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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF YOLO**

14 HILARY CEARLEY and YEKATERINA
15 KUCHEROVA, on behalf of the State of
16 California, as a private attorney generals,

17 Plaintiffs,

18 vs.

19 UNIVERSITY RETIREMENT
20 COMMUNITY AT DAVIS, INC., a
21 Corporation; PACIFIC RETIREMENT
22 SERVICES, INC., a Corporation and
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. CV2021-0524

REPRESENTATIVE ACTION COMPLAINT
FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiffs Hilary Cearley and Yekaterina Kucherova (“PLAINTIFFS”) on behalf of the
2 people of the State of California and as “aggrieved employees” acting as private attorney
3 generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants UNIVERSITY RETIREMENT
8 COMMUNITY AT DAVIS, INC. and PACIFIC RETIREMENT SERVICES, INC.,
9 (“DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on behalf
10 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS
11 do **not seek to recover anything other than penalties as permitted by California Labor**
12 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
13 PLAINTIFFS do not seek underlying general and/or special damages for those violations, but
14 simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on
16 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
17 sole nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant University Retirement Community At Davis, Inc. is a corporation that
25 at all relevant times mentioned herein conducted and continues to conduct substantial business
26 in the state of California.

27 5. Defendant Pacific Retirement Services, Inc. is a corporation that at all relevant
28

1 times mentioned herein conducted and continues to conduct substantial business in the state of
2 California.

3 6. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or
4 managers of Defendant University Retirement Community At Davis, Inc. and Defendant Pacific
5 Retirement Services, Inc. at all relevant times. PLAINTIFFS allege there has existed a unity
6 of interest and ownership between Defendant University Retirement Community At Davis, Inc.
7 and Defendant Pacific Retirement Services, Inc. such that any individuality and separateness
8 between the entities has ceased. Defendant University Retirement Community At Davis, Inc.
9 and Defendant Pacific Retirement Services, Inc. and DOES 1-50 are therefore alter egos of each
10 other. Adherence to the fiction of the separate existence of would permit an abuse of the
11 corporate privilege, and would promote injustice by protecting Defendant University Retirement
12 Community At Davis, Inc. and Defendant Pacific Retirement Services, Inc. from liability for
13 the wrongful acts committed by them. As evidenced by PLAINTIFFS' paychecks and company
14 documents, Defendants University Retirement Community At Davis, Inc. and Pacific
15 Retirement Services, Inc. were joint employers of PLAINTIFFS and are referred to herein as
16 ("DEFENDANT").

17 7. PLAINTIFFS further allege that Defendant University Retirement Community
18 At Davis, Inc. and Defendant Pacific Retirement Services, Inc. are the alter egos of each other
19 for the following reasons:

20 (A) On the California Secretary of State's website
21 (<https://businesssearch.sos.ca.gov/>) Defendant University Retirement
22 Community At Davis, Inc. and Defendant Pacific Retirement Services,
23 Inc. have the same entity address and/or mailing address;

24 (B) On information and belief Defendant University Retirement Community
25 At Davis, Inc. and Defendant Pacific Retirement Services, Inc. utilize the
26 same standardized employment forms and issue the same employment
27 policies; and,

28 (C) Defendant Pacific Retirement Services, Inc. has Defendant University

1 Retirement Community At Davis, Inc. as their agent for service of process.

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3 8. Plaintiff Cearley was employed by DEFENDANT from October 2019 to July of
4 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
5 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
6 and overtime wages due for all time worked.

7 9. Plaintiff Kucherova was employed by DEFENDANT from February of 2017 to
8 July of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid
9 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
10 minimum and overtime wages due for all time worked.

11 10. PLAINTIFFS and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, bring this Representative Action on behalf of the State of California with respect to
14 themselves and all individuals who worked for Defendant University Retirement Community
15 At Davis, Inc. and/or Defendant Pacific Retirement Services, Inc. in California and classified
16 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of August
17 20, 2019, until a date as determined by the Court (the "PAGA PERIOD").

18 11. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
19 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
20 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
21 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a),
22 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
23 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
24 Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved
25 employees within the meaning of Labor Code § 2699, *et seq.*

26 12. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
28 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names

1 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
2 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
3 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
4 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
5 inclusive, are responsible in some manner for one or more of the events and happenings that
6 proximately caused the injuries and damages hereinafter alleged.

7 13. The agents, servants and/or employees of the Defendants and each of them acting
8 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
9 agent, servant and/or employee of the Defendants, and personally participated in the conduct
10 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
11 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
12 all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED
13 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
14 agents, servants and/or employees.

15 **THE CONDUCT**

16 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
17 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. DEFENDANT required
20 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
21 time they were under DEFENDANT's control. DEFENDANT required PLAINTIFFS and the
22 AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time they
23 performed post-shift duties, specifically by failing to provide enough labor hours to accomplish
24 all the job tasks that DEFENDANT expected PLAINTIFFS and AGGRIEVED EMPLOYEES
25 to complete on a daily and/or weekly basis. Specifically, DEFENDANT required PLAINTIFFS
26 and the AGGRIEVED EMPLOYEES to clock out of DEFENDANT's timekeeping system and
27 then complete reports for the employees who were working the next work shift. DEFENDANT
28 failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the time they spent

1 working after they have already clocked out of DEFENDANT's timekeeping system at the end
2 of their work shifts. Additionally, from time to time, DEFENDANT required PLAINTIFFS
3 to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break.
4 PLAINTIFFS were from time to time interrupted by work assignments. Further, PLAINTIFFS
5 and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time
6 worked, including overtime wages, such that in the aggregate employees were underpaid wages
7 as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
8 employees. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited
9 minimum wage and overtime compensation by from time to time working without their time
10 being accurately recorded and without compensation at the applicable minimum wage and
11 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other
12 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
13 records.

14 15. In addition, State and federal law provides that employees must be paid overtime
15 at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other AGGRIEVED
16 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
17 elements of an employee's performance.

18 16. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES'
19 compensation was DEFENDANT's non-discretionary incentive program that paid
20 PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their
21 performance for DEFENDANT, including but not limited to on-call flat sum wages and shift
22 differential wages for working undesirable shifts. The non-discretionary incentive program
23 provided all employees paid on an hourly basis with incentive compensation when the
24 employees met the various performance goals set by DEFENDANT. However, when
25 calculating the regular rate of pay in order to pay overtime to PLAINTIFFS and other
26 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
27 part of the employees' "regular rate of pay" for purposes of calculating overtime pay. Also,
28 DEFENDANT underpaid sick pay wages to PLAINTIFFS and other AGGRIEVED

1 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically,
2 PLAINTIFFS and other non-exempt employees regularly earn non-discretionary remuneration,
3 including but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick
4 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other
5 AGGRIEVED EMPLOYEES at their base rates of pay. Management and supervisors described
6 the incentive program to potential and new employees as part of the compensation package. As
7 a matter of law, the incentive compensation received by PLAINTIFFS and other AGGRIEVED
8 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted
9 in an underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED
10 EMPLOYEES by DEFENDANT.

11 17. As a result of their rigorous work schedules, PLAINTIFFS and other
12 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
13 and were not fully relieved of duty for meal periods. PLAINTIFFS and other AGGRIEVED
14 EMPLOYEES are from time to time required to perform work as ordered by DEFENDANT for
15 more than five (5) hours during a shift without receiving an off-duty meal break. Further,
16 DEFENDANT failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second
17 off-duty meal period from time to time in which these employees were required by
18 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and the other
19 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
20 and in accordance with DEFENDANT’s corporate policy and practice.

21 18. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES were also required from time to time to work in excess of four (4) hours without
23 being provided ten (10) minute rest periods. Further, these employees were denied their first
24 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
25 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
26 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
27 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
28 time to time. PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided

1 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS
2 and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods
3 by DEFENDANT and DEFENDANT's managers. Additionally, the applicable California
4 Wage Order requires employers to provide employees with off-duty rest periods, which the
5 California Supreme Court defined as time during which an employee is relieved from all work
6 related duties and free from employer control. In so doing, the Court held that the requirement
7 under California law that employers authorize and permit all employees to take rest period
8 means that employers must relieve employees of all duties and relinquish control over how
9 employees spend their time which includes control over the locations where employees may
10 take their rest period. Employers cannot impose controls that prohibit an employee from taking
11 a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricted
12 PLAINTIFFS and other AGGRIEVED EMPLOYEES from unconstrained walks and required
13 these employees to remain on DEFENDANT's premises under DEFENDANT's control during
14 what should be their paid, off duty rest periods.

15 19. DEFENDANT also failed to provide PLAINTIFFS and the other AGGRIEVED
16 EMPLOYEES with complete and accurate wage statements which failed to show, among other
17 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
18 employer shall furnish each of his or her employees with an accurate itemized wage statement
19 in writing showing, among other things, gross wages earned and all applicable hourly rates in
20 effect during the pay period and the corresponding amount of time worked at each hourly rate.
21 Aside, from the violations listed above, DEFENDANT failed to issue to PLAINTIFFS an
22 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
23 As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
24 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

25 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence of
28 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

1 2802, employers are required to indemnify employees for all expenses incurred in the course
2 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 21. In the course of their employment PLAINTIFFS and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit.
12 Specifically, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by
13 DEFENDANT to use their personal cellular phones to as the main form of communication
14 while off the clock at home (which also results in a minimum wage and overtime violation) and
15 while at work. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS
16 and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which
17 included, but were not limited to, costs related to the use of their personal cellular phones all
18 on behalf of and for the benefit of DEFENDANT.

19 22. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
21 intentionally and knowingly failed to compensate PLAINTIFFS and the other AGGRIEVED
22 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT is
23 intended to purposefully avoid the payment for all time worked as required by California law
24 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
25 who complied with the law. To the extent equitable tolling operates to toll claims by the
26 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
27 accordingly.

28 23. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED

1 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
2 to accurately calculate and record all missed meal and rest periods and failed to pay all
3 minimum and overtime wages due to PLAINTIFFS and other AGGRIEVED EMPLOYEES.
4 The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
5 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
6 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
7 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
8 regulations promulgated thereunder as herein alleged.

9 24. All of the conduct and violations alleged herein occurred during the PAGA
10 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
11 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
12 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
13 AJDAR 12157 (Certified for Publication 12/19/18).

14 15 **JURISDICTION AND VENUE**

16 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure, Section 410.10.

18 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT,
20 resides in this County, and DEFENDANT (i) currently maintains and at all relevant times
21 maintained offices and facilities in this County and/or conducts substantial business in this
22 County, and (ii) committed the wrongful conduct herein alleged in this County against
23 PLAINTIFFS and the AGGRIEVED EMPLOYEES.

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1 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
2 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
3 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

4 31. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
8 to pay minimum wages, (e) failed to reimburse for necessary business expenses incurred, and
9 (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
10 listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
11 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
12 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives
13 rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only
14 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
15 representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
16 and the other AGGRIEVED EMPLOYEES.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
19 severally, as follows:

20 1. On behalf of the State of California and with respect to all AGGRIEVED
21 EMPLOYEES:

22 A) Recovery of civil penalties as prescribed by the Labor Code Private
23 Attorneys General Act of 2004; and,

24 B) An award of attorneys' fees and cost of suit, as allowable under the
25 law, including, but not limited to, pursuant to Labor Code §2699.

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28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

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Dated: March 26, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff