from Defendant AVANTSTAY.
2. Civil penalties recovered under California Labor Code section 2699 (i), shall be distributed: seventy-five percent (75%) to the Labor and Workforce

1 Development Agency and twenty-five percent (25%) to the aggrieved
2 employees.

3 3. Plaintiff is not seeking individualized (i.e., victim-specific) relief as described
4 in *Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228.

5 4. Plaintiff seeks and may recover reasonable attorneys' fees and costs under
6 California Labor Code section 2699.
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22 DATED: October 6, 2020

Respectfully submitted,

23
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25 By 

26 Ranojoy Guha, Attorney for Plaintiff

27 **The Guha Law Firm**
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EXHIBIT A



May 19, 2020

ATTN: PAGA Administrator
Labor and Workforce Development Agency
(Filed online at dir.ca.gov)

RE: CARDWELL v. AVANTSTAY, Inc.

PAGA Administrator,

Pursuant to Labor Code Section 2699.3, please accept this letter as notice that Jennifer Cardwell (hereinafter "Plaintiff") alleges that Avantstay, Inc., ("Defendant" or "Avantstay") violated numerous provisions of the California Labor Code, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 223, 226, 226.7, 226.8, 510, 512, 516, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2699, and 2802.

Defendant Avantstay owns residential properties located throughout California that it operates as short-term vacation rentals. In order to manage and operate these rentals, Defendant employs dozens of housekeeping and maintenance staff in numerous metropolitan areas throughout California.

Plaintiff was hired on August 20, 2018 to perform housekeeping services on vacation rental properties owned and operated by Defendant in Temecula, California. Throughout her employment, Plaintiff was required to personally perform housekeeping and maintenance services; coordinate the schedules of housekeeping teams working throughout California and other states; respond to customer complaints and questions; and/or work with contractors and other company employees to ensure that Defendant's newly acquired residential properties were properly furnished, renovated, repaired and ready for use as vacation rentals. Plaintiff was employed continuously by Defendant until her termination on April 17, 2020.

Defendant systematically misclassified Plaintiff and numerous other non-exempt employees engaged in housekeeping, maintenance, and customer service positions throughout California as independent contractors. Accordingly, Defendant failed to pay Plaintiff and other non-exempt employees for all time worked, including time spent performing housekeeping, customer service, and maintenance duties as well as time spent traveling between Defendant's properties. Furthermore, Defendant failed to reimburse Plaintiff and other non-exempt employees for any necessary work-related expenses.

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Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a) and brings this Private Attorney General’s Act action on behalf of herself and all other aggrieved employees. Accordingly, Plaintiff, on behalf of herself and all other aggrieved employees, seeks the imposition of civil penalties under the Private Attorney General’s Act (Labor Code § 2698, *et seq.*) due to Defendant’s:

Willful Misclassification of an Employee as an Independent Contractor

Defendant voluntarily and knowingly engaged in a worker misclassification scheme designed to minimize business expenses. Through this system of misclassification, Defendant failed to pay Plaintiff and other aggrieved employees for all hours that they worked. Defendant further failed to keep accurate employment records of the work performed by Plaintiff and other aggrieved employees, failed to pay them missed meal and rest break premiums, failed to provide them all wages earned at the time of separation, and failed to reimburse them for necessary business expenses.

Defendant’s system of willful misclassification violated Labor Code § 226.8(a), which makes unlawful any such misclassification and, among other things, any resulting deductions from the misclassified individual’s pay.

Failure to Provide Accurate Itemized Wage Statements

Defendant systemically failed to accurately track all regular, overtime, and double-time hours worked by Plaintiff and other aggrieved employees, including unpaid work time as well as missed meal and rest breaks.

Defendant’s systemic failure to accurately track employees’ hours violated Labor Code § 226(a), which requires every employer to provide employees with itemized wage statements that accurately reflect, among other things, their total hours worked.

Failure to Pay Minimum Wages and/or Designated Rates

Defendant systemically and willfully misclassified Plaintiff and other aggrieved employees as independent contractors. As a matter of policy and/or practice, Defendant routinely failed to compensate Plaintiff and other aggrieved employees for work that they were required to perform during portions of the day when they were subject to Defendant’s control.

Defendant’s systemic failure to pay minimum wages and/or designated rates for all hours worked violated Labor Code §§ 1182.12, 1197 and Wage Order No. 5. Labor Code § 1194.2

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entitles Plaintiff and other aggrieved employees to recover liquidated damages in an amount equal to these unpaid wages plus interest thereon.

Failure to Pay Overtime Compensation

Because Defendant systemically required Plaintiff and other aggrieved employees to work without pay during portions of the day when they were subject to Defendant's control, Defendant failed to properly record and pay overtime and double-time wages for their actual time worked.

Defendant violated Labor Code § 1194, § 510(a), and Wage Order No. 5 by failing to pay overtime wages equal to one and one half times each employee's regular rate for hours worked over eight per day and forty per workweek, or double the employee's regular rate for all hours worked in excess of twelve hours in any workday or eight hours on the seventh day of work in any one workweek.

Failure to Provide Meal Breaks

As a result of the substantial workload placed on employees such as Plaintiff, who worked alone or in small groups, Defendant failed to provide the opportunity for employees to have a meal period during which they were relieved of all duties. Specifically, Defendant regularly failed to provide Plaintiff and other aggrieved employees with a first meal period of not less than thirty minutes relieved of all duty before they worked more than five hours. Defendant additionally failed to provide Plaintiff and other aggrieved employees with a second meal period of not less than thirty minutes before they worked more than ten hours per day. Furthermore, Defendant failed to accurately record all meal periods and failed to pay one hour of pay at the employee's regular rate for each day that a meal period was not provided pursuant to California law.

Defendant violated Labor Code §§ 226.7(a), 512, 516, and Wage Order No. 5 failing to provide meal periods relieved of all duty or premium pay thereon.

Failure to Pay Compensation at Time of Separation

Defendant systemically failed to keep required employment records, including records of all hours worked as well as missed meal and missed rest breaks. Accordingly, Plaintiff and other aggrieved employees were not paid all compensation owed at the time of separation.

Defendant's systemic failure to pay all outstanding compensation owed at the time of separation violated Labor Code § 201-203.



Failure to Reimburse Necessary Business Expenses

Defendant consistently failed to reimburse Plaintiff and other aggrieved employees for, among other things, their use of personal vehicles, cell phones, internet, cleaning equipment, and cleaning supplies.

Defendant's systemic failure to reimburse Plaintiff and other aggrieved employees for all necessary expenditures or losses incurred in direct discharge of their duties violated Labor Code § 2802(a), which requires every employer to indemnify employees, among other things for all necessary business expenditures.

Retaliation Based on Exercise of Employee Rights Under the Labor Code

Throughout her employment, Plaintiff tried repeatedly to address directly with her superiors the systemic Labor Code violations inherent in Avantstay's misclassification scheme. However, Plaintiff's attempts to mitigate Defendant's violations affecting herself and other aggrieved employees were repeatedly met with warnings from her supervisors that such issues were not her concern, and that she should cease all communications with them regarding those issues. Ultimately, after Plaintiff repeatedly and explicitly refused to participate in Defendant's willful misclassification scheme, she was finally terminated.

Defendant's retaliatory treatment and wrongful discharge of Plaintiff violated Labor Code § 98.6(a), which requires every employer to refrain from discharging or otherwise discriminating, retaliating, or taking any other adverse employment action because the employee has exercised rights under the Labor Code on behalf of herself or other aggrieved employees.

As a result of Defendant's violations of numerous provisions of California law, Plaintiff, on behalf of the state of California and all other Aggrieved Employees, seeks the imposition of all civil penalties allowed by law in the maximum amount, pursuant to CA Labor Code §§ 98.6(b), 203, 225.5, 226(e), 226(g), 226.3, 226.7(b), 226.8(b), 226.8 (c), 256, 558, 1174.5, 1194, 1194(a), 1194.2(a), 2699, 2699.3; CA Civil Code 3287(b), and Wage Order 5-2001.

Plaintiff respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail, return receipt, to Defendant. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.



Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ranojoy Guha', is written over a horizontal line.

Ranojoy Guha, Attorney

Enclosure

cc: LegalZoom.com, Inc.
Registered Agent for Service of Process for Defendant,
Avantstay, Inc.
101 North Brand Boulevard
11th floor
Glendale, CA 91203
Via Certified Mail

EXHIBIT B



October 6, 2020

ATTN: PAGA Administrator
Labor and Workforce Development Agency
(Filed online at dir.ca.gov)

RE: CARDWELL v. AVANTSTAY, Inc. (Case No. LWDA-CM-787202-20)

PAGA Administrator,

Pursuant to Labor Code Section 2699.3, please accept this letter as notice that Jennifer Cardwell (hereinafter "Plaintiff") alleges that Avantstay, Inc., ("Defendant") violated numerous provisions of the California Labor Code, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 223, 226, 226.7, 226.8, 510, 512, 516, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2699, and 2802.

Defendant owns and rents residential properties located throughout California that it rents or sublets as short-term vacation rentals. In order to manage and operate these short-term rentals, Defendant employs over one hundred housekeepers and hospitality managers located throughout California.

Plaintiff was hired on August 20, 2018 to perform housekeeping services on vacation rental properties owned and operated by Defendant in Temecula, California. Throughout her employment, Plaintiff was required to personally perform housekeeping and maintenance services; coordinate the schedules of housekeeping teams working throughout California and other states; respond to customer complaints and questions; and/or work with contractors and other company employees to ensure that Defendant's newly acquired residential properties were properly furnished, renovated, repaired and ready for use as vacation rentals. Plaintiff was employed continuously by Defendant until her termination on April 17, 2020.

Defendant systematically misclassified Plaintiff and numerous other non-exempt employees engaged in housekeeping and hospitality management positions throughout California as independent contractors. Accordingly, Defendant failed to pay Plaintiff and other non-exempt employees for all time worked, including time spent performing housekeeping, customer service, and maintenance duties as well as time spent traveling between Defendant's properties. Furthermore, Defendant failed to reimburse Plaintiff and other non-exempt employees for any necessary expenses incurred because of their

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employment with Defendant.

Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a) and brings this Private Attorney General’s Act action on behalf of herself and all other aggrieved employees. Accordingly, Plaintiff, on behalf of herself and all other aggrieved employees, seeks the imposition of civil penalties under the Private Attorney General’s Act (Labor Code § 2698, *et seq.*) due to Defendant’s:

Willful Misclassification of an Employee as an Independent Contractor

Despite being advised by skilled attorneys, Defendant voluntarily and knowingly engaged in a worker misclassification scheme designed to minimize business expenses. Through this system of misclassification, Defendant failed to pay Plaintiff and other aggrieved employees for all hours that they worked. Defendant further failed to keep accurate employment records of the work performed by Plaintiff and other aggrieved employees, failed to pay them missed meal and rest break premiums, failed to provide them all wages earned at the time of separation, and failed to reimburse them for necessary business expenses.

Defendant’s system of willful misclassification violated Labor Code § 226.8(a), which makes unlawful any such misclassification and, among other things, any resulting deductions from the misclassified individual’s pay.

Failure to Pay Minimum Wages and/or Designated Rates

Defendant systemically and willfully misclassified Plaintiff and other aggrieved employees as independent contractors. As a matter of policy and/or practice, Defendant routinely failed to compensate Plaintiff and other aggrieved employees for work that they were required to perform during portions of the day when they were subject to Defendant’s control.

Defendant’s systemic failure to pay minimum wages and/or designated rates for all hours worked violated Labor Code §§ 1182.12, 1197 and Wage Order No. 5. Labor Code § 1194.2 entitles Plaintiff and other aggrieved employees to recover liquidated damages in an amount equal to such unpaid wages plus interest thereon.

Failure to Pay Overtime Compensation

Because Defendant systemically required Plaintiff and other aggrieved employees to work without pay during portions of the day when they were subject to Defendant’s control, Defendant failed to properly record and pay them earned overtime and double-time wages for their actual time worked.

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Defendant violated Labor Code § 1194, § 510(a), and Wage Order No. 5 by failing to pay overtime wages equal to one and one half times each employee's regular rate for hours worked over eight per day and forty per workweek and/or double the employee's regular rate for all hours worked in excess of twelve hours in any workday or eight hours on the seventh day of work in any one workweek.

Failure to Provide Meal Breaks

As a result of the substantial workload placed on Plaintiff and other aggrieved employees who worked alone or in small groups, Defendant failed to provide the opportunity for employees to have a meal period during which they were relieved of all duties. Specifically, Defendant regularly failed to provide Plaintiff and other aggrieved employees with a first meal period of not less than thirty minutes relieved of all duty before they worked more than five hours. Defendant additionally failed to provide Plaintiff and other aggrieved employees with a second meal period of not less than thirty minutes before they worked more than ten hours per day. Furthermore, Defendant failed to accurately record all meal periods and failed to pay one hour of pay at the employee's regular rate for each day that a meal period was not provided pursuant to California law.

Defendant violated Labor Code §§ 226.7(a), 512, 516, and Wage Order No. 5 failing to provide meal periods relieved of all duty or premium pay thereon.

Failure to Timely Pay Wages During Employment

Defendant AVANTSTAY systematically failed to pay housekeepers and hospitality managers at least the minimum wage for each hour of work they performed, failed to pay them overtime when they worked over eight hours in one day and/or over 40 hours in a week, and failed to pay them one additional hour of pay at their regular rate of pay when they were not provided meal periods free from all work duty. All such wages were not and continue not to be timely paid to housekeepers and hospitality managers during their employment.

Defendant's systemic failure to timely pay wages to housekeepers and hospitality managers during employment violated Labor Code section 204, which requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and further requires that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th

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day of the following month. Defendant further systemically violated Labor Code section 204 by failing to pay all wages earned by housekeepers and hospitality managers for work in excess of their normal work period by the payday for the next regular payroll period.

Failure to Pay Compensation at Time of Separation

Defendant systemically failed to keep required employment records, including records of all hours worked as well as missed meal and missed rest breaks. Accordingly, Plaintiff and other aggrieved employees were not paid all compensation owed at the time of separation.

Defendant's systemic failure to pay all outstanding compensation owed at the time of separation violated Labor Code § 201-203.

Retaliation Based on Exercise of Employee Rights Under the Labor Code

Throughout her employment, Plaintiff and other aggrieved employees tried repeatedly to address directly with her superiors the systemic Labor Code violations inherent in Defendant's misclassification scheme. However, Plaintiff's attempts to mitigate Defendant's violations affecting herself and other aggrieved employees were repeatedly met with warnings from her supervisors that such issues were not her concern, and that she should cease all communications with them regarding those issues. Ultimately, after Plaintiff and other aggrieved employees repeatedly and explicitly refused to participate in Defendant's willful misclassification scheme, they were terminated.

Defendant's retaliatory treatment and wrongful discharge of Plaintiff violated Labor Code § 98.6(a), which requires every employer to refrain from discharging or otherwise discriminating, retaliating, or taking any other adverse employment action because an employee has exercised rights under the Labor Code on behalf of herself or other aggrieved employees.

Failure to Reimburse Necessary Business Expenses

Defendant consistently failed to reimburse Plaintiff and other aggrieved employees for, among other things, their use of personal vehicles, cell phones, internet, cleaning equipment, and cleaning supplies.

Defendant's systemic failure to reimburse Plaintiff and other aggrieved employees for all necessary expenditures or losses incurred in direct discharge of their duties violated Labor Code § 2802(a), which requires every employer to indemnify employees, among other things for all necessary business expenditures.

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Failure to Provide Accurate Itemized Wage Statements

Defendant systemically failed to accurately track and issue wage statements that included all regular, overtime, and double-time hours worked by Plaintiff and other aggrieved employees, including unpaid work time as well as missed meal and rest breaks.

Defendant's systemic failure to accurately track employees' hours violated Labor Code § 226(a), which requires every employer to provide employees with itemized wage statements that accurately reflect, among other things, their total hours worked.

Failure to Keep Accurate Business Records

Defendant intentionally and willfully fails to keep accurate and complete payroll records, including but not limited to, failing to keep at a central location in the State of California payroll records showing the hours worked daily by and the wages paid to, or the number of piece rate units earned by or any applicable piece rate paid to housekeepers and hospitality managers. Defendant failed to its housekeepers and hospitality managers at least the minimum wage all work performed, failed to pay them overtime when they worked over eight hours in one day and/or over 40 hours in a week, and failed to pay them one additional hour of pay at their regular rate of pay when they were not provided meal periods.

Defendant's systemic failure to keep accurate and complete payroll records violated Labor Code section 1174(d), which requires employers, for not less than two years and at a central location in the state or at the plants or establishments at which employees are employed, to keep on file all payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.

Periodic Rest Days

In order to keep up with their constant, heavy workload, Defendant's housekeepers and hospitality managers have worked and continue to regularly work weeks or months consecutively without a single day off.

Defendant's systemic failure to provide all employees with at least one day's rest during each seven-day workweek violated Labor Code section 551 and Wage Order 5-2001.

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As a result of Defendant's violations of numerous provisions of California law, Plaintiff, on behalf of the state of California and all other Aggrieved Employees, seeks the imposition of all civil penalties allowed by law in the maximum amount, pursuant to CA Labor Code §§ 98.6(b), 203, 225.5, 226(e), 226(g), 226.3, 226.7(b), 226.8(b), 226.8 (c), 256, 558, 1174.5, 1194, 1194(a), 1194.2(a), 2699, 2699.3; CA Civil Code 3287(b), and Wage Order 5-2001.

Plaintiff respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail, return receipt, to Defendant. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Sincerely,



Ranojoy Guha, Attorney

Enclosure

cc: LegalZoom.com, Inc.
Registered Agent for Service of Process for Defendant,
Avantstay, Inc.
101 North Brand Boulevard
11th floor
Glendale, CA 91203
Via Certified Mail

Cardwell v. Avantstay, Inc.
Superior Court of the State of California, County of Los Angeles
Case No. 20STCV17244

PROOF OF SERVICE

I am employed in Orange County. I am over the age of 18 and not a party to this action. My business address is 1100 Town and Country Road, Suite 1250, Orange, California 92868.

On **June 21, 2021**, I served the foregoing documents, described in this action as:

First Amended PAGA Complaint

[X] by placing [] the original [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

LABOR AND WORKFORCE DEVELOPMENT AGENCY
LWDA Online Document Submission Portal

[] **BY U.S. MAIL** I deposited such envelopes in the mail at ____ (city) ____, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with The Guha Law Firm's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

[X] **BY E-MAIL or ELECTRONIC TRANSMISSION** I caused based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, the documents to be sent to the persons at the e-mail addresses. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[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 **June 21, 2021**, at Orange, California.

Print: Ranojoy Guha

Sign: /s/