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12 similarly situated members of the general public

ENDORSED
FILED
San Francisco County Superior Court

NOV 05 2020

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11 JULIAN SMITH, on behalf of similarly
12 situated members of the general public,

13 Plaintiff,

14 vs.

15 EQUITY RESIDENTIAL SERVICES,
16 LLC; and DOES 1 through 20, inclusive,

17 Defendants.
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Case No.

CGC-20-587812

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, ET SEQ.)**

FAXED

1 Plaintiff Julian Smith, individually and on behalf of other aggrieved employees, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Julian Smith (“Plaintiff”) brings this representative action against
5 defendants Equity Residential Services, LLC, and DOES 1 through 20, inclusive (collectively,
6 “Defendants”), on behalf of himself individually and all other aggrieved employees employed
7 by Defendants throughout California.

8 2. Defendants are in the business of property management.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders.

12 4. Plaintiff is informed and believes, and thereon alleges, that during the relevant
13 time period, Defendants had a consistent policy of violating state wage and hour laws by,
14 among other things:

- 15 (a) failing to pay overtime wages at the proper rates;
- 16 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 17 (c) failing to authorize or permit lawful rest breaks or provide compensation
18 in lieu thereof;
- 19 (d) failing to provide accurate itemized wage statements; and
- 20 (e) failing to pay all wages due upon separation of employment.

21 5. Plaintiff brings this representative action against Defendants on behalf of
22 himself and other aggrieved employees to recover, among other things, civil penalties,
23 attorney’s fees, costs and expenses pursuant to the Private Attorneys General Act of 2004,
24 Labor Code §§ 2698, *et seq.* (“PAGA”).

25 **JURISDICTION AND VENUE**

26 6. This is a representative action, pursuant to PAGA. The monetary relief sought
27 by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be
28 established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint

1 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
2 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
3 the employer and/or joint employer of Plaintiff and other aggrieved employees.

4 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
6 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
7 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
8 the official policy of Defendants.

9 16. At all relevant times, Defendants, and each of them, acted within the scope of
10 such agency or employment, or ratified each and every act or omission complained of herein.
11 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
12 each and all the other Defendants in proximately causing the damages herein alleged.

13 17. Plaintiff is informed and believes, and thereon alleges, that each of said
14 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
15 omissions, occurrences, and transactions alleged herein.

16 **GENERAL ALLEGATIONS**

17 18. At all relevant times mentioned herein, Defendants employed Plaintiff and other
18 persons as non-exempt employees at Defendants' California business location(s).

19 19. Defendants continue to employ non-exempt employees within California.

20 20. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
22 who were knowledgeable about California's wage and hour laws, employment and personnel
23 practices, and the requirements of California law.

24 21. Plaintiff is informed and believes, and thereon alleges, that Defendants
25 improperly calculated the overtime rate of pay for Plaintiff and other aggrieved employees
26 because the rates did not include non-discretionary wages, including, but not limited to,
27 bonuses, shift premiums, rent subsidies, cash in lieu of benefits, and/or other incentive pay into
28 the computation of their regular rate of pay for purposes of calculating the overtime rate of pay.

1 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other aggrieved employees were entitled to receive all
3 required meal periods or payment of one (1) additional hour of pay at Plaintiff and class
4 members' regular rate of pay when they did not receive a timely meal period. In violation of
5 the Labor Code and IWC Wage Orders, Plaintiff and class members did not receive all timely
6 meal periods or payment of one (1) additional hour of pay at Plaintiff and class members'
7 regular rate of pay when they did not receive a timely meal period.

8 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
10 breaks or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate
11 of pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
12 Plaintiff and class members did not receive all rest breaks or payment of one (1) additional hour
13 of pay at Plaintiff and class members' regular rate of pay when a rest break was missed.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other aggrieved employees were entitled to receive
16 itemized wage statements that accurately showed the employer name, their gross and net wages
17 earned, inclusive dates of pay periods, total hours worked, and all applicable hourly rates in
18 effect and the number of hours worked at each hourly rate in accordance with California law.
19 In violation of the Labor Code, Plaintiff and class members were not provided with accurate
20 itemized wage statements.

21 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other aggrieved employees were entitled to timely
23 payment of wages upon separation of employment. In violation of the California Labor Code,
24 Plaintiff and aggrieved employees did not receive payment of all wages, including, but not
25 limited to, unpaid minimum wages, overtime wages, meal period premiums, and rest break
26 premiums, within permissible time periods.

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known they had a duty to compensate Plaintiff and aggrieved employees, and

1 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
2 intentionally failed to do so in order to increase Defendants' profits.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

5 (California Labor Code §§ 2698, *et seq.*)

6 27. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 28. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
9 provides for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
11 agencies or employees for violation of the code may, as an alternative, be recovered through a
12 civil action brought by an aggrieved employee on behalf of himself and other current or former
13 employees pursuant to the procedures specified in Labor Code § 2699.3.

14 29. For all provisions of the Labor Code except those for which a civil penalty is
15 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
16 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
17 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
18 period in which Defendants violated these provisions of the Labor Code.

19 30. Defendants' conduct with respect to Plaintiff and other aggrieved employees
20 violates numerous Labor Code sections including, but not limited to, the following:

- 21 (a) Violation of Labor Code §§ 201-204, 210, 510, 1194, and 1198 for
22 failure to timely pay all earned overtime wages owed to Plaintiff and
23 other aggrieved employees during employment and upon separation of
24 employment as herein alleged;
- 25 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
26 periods to Plaintiff and other aggrieved employees and failure to pay
27 premium wages for missed meal periods as herein alleged;
- 28

1 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to
2 Plaintiff and other aggrieved employees and failure to pay premium
3 wages for missed rest periods as herein alleged;

4 (d) Violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
5 itemized wage statements to Plaintiff and other aggrieved employees as
6 herein alleged; and

7 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
8 accurate records.

9 31. Plaintiff is an “aggrieved employee” because he was employed by the alleged
10 violator and had one or more of the alleged violations committed against him, and therefore is
11 properly suited to represent the interests of all other aggrieved employees.

12 32. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
13 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and
14 all other aggrieved employees during PAGA.

15 33. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
16 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
17 cited above.

18 34. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
19 herein.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on his own behalf and on behalf of all other aggrieved employees, prays for
22 judgment against Defendants as follows:

23 1. For civil penalties against Defendants on behalf of all aggrieved employees;

24 2. For reasonable attorney’s fees and costs of suit to the extent permitted by law,
25 including pursuant to California Labor Code §§ 2698, *et seq.*, and California Code of Civil
26 Procedure § 1021.5; and

27 3. For such other relief as the Court deems just and proper.
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1 Dated: November 5, 2020

AEGIS LAW FIRM, PC

2
3 By: 

4 Fawn F. Bekam

5 Attorneys for Plaintiff