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15 **SUPERIOR COURT OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF LOS ANGELES**
17

18 JADE FINDLEY, YVONNE CAKEBREAD,
and GABRIEL UHURU, on behalf of the State
19 of California,

20 Plaintiffs,

21 v.

22 AVENUE5 RESIDENTIAL LLC, a Washington
Corporation; WALT SMITH, an individual; and
DOES 1-50,

23 Defendants.
24

Case No. 20STCV34633

**SECOND AMENDED COMPLAINT
FOR VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT, CAL.
LABOR CODE SECTIONS 2698, et seq.**

DEMAND FOR JURY TRIAL

GENERAL ALLEGATIONS

1. Plaintiffs JADE FINDLEY, YVONNE CAKEBREAD, and GABRIEL UHURU (“Plaintiffs”) are individuals residing in the State of California.

2. Defendant AVENUE5 RESIDENTIAL LLC (“AVENUE5”), a Washington corporation, is authorized to do business within the State of California. AVENUE5 and its managing agents own, operate, or otherwise manage a company that provides multifamily property management services as well as comfortable apartments for rent throughout the United States.

3. On information and belief, Defendant WALT SMITH is an individual residing in the State of Washington and is, and at all relevant times has been, the CEO of Defendant AVENUE5 and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, WALT SMITH devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor code §§558 and 1197.1, WALT SMITH is liable as a person who “caused” the violations to occur.

4. Plaintiffs are unaware of the names and capacities of those Defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiffs are informed and believe and thereon allege that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship.

5. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant, employee, and/or joint venture of each of the other defendants and was acting within the course and scope of said conspiracy, agency, employment, and/or joint venture and with the permission and consent of each of the other Defendants.

6. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendants employed Plaintiffs and other aggrieved employees (“Aggrieved Employees”) to work in this judicial district, and some of the complained

1 of conduct occurred in this judicial district.

2 **FACTUAL ALLEGATIONS**

3 7. Plaintiffs bring this action on behalf of the State of California under the Private
4 Attorneys General Act of 2004, Labor Code sections 2698, et seq., (“PAGA”) with respect to
5 themselves and all individuals employed by Defendants in California at any time from July 10,
6 2019 to the present. This action is brought solely pursuant to PAGA and seeks no relief beyond
7 that available under PAGA.

8 8. Plaintiff JADE FINDLEY was directly employed by Defendants as a non-exempt
9 employee during the relevant time period with a job title of “Resident Services Coordinator.”
10 Plaintiff YVONNE CAKEBREAD was directly employed by Defendants as a non-exempt
11 employee during the relevant time period. Plaintiff GABRIEL UHURU was directly employed by
12 Defendants as a “Leasing Consultant” during the relevant time period. Among other duties,
13 Plaintiffs opened the office, set up the beverage trays, worked in the lobby, and dealt with all
14 resident maintenance requests and grievances for Defendants. Defendants paid Plaintiffs on an
15 hourly basis and they received additional compensation from Defendants in the form of non-
16 discretionary incentive wages including, but not limited to, performance bonuses and housing
17 benefits.

18 9. During the period beginning one-year period preceding the filing of the required PAGA
19 notice with the Labor Workforce and Development Agency, and continuing through the present,
20 Defendants violated Labor Code sections 201, 202, 204, 216, 218.5, 221, 222, 223, 224, 225.5,
21 226, 226.3, 226.7, 227.3, 233, 234, 245, 245.5, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 248.3,
22 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.5, 1198, 1199, 2698 et
23 seq., 2802, and 2810.5 and all Applicable Wage Orders, as to Plaintiffs and all other Aggrieved
24 Employees employed by Defendants as both non-exempt and exempt employees or similar
25 positions in California. These violations subject Defendants to civil penalties as set forth in the
26 foregoing statutes, Labor Code sections 203, 210, 225.5, 226.3, 248.5, 256, 558, 558.1, 1174.5,
27 1194.2, 1197.1, and 2699, and IWC Wage Order 5-2001 (and all applicable IWC Orders),
28 sections 5, 7, 11, 12, and 20.

FIRST CAUSE OF ACTION

(Violation of the Private Attorneys General Act, Labor Code §§ 2698, et seq.)

(Against All Defendants)

10. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 9.

11. California law provides employees in California must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. California law also provides employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day. Plaintiffs and other Aggrieved Employees regularly worked hours, including overtime hours, for which they were not compensated by Defendants as required by California law.

12. Defendants violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by Plaintiffs and other Aggrieved Employees and not paying multiples of the appropriate regular rate of pay for all overtime hours worked. Upon information and belief, Defendants used a time rounding system that as applied worked to detrimentally shave and round time off from Plaintiffs and Aggrieved Employees' workdays. Plaintiffs allege on information and belief that through the operation of the time rounding system, Plaintiffs and Aggrieved Employees were systematically deprived of compensable time because the system would almost always, if not always, understate the actual compensable work time due to the rounding. Additionally, Defendants did not properly record meal breaks but instead automatically deducted a thirty-minute meal period per shift worked even though Plaintiffs and the Aggrieved Employees did not always receive a full thirty-minute meal period. Further, Defendants failed to properly pay Plaintiffs and the Aggrieved Employees reporting time pay. As a result, Defendants failed to pay Plaintiffs and Aggrieved Employees for all hours worked at a rate no less than the applicable minimum wage in violation of the Labor Code and Wage Orders. Defendants further violated California's overtime laws by failing to correctly calculate the regular rate of compensation because they did not include all non-discretionary remuneration, including without limitation performance-based bonuses and housing benefits, when calculating the regular

1 rate of pay of Plaintiffs and Aggrieved Employees. As a result, Defendants did not pay Plaintiffs
2 and Aggrieved Employees the correct premium rate for all overtime hours worked, in violation of
3 the Labor Code and Wage Orders.

4 13. In failing to compensate Plaintiffs and Aggrieved Employees for all minimum
5 wages and overtime at the correct regular rate of pay, Defendants violated Labor Code sections
6 1194-1199, and Wage Order 5-2001, section 7, as to Plaintiffs and all other Aggrieved Employees.
7 These violations subject Defendants to civil penalties under the foregoing Labor Code sections and
8 other applicable Labor Code sections, including without limitation Labor Code sections 1197.1 and
9 2699, as well as the applicable Wage Order(s). Each violation of each Labor Code section and
10 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

11 14. Under Labor Code section 1197, "The minimum wage for employees fixed by the
12 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
13 and the payment of a lower wage than the minimum so fixed is unlawful." Upon information and
14 belief, Defendants failed to properly provide Plaintiffs and the Aggrieved Employees with
15 minimum wages for all hours worked as fixed by law. In particular, Plaintiffs and the Aggrieved
16 Employees were not paid the minimums fixed by applicable state law, including but not limited to,
17 paid sick time pursuant to Labor Code section 246 of the HWHFA. PAGA imposes upon
18 Defendants, and each of them, penalties for violating Labor Code sections 1197.

19 15. Labor Code Section 221 prohibits an employer from "collect[ing] or receiv[ing]
20 from an employee any part of wages theretofore paid by said employer to said employee." Plaintiffs
21 allege on information and belief that Defendants made unlawful deductions from their and the
22 Aggrieved Employees' paychecks during the relevant time period. The foregoing violates,
23 including but not limited to, Labor Code Section 221, which subjects Defendants to civil penalties
24 under Labor Code Section 2699. Each violation results in a separate civil penalty, for each
25 aggrieved employee, for each pay period during which the statute provisions were violated.

26 16. California law requires employers to provide employees a duty-free, uninterrupted
27 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
28 and it must be provided within the first five (5) hours the employee works. Employers must also

1 provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an
2 employee works more than (10) hours in a workday, and it must be provided before the end of the
3 10th hour of work. Meal periods can be waived, but only under the following circumstances: (1) if
4 an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
5 required meal period may be waived by mutual consent of the employer and employee, and (2) if
6 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
7 the required second meal period may be waived by mutual consent of the employer and employee,
8 but only if the first meal period was not waived. Employers covered by Wage Order 5-2001 (and
9 all applicable wage orders) have an obligation to both (1) relieve their employees for at least one
10 meal period for shifts over five hours and (2) record having done so. If the employer fails to properly
11 record a valid meal period, it is presumed that no meal period was provided. Employers must further
12 pay employees an additional hour of wages at the regular rate of compensation for each missed or
13 otherwise non-compliant meal period.

14 17. Defendants failed to maintain a company meal period policy compliant with
15 California law and failed to provide Plaintiffs and other Aggrieved Employees with proper meal
16 periods. In fact, Defendants did not have a written meal period policy nor did they have any sort of
17 compliant policy in practice. Based on Plaintiffs' work schedules, Plaintiffs were always entitled
18 to at least one timely, uninterrupted thirty-minute meal break per shift and often entitled to a second
19 timely, uninterrupted thirty-minute meal break per shift worked. However, Plaintiffs would not
20 receive a single thirty (30) minute meal period and when they did, they were always receiving it
21 late, after the fifth hour of work. As such, Defendants did not provide the required meal periods by
22 law. Additionally, Defendants prohibited the taking of a second meal break even though Plaintiffs
23 and other Aggrieved Employees' shifts typically lasted longer than ten (10) hours. Furthermore,
24 Defendants maintained an illegal break policy whereby Plaintiffs and other Aggrieved Employees
25 were prohibited from leaving the work premises during their shifts. Accordingly, Plaintiffs and
26 other Aggrieved Employees never received a proper duty-free meal period during the relevant time
27 period. Despite not providing its employees with the meal breaks to which they were legally
28 entitled, Defendants did not pay any premiums for these missed meal periods in violation of

1 California law.

2 18. In failing to provide all required and fully compliant meal periods and/or failing to
3 compensate for missed/non-compliant meal periods at the correct regular rate of compensation,
4 Defendants violated Labor Code sections 226.7, 512, and 1198-1199, and Wage Order 5-2001 (and
5 all applicable wage orders), sections 11(A) and (C). These violations subject Defendants to civil
6 penalties under Labor Code section 2699, and Wage Order 5-2001 (and all applicable wage orders),
7 section 20. Each violation of each Labor Code section and Wage Order provision, for each
8 aggrieved employee, results in a separate civil penalty.

9 19. California law requires employers to provide employees a paid, duty-free ten (10)
10 minute rest period for each four (4) hours worked, or major fraction thereof. Employers must pay
11 employees an additional hour of wages at the employee's regular rate of pay for each missed or
12 improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s)
13 during shift(s)) rest period. The rest period requirement obligates employers to permit and authorize
14 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
15 and relinquish control over how employees spend their time.

16 20. Defendants failed to maintain a company rest period policy compliant with
17 California law and failed to provide Plaintiffs and other Aggrieved Employees with proper rest
18 breaks. In fact, Defendants did not have a written rest period policy, nor did they have any sort of
19 compliant policy in practice. Based on their work schedules, Plaintiffs and other Aggrieved
20 Employees were typically entitled to three (3) ten-minute paid duty-free rest breaks per shift.
21 However, Plaintiffs and other Aggrieved Employees were not provided proper rest periods because
22 the provided rest breaks were often interrupted and/or untimely and never duty-free since Plaintiffs
23 and other Aggrieved Employees were always tethered to their work location during these purported
24 breaks. Defendants did not maintain a company rest period policy and/or practice compliant with
25 California law, and Defendants did not properly authorize and provide Plaintiffs and other
26 Aggrieved Employees with appropriate rest periods in compliance with the law.

27 21. In failing to provide all required and fully compliant rest breaks and/or failing to
28 compensate for missed/non-compliant rest breaks at the correct regular rate of compensation,

1 Defendants have violated Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-
2 2001 (and all applicable wage orders), section 12(A). These violations subject Defendants to civil
3 penalties under Labor Code section 2699, and Wage Order 5-2001 (and all applicable wage orders),
4 section 20. Each violation of each Labor Code section and Wage Order provision, for each
5 aggrieved employee, results in a separate civil penalty.

6 22. California law provides that, at the time of each payment of wages, the employer
7 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
8 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
9 employee is being paid, the employee's name and last four digits of their social security number,
10 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
11 effect during the pay period and all hours worked at each rate.

12 23. Defendants knowingly and intentionally failed to provide Plaintiffs and other
13 Aggrieved Employees with proper, itemized wage statements as the wage statements provided by
14 Defendants did/do not accurately reflect, inter alia, gross wages earned, total hours worked, net
15 wages earned, and all applicable hourly rates in effect during each pay period and all hours worked
16 at each applicable hourly rate because Defendants failed to correctly calculate and pay all wages
17 due, as further discussed herein, including overtime wages and premium wages for missed/non-
18 compliant meal and rest periods.

19 24. Accordingly, Defendants have violated Labor Code sections 226(a) and/or 226(e)
20 as Plaintiffs and all Aggrieved Employees. These violations subject Defendants to civil penalties
21 under the Labor Code, including without limitation Labor Code sections 226, 226.3 and 2699. Each
22 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
23 results in a separate civil penalty.

24 25. Accordingly, Defendants has violated Labor Code sections 226(a) and/or 226(e) as
25 to Plaintiffs and all Aggrieved Employees. These violations subject Defendants to civil penalties
26 under the Labor Code, including without limitation Labor Code sections 226, 226.3 and 2699. Each
27 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
28 results in a separate civil penalty.

1 26. California law requires employers to keep “accurate and complete” payroll records
2 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
3 Order 5-2001, section 7, similarly requires employers to keep time records showing, inter alia,
4 when the employees begin and end each work period. At all relevant times, Defendants have failed,
5 and continues to fail, to keep the required time records, as Defendants did not provide and/or record
6 all of Plaintiffs’ and other Aggrieved Employees hours worked as alleged herein. Defendants’
7 failure to keep “accurate and complete” payroll records for Plaintiffs and other Aggrieved
8 Employees violates Labor Code sections 1174, 1198-99, and Wage Order 5- 2001, section 7. These
9 violations subject Defendants to civil penalties under the Labor Code, including without limitation
10 sections 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision,
11 for each aggrieved employee, results in a separate civil penalty.

12 27. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
13 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
14 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections
15 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants’ violations with respect to
16 meal periods, rest periods, recordkeeping provisions, and minimum wages and/or overtime wages,
17 as alleged herein, result in separate violations of Labor Code sections 1198 and 1199, and subject
18 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
19 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,
20 for each aggrieved employee, results in a separate civil penalty.

21 28. Labor Code section 204 requires that all earned wages must be paid to employees
22 twice during each calendar month. Defendants violated this section by failing to pay Plaintiffs and
23 Aggrieved Employees an additional hour of pay for meal and rest periods not provided/valid, by
24 failing to compensate employees for all hours worked, including overtime hours worked, and by
25 failing to pay proper premium wage rates for all hours worked. These violations subject Defendants
26 to civil penalties under Labor Code section 210. Each violation results in a separate civil penalty,
27 for each aggrieved employee for each pay period during which the statute provisions were violated.

28 29. Labor Code section 201 requires employers to pay all wages earned and unpaid at

1 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
2 provisions with respect to employees who resign. For all Aggrieved Employees no longer employed
3 by Defendants, including Plaintiffs, Defendants still have not paid such Aggrieved Employees all
4 wages earned and unpaid at the time of discharge as alleged herein including vested vacation wage
5 under Labor Code section 227.3 and sick leave wage under section 246. These violations subject
6 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
7 sections 203, 256 and 2699. Each violation results in a separate civil penalty, for each aggrieved
8 employee for each pay period during which the statutory provisions were violated.

9 30. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
10 and payable and/or denial of the validity of any claim to wages due. Defendants violated/violates
11 this section by failing to pay Plaintiffs and Aggrieved Employees for all hours worked at the proper
12 wage rate and by failing to pay Plaintiffs and Aggrieved Employees an additional hour of pay for
13 each meal/rest period not provided/that was invalid. These violations subject Defendants to civil
14 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
15 each aggrieved employee, for each pay period during which the statute provisions were violated.

16 31. California Labor Code section 223 makes it unlawful for an employer to secretly
17 pay wages lower than required by statute while purporting to pay legal wages. As described above,
18 Defendants willfully and systematically denied Plaintiffs and other Aggrieved Employees
19 minimum wage compensation for all hours worked which resulted in the payment of less than
20 statutorily required wages to them. Defendants acted with the intent to deprive them of statutory
21 wages, including, but not limited to, overtime wages and minimum wages, to which they were
22 entitled to under California law. Thus, Defendants paid Plaintiffs and other Aggrieved Employees
23 lower wages than those they were entitled to while purporting that Plaintiffs and other Aggrieved
24 Employees were properly paid.

25 32. Labor Code section 432.5 states that it is illegal for an employer to require an
26 employee to agree in writing to any term of employment the employer knows is illegal. The Labor
27 Code places certain procedural and substantive limits on employers' ability to conduct employee
28 background checks and on how employers can use the information they obtain through those

1 background checks. Labor Code Section 1024.5 states that employers, except for financial
2 institutions, may order a credit check only if the individual works (or is applying to work) in certain
3 positions, and Labor Code Section 432.7 prohibits an employer from asking applicants about past
4 arrest(s) unless they resulted in conviction(s) and even then certain limitations apply. Additionally,
5 the Investigative Consumer Reporting Agencies Act, Civil Code §§ 1786, et seq. (“ICRAA”), and
6 the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq. (“FCRA”), mandate several requirements
7 prior to and following an employee background check, including but not limited to identifying an
8 appropriate reason for the background check, a separate consent form with required disclosures and
9 certain formatting requirements, additional forms such as a summary of rights, as well as proper
10 notice of adverse actions taken, among other statutory requirements.

11 33. On information and belief, Defendants required Plaintiffs and other Aggrieved
12 Employees to sign unlawful non-compete agreements as a condition of hire/maintaining
13 employment which was known by Defendants to be prohibited by law. In so doing, Defendants
14 violated Labor Code section 432.5, which violations subject Defendants to civil penalties under the
15 Labor Code, including without limitation sections 432.5 and 2699. Each violation of each Labor
16 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
17 penalty.

18 34. On information and belief, Defendants required Plaintiffs and other Aggrieved
19 Employees to submit to an unlawful criminal and/or financial background check as a condition of
20 obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or 432.7.
21 Defendants also required Plaintiffs and other Aggrieved Employees to agree in writing to unlawful
22 background checks not in conformance with the requirements ICRAA and/or FCRA. Defendants
23 also asked about arrests not resulting in convictions on its employment application. These violations
24 subject Defendants to civil penalties under the Labor Code, including without limitation Labor
25 Code sections 432.5, 432.7 and 2699. Each violation of each Labor Code section and Wage Order
26 provision, for each aggrieved employee, results in a separate civil penalty.

27 35. Defendants failed to pay Plaintiffs and the Aggrieved Employees all wages and
28 entitlements under Labor Code section 510, including, but not limited to, compensating such

1 employees at the appropriate regular rate of pay where applicable for all overtime hours worked.
2 This was a result of Defendants' failure to appropriately factor in the incentive compensation earned
3 by Plaintiffs and the Aggrieved Employees during a given period for the purpose of computing the
4 employees' regular rate of pay. For example, Plaintiffs and the Aggrieved Employees would
5 regularly earn compensation for regular hours in a single workweek wherein they would also earn
6 incentives such as bonuses. Yet Defendant failed to properly compensate such employees at the
7 proper rate of compensation pursuant to California law. In failing to apply the proper computation,
8 Plaintiffs and the Aggrieved Employees were underpaid in wages for all hours that required
9 payment of the regular rate of pay or a multiple thereof, including overtime hours as mandated in
10 Labor Code section 510.

11 36. Defendants failed to provide paid sick leave to Plaintiffs and Aggrieved Employees,
12 further failing to put them on notice of their paid sick leave rights—or thereby putting their
13 entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Defendants failed to
14 maintain accurate records of used sick leave and the balance of paid sick leave left to the employee
15 throughout the relevant time period. Notably, where an employer compensates an employee with
16 non-discretionary bonus pay (as Defendants did here), any sick leave/sick pay calculation must
17 incorporate the value of the non-discretionary bonuses; upon information and belief, Defendants'
18 sick leave/sick pay calculation did not. Additionally, Defendants failed to provide notice of the
19 correct sick leave amount balance left for Plaintiffs and Aggrieved Employees, and thus affecting
20 their intelligent exercise of their paid sick leave. But for this failure, Plaintiffs and Aggrieved
21 Employees would have used their paid sick leave at least prior to their respective separation, for as
22 on several occasions thereafter, he or she would have been entitled to use the banked sick leave and
23 earn appropriate compensation. This illegal retention of paid sick leave is unlawful and Plaintiffs
24 seek all forms of injunctive relief, restitution, and declaratory relief as permitted by California law,
25 on behalf of themselves and all Aggrieved Employees.

26 36. An Employer is required to provide paid sick days in accordance to Labor Code
27 Section 245 through 248.5. Defendants failed to provide a Labor Code Section 2810.5 notice,
28 putting Plaintiffs on notice of their rights to use paid sick leave. Defendants failed to provide the

posting required by these statutes, showing and demonstrating all of the following: (1) an employee is entitled to accrue, request, and use paid sick days; (2) the amount of sick days provided for by this article; (3) the terms of use of paid sick days; (4) that retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

37. Defendants failed to maintain records documenting the hours worked and paid sick days accrued and used by employees in violation of Labor Code Section 247.5, permitting the presumption that Plaintiffs were entitled to the maximum number of hours accruable under this article at the time of their termination. Defendants further failed to comply with Labor Code Section 246, that is, providing its employees with a 226 statement or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays its period wages and provides a Labor Code Section 226 statement.

38. Moreover, Defendants unlawfully retained and continue to retain paid sick leave that should have been paid and wasn't as a result of its failure to properly institute a paid sick leave program. On information and belief, Plaintiffs allege that all of these practices were experienced and continue to be experienced by other Aggrieved Employees. Plaintiffs request all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but wasn't, due to Defendants' sole failure to institute such a paid sick leave entitlement/paid sick leave bank as required by California law.

39. Defendant failed to pay Plaintiffs and the Aggrieved Employees all wages and entitlements due under the Healthy Workplace, Healthy Families Act of 2014 ("HWHFA") codified under Labor Code section 245 et seq. In particular, Defendants violated Labor Code section 246 by failing to pay Plaintiffs and the Aggrieved Employees all wages and entitlements, including, but not limited to, compensating such employees for use of their sick leave pursuant to the correct rate mandated in Labor Code section 246(l), which requires Defendants to account for all compensation earned including incentives and non-discretionary bonuses during the pay period. Such violation resulted in an underpayment of wages to Plaintiffs and Aggrieved Employees, including the

1 nonpayment of all wages due and payable upon termination from employment pursuant to Labor
2 Code sections 201-203.

3 40. Accordingly, Defendants have violated Labor Code sections 233 and 234 as to
4 Plaintiffs and all Aggrieved Employees. These violations subject Defendants to civil penalties
5 under the Labor Code, including without limitation Labor Code Section 233 and 234 and 2699.
6 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
7 employee, results in a separate civil penalty.

8 41. Under the provisions of PAGA and Labor Code sections 201, 202, 203, 204, 210,
9 216, 218.5, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 233, 234, 245, 245.5, 246, 246.5,
10 247, 247.5, 248, 248.1, 248.2, 248.3, 248.5, 256, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174,
11 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2698 et seq., 2802, 2810.5 and all
12 applicable Wage Orders, as well as all interpretations of these laws by California Courts and
13 administrative bodies, as well as any other law that is enforceable through PAGA, Defendants are
14 liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the relevant
15 California Labor Code provisions listed herein, or for default PAGA penalties under Labor Code
16 Section 2699(f) for any violation of a Labor Code section without a specified civil penalty.

17 42. Plaintiffs complied with the procedures for bringing suit specified in Labor Code
18 sections 2699.3 and 2699.5. Plaintiffs gave written notice to the California Labor and Workforce
19 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov, and to
20 Defendants via certified mail, of the specific provisions of the Labor Code and Wage Orders
21 allegedly violated, including the facts and theories to support the alleged violations.

22 43. Under Labor Code section 2699.3, the LWDA must give written notice by
23 certified mail to the parties, where it intends to investigate the alleged violations, within 65
24 days of the date of Plaintiffs’ written notice. As of the expiration of the statutory exhaustion period,
25 the LWDA has not provided the parties any notice of its intention to investigate Plaintiffs’
26 claims on behalf of the State of California and other Aggrieved Employees. As of the filing of this
27 Complaint, Defendants have not responded to Plaintiffs’ PAGA notices in an attempt to cure.
28 Accordingly, Plaintiffs have exhausted all administrative remedies required by law.

44. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiffs are entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

PRA YER

WHEREFORE, Plaintiffs pray for judgment against each Defendant, jointly and severally,
as follows:

1. For civil penalties according to proof;
2. For reasonable attorney's fees and costs of suit; and
3. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable.

Dated: March 1, 2022

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