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**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**MAR 18 2021**

Sherri R. Carter, Executive Officer/Clerk of Court

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

14 ERNEST WINTERS, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 DOUGLAS EMMETT, INC.; DOUGLAS  
19 EMMETT MANAGEMENT, INC.;  
20 DOUGLAS EMMETT MANAGEMENT,  
21 LLC; and DOES 1 through 10,

22 Defendants.

Case No.: **21STCV10680**

**CLASS- AND REPRESENTATIVE-  
ACTION COMPLAINT FOR:**

1. **Failure to Make Proper Disclosure,  
in Violation of FCRA (15 U.S.C.  
§ 1681b(b)(2)(A)(ii))**
2. **Failure to Obtain Proper  
Authorization, in Violation of FCRA  
(15 U.S.C. § 1681b(b)(2)(A)(ii))**
3. **Violation of PAGA (Cal. Lab. Code  
§ 2698 *et seq.*)**

**JURY TRIAL DEMANDED**

**By Fax**

1 Plaintiff Ernest Winters (“Plaintiff”) alleges as follows, upon personal knowledge as to himself  
2 and his own acts and experiences, and, as to all other matters, upon information and belief, including  
3 investigation conducted by his attorneys.

4 **PRELIMINARY STATEMENTS**

5 1. This class action and representative action arises from the procurement by Defendants  
6 Douglas Emmet, Inc.; Douglas Emmett Management, Inc.; Douglas Emmett Management, LLC; and  
7 DOES 1 through 10 (collectively, “Defendants”) of consumer reports on Plaintiff and other  
8 prospective, current, and former employees without proper disclosure and authorization as required by  
9 the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and from Defendants’ systematic  
10 violations of California’s wage-and-hour laws.

11 2. Defendants routinely procure consumer reports to conduct background checks as part  
12 of the employment-application process. However, Defendants fail to comply with federal mandates  
13 for obtaining and using consumer reports for employment purposes. Plaintiff brings this action  
14 against Defendants for the violation of these federal laws.

15 3. Although the procurement of a consumer report for employment purposes is not *per se*  
16 unlawful, it is subject to strict disclosure requirements under federal law pursuant to the FCRA.  
17 Among other things, an employer may not procure a consumer report concerning a job applicant or  
18 employee unless a “clear and conspicuous” disclosure is made in a stand-alone document that  
19 “consists solely of the disclosure” informing the applicant or employee that a report may be obtained  
20 for employment purposes.

21 4. Defendants procured and/or caused consumer reports respecting Plaintiff and Class  
22 Members to be procured as part of their standard practice and policy, but failed to provide them with a  
23 clear and conspicuous written disclosure, in a document that consists solely of the disclosure, that a  
24 consumer report may be obtained for employment purposes.

25 5. As a result of Defendants’ wrongful acts and omissions, Plaintiff and other putative  
26 Class Members have been injured, including, without limitation, by having their privacy,  
27 informational, and statutory rights violated. On behalf of himself and a nationwide putative Class,  
28 Plaintiff seeks statutory damages, punitive damages, costs and attorneys’ fees, equitable relief, and

other appropriate relief for Defendants' systematic and willful violations of the FCRA.

6. In addition, pursuant to the Private Attorney General Act (“PAGA”), § 2698 *et seq.* of the California Labor Code, Plaintiff brings a representative action against Defendants on behalf of all aggrieved employees in California for Defendants’ various wage-and-hour abuses, including Defendants’ failure to provide proper meal and rest periods, pay for all hours worked and when due, and provide proper wage statements.

## PARTIES

7. Plaintiff Ernest Winters is, and at all times relevant herein was, a resident of Los Angeles, California.

8. Upon information and belief, Defendant Douglas Emmett, Inc. is, and at all times relevant herein was, a Maryland corporation headquartered in Santa Monica, California, and engaged in commercial transactions throughout this county and the State of California.

9. Upon information and belief, Defendant Douglas Emmett Management, Inc. is, and at all times relevant herein was, a Delaware corporation headquartered in Santa Monica, California, and engaged in commercial transactions throughout this county and the State of California. On information and belief, Defendant Douglas Emmett Management, Inc. is the managing member of Defendant Douglas Emmett Management, LLC.

10. Upon information and belief, Defendant Douglas Emmett Management, LLC is, and at all times relevant herein was, a Delaware corporation headquartered in Santa Monica, California, and engaged in commercial transactions throughout this county and the State of California.

11. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or are attributable to, Defendants and/or DOES 1 through 10, with each acting as the agent for the other, and with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official practice and policy of Defendants. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the Complaint and serve such fictitiously named Defendants once their names and capacities become known.

12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, shareholders, managers, or employees of Defendants Douglas Emmett Management, LLC; Douglas Emmett Management, Inc.; and Douglas Emmett Management, Inc. at all relevant times.

13. Plaintiff is informed and believes, and thereon alleges, that each Defendant is, in some manner, intentionally or otherwise, responsible for the acts, omissions, occurrences, and transactions of each and all of the other Defendants in proximately causing the damages herein alleged.

14. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts alleged herein.

## **JURISDICTION AND VENUE**

15. Pursuant to article VI, section 10, of the California Constitution, subject-matter jurisdiction over Plaintiff's wage-and-hour claims is proper in the Superior Court of California, County of Los Angeles, State of California, because Plaintiff alleges claims arising under California law.

16. Jurisdiction over Plaintiff’s FCRA claim is proper under 15 U.S.C. § 1681p, which provides that “[a]n action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction.” 15 U.S.C. § 1681p.

17. This court has personal jurisdiction over Defendants because Defendants reside within this State, conduct business in this State, and have systematic and continuous ties with this State.

18. Pursuant to section 395 of the California Code of Civil Procedure, venue is proper in the Superior Court of California for the County of Los Angeles because Defendants' corporate records filed with the California Secretary of State indicate that Defendants maintain their principal business office at 1299 Ocean Avenue, Suite 1000, Santa Monica, California 90401.

## STATUTORY BACKGROUND

18. Enacted in 1970, the FCRA’s passage was driven in part by two related concerns: first, that consumer reports were playing a central role in people’s lives at crucial moments, such as when

1 they applied for a job or credit, and when they applied for housing; second, despite their importance,  
2 consumer reports were unregulated and had widespread errors and inaccuracies.

3 19. While recognizing that consumer reports play an important role in the economy,  
4 Congress wanted consumer reports to be “fair and equitable to the consumer” and to ensure their  
5 “confidentiality, accuracy, relevancy, and proper utilization.” 15 U.S.C. § 1681.

6 20. Congress was particularly concerned about the use of consumer reports by employers  
7 to deny otherwise qualified job applicants, or to take other adverse actions against prospective or  
8 current employees. Accordingly, Congress required employers to make a clear and conspicuous  
9 written disclosure to employees and job applicants, in a document that consists *solely* of the  
10 disclosure, that a consumer report may be procured for employment purposes. 15 U.S.C.  
11 § 1681b(b)(2). This is commonly referred to as the “stand-alone disclosure” requirement. Congress  
12 further required that employers obtain written authorization prior to procurement of a consumer report  
13 for employment purposes. *Id.*

14 21. The FCRA’s stand-alone disclosure requirement ensures that employees and job  
15 applicants know when reports about them are being generated. This notice is one of many elements of  
16 the FCRA that combine to ensure that consumers are aware that consumer reports are generated about  
17 them, that they know their rights, and that they have the opportunity to dispute errors in their reports.  
18 *See* 15 U.S.C. § 1681b(b)(3)(A) (pre-adverse employment action notice requirement); § 1681b(4)(B)  
19 (notification of national security investigation); § 1681c(h) (notification of address discrepancy);  
20 § 1681d(a) (disclosure of investigative report); § 1681g (full file disclosure to consumers);  
21 § 1681k(a)(1) (disclosure regarding the use of public record information); § 1681h (form and  
22 conditions of disclosure); § 1681m(a) (post-adverse employment action notice requirement).

23 22. Although the disclosure and the authorization may be combined in a single document,  
24 the FTC has warned that the form should not include any extraneous information or be part of another  
25 document. For example, in response to an inquiry as to whether the disclosure may be set forth within  
26 an application for employment or whether it must be included in a separate document, the FTC has  
27 stated:

28 /////

1           The disclosure may not be part of an employment application  
2           because the language [of 15 U.S.C. § 1681b(b)(2)(A)] is intended to  
3           ensure that it appears conspicuously in a document not encumbered  
4           by any other information. The reason for requiring that the disclosure  
          be in a stand-alone document is to prevent consumers from being  
          distracted by other information side-by-side within the disclosure.

5           23.     The plain language of the statute also clearly indicates that the inclusion of a waiver in  
6           a disclosure form violates the disclosure and authorization requirements of the FCRA because such a  
7           form would not consist “solely” of the disclosure. In fact, the FTC expressly has warned that the  
8           FCRA notice may not include extraneous information such as a waiver. In a 1998 opinion letter, the  
9           FTC stated:

10                   [W]e note that your draft disclosure includes a waiver by the  
11                   consumer of his or her rights under the FCRA. The inclusion of such  
12                   a waiver in a disclosure form will violate Section 604(b)(2)(A) of the  
13                   FCRA, which requires that a disclosure consist “solely” of the  
                  disclosure that a consumer report may be obtained for employment  
                  purposes.

14           24.     Consistent with the FTC’s construction of the FCRA, courts have consistently held that  
15           extraneous information renders a purported FCRA disclosure non-compliant. *See, e.g., Woods v.*  
16           *Caremark PHC, LLC*, No. 4:15-cv-00535, 2015 WL 6742124, at \*2 (W.D. Mo. Nov. 2, 2015)  
17           (denying motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure  
18           contained an overbroad authorization for third parties to provide information to defendant and its  
19           consumer reporting agency, and state-specific notices that did not apply to plaintiff); *Jones v.*  
20           *Halstead Mgmt. Co., LLC*, No. 14-cv-3125, 2015 WL 366244, at \*5 (S.D.N.Y. Jan 27, 2015) (denying  
21           motion to dismiss FCRA complaint where plaintiff alleged that purported disclosure form included  
22           timeframes during which applicant must challenge accuracy of any report, an acknowledgement that  
23           employment decisions are based on non-discriminatory reasons, the contact information for the  
24           consumer reporting agency, and state-specific notices that “stretched what should be a simple  
25           disclosure form into two full pages of eye-straining typeface writing”).

26           25.     As discussed below, Defendants routinely violate the FCRA by failing to provide the  
27           required stand-alone disclosure to employees and job applicants.

28           /////

1 **FACTUAL ALLEGATIONS**

2 26. Defendant Douglas Emmett, Inc. is a New York Stock Exchange-listed company that  
3 owns and operates approximately 18.2 million square feet of office space and over 4,200 apartment  
4 units through various subsidiaries including, on information and belief, Defendants Douglas Emmett  
5 Management, Inc. and Douglas Emmett Management, LLC. On information and belief, Defendants  
6 processes thousands of employment applications per year.

7 27. On or about December 17, 2018, as part of Plaintiff's application for employment,  
8 Plaintiff was presented with, and required to complete and sign, an employment application titled  
9 "Employment Application" (the "Application"). A true and correct redacted copy of the Application  
10 is attached hereto and marked as **Exhibit 1**.

11 28. The Application is branded with a Douglas Emmett logo, and, on information and  
12 belief, the same or a substantially similar application was used by Defendants nationwide.

13 29. Buried within the bottom of the fourth page of the Application is a paragraph that  
14 purports to authorize a criminal-history investigation of the applicant and that concludes, "By  
15 submitting this application, employee understands and consents to a background check in accordance  
16 with standard company policy." (Ex. 1.) On the fifth and final page of the Application is another  
17 paragraph that purports to authorize investigation of the applicant, including the procurement of a  
18 consumer report or investigative consumer report. (*See* Ex. 1.) Among other extraneous information,  
19 the Application contains a liability release and hold-harmless clause, as well as a broad privacy waiver  
20 authorizing the release to Defendants of any information concerning the applicant in the possession of  
21 any person or entity. (*See* Ex. 1.)

22 30. On information and belief, Plaintiff and other Class Members nationwide were  
23 presented with, and completed, the same Application or a substantially similar application.

24 31. Plaintiff maintains that the Application contains illegal consumer-report disclosures  
25 because they are part of the overall employment application and because they contain, and are  
26 surrounded by, reams of extraneous information that may not be included in the same document as a  
27 consumer-report disclosure.

28 32. On or about January 4, 2019, Defendant also presented Plaintiff with a separate

1 Douglas Emmett-branded document titled “Pre-Employment Background Check Information” (the  
2 “Authorization”). A true and correct redacted copy of the Authorization is attached hereto and  
3 marked as **Exhibit 2**.

4 33. Defendant's Authorization is deceptively titled “Pre-Employment Background Check  
5 Information,” which suggests that the form is merely informational in nature, and not an authorization.

6 34. Defendant’s Authorization is two pages long and does not include a formal consumer-  
7 report disclosure. Defendant’s Authorization does include, *inter alia*, the following extraneous  
8 information:

9 a. The statement “I hereby authorize any person, school, current employer (except as  
10 restricted above), past employer, government and law enforcement agency and the  
11 references I have listed to provide to Douglass Emmett or any affiliate or subsidiary  
12 and their agents any and all public and non-public information, opinions, letters and  
13 reports relevant to sch investigation, without giving me prior notice of such  
14 disclosure.” This statement is not a disclosure that a consumer report will be procured,  
15 nor is it an authorization to procure a consumer report. Rather, it is a self-serving and  
16 extraordinarily broad privacy waiver through which the applicant consents to permit  
17 “any person, school, current employer (except as restricted above), past employer,  
18 government and law enforcement agency and the references I have listed” to divulge  
19 that information whether or not otherwise lawful or appropriate to do so (“Privacy  
20 Waiver”).

21 b. An acknowledgement of receipt and certification of understanding California State’s  
22 right disclosure.

23 c. A page-long criminal-history questionnaire.

24 35. On information and belief, this same Authorization was used regularly by Defendants  
25 for all job applicants nationwide during the relevant time period pursuant to Defendants’ standard  
26 employment policies, procedures, and/or practices.

27 36. Plaintiff further alleges, on information and belief, that Defendants’ Application and  
28 Authorization are the only things provided to applicants prior to Defendants’ procuring a consumer

1 report on the applicants that relate in any way the fact that a consumer report may be procured.

2 37. Each element of extraneous information in the Application and Authorization, taken  
3 individually, suffices to render these documents non-compliant to the extent they are intended to  
4 comprise an FCRA-required stand-alone consumer report disclosure.

5 38. Despite their failure to provide Plaintiff with the required stand-alone disclosure, on  
6 information and belief, Defendants procured or caused to be procured a consumer report on Plaintiff  
7 and Class Members, in accordance with Defendants' standard employment policies, procedures,  
8 and/or practices. On information and belief, Defendants did not procure Plaintiff's and Class  
9 Members' reports in connection with any investigation of suspected misconduct relating to  
10 employment, or compliance with federal, state, or local laws and regulations, the rules of a self-  
11 regulatory organization, or any preexisting written policies of the Defendants.

12 39. Plaintiff was not informed by Defendants at the time he applied for employment or  
13 thereafter that a consumer report was, in fact, procured on him; nor was he provided a copy of the  
14 report. Plaintiff became aware that Defendants had obtained "background check results" concerning  
15 him on or about November 20, 2020, when his personnel file was produced in response to a personnel-  
16 file request made by his attorneys pursuant to the California Labor Code.

17 40. On information and belief, it is Defendants' practice and policy not to inform  
18 applicants whether a consumer report is, in fact, procured in connection with the application process,  
19 and not to provide copies of the reports that are procured. Thus, like Plaintiff, putative Class  
20 Members were similarly unaware at the time they applied or thereafter whether Defendant, in fact,  
21 procured a consumer report respecting them.

22 41. Defendants' conduct unambiguously violates the FCRA. By including extraneous  
23 information within the Application and Authorization, Defendants disregarded well-established case  
24 law and regulatory guidance from the FTC, and failed to provide Plaintiff with information to which  
25 he was statutorily entitled. Additionally, the inclusion of the extraneous provisions causes the  
26 Application and the Authorization to fail to be "clear and conspicuous" and "clear[] and accurate[],"  
27 and violates § 1681b(b)(2)(A) for this reason as well.

28 42. Defendants' multiple violations of the FCRA, combined with their knowledge of the

requirements of federal law, provide further evidence that Defendants' violations were willful.

### **CLASS-ACTION ALLEGATIONS**

43. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

44. Plaintiff asserts the following Class:

All persons residing in the United States regarding whom Defendants procured or caused to be procured a consumer report for employment purposes during the period five years prior to the filing of the present action through the date of certification.

41. Members of the Class, as described above, will be referred to as "Class Members."

Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and Defendants' legal representatives, officers, directors, assigns, and successors; and (2) the Judge to whom this case is assigned and the Judge's staff. Plaintiff reserves the right to amend the above Class and to add subclasses as appropriate based on investigation, discovery, and the specific theories of liability.

#### **Numerosity**

42. The proposed Class is so numerous that joinder of all Class Members is impracticable. Defendants regularly obtain and use information in consumer reports to conduct background checks on prospective and existing employees. Given the number of employees working for Defendants, Plaintiff believes that, during the relevant time period, thousands of Defendants' employees and prospective employees would fall within the definition of the Class.

#### **Common Questions of Law and Fact**

43. Virtually all of the issues of law and fact in this class action predominate over any questions affecting individual Class Members. Among the questions of law and fact common to the Class are:

- a. Whether Defendants use consumer-report information to conduct background checks on current and prospective employees;
- b. Whether Defendants fail to disclose to current and prospective employees that a consumer report will be procured in a stand-alone document consisting solely of the disclosure;
- c. Whether the Defendants violated the FCRA by procuring consumer reports based on

1           invalid authorizations;

2           d. Whether Defendants' violations of the FCRA were willful; and,

3           e. The proper measure of statutory and punitive damages.

4           **Typicality**

5           44. Plaintiff's claims are typical of the members of the proposed Class. Defendants  
6 typically present applicants with an employment application and purported FCRA authorization form  
7 that contain reams of extraneous information, which clearly renders these materials non-compliant.  
8 The FCRA violations suffered by Plaintiff are typical of those suffered by other Class Members, and  
9 Defendants treated Plaintiff consistent with other Class Members in accordance with Defendants'  
10 standard policies, practices, and procedures.

11           **Adequacy of Representation**

12           45. Plaintiff, as the representative of the Class, will fairly and adequately protect the  
13 interests of the Class, and he has no interests that conflict with, or are antagonistic to, the interests of  
14 the other Class Members. Plaintiff has retained attorneys competent and experienced in class-action  
15 litigation. No conflict exists between Plaintiff and Members of the Class.

16           **Superiority**

17           46. A class action is superior to all other available methods for the fair and efficient  
18 adjudication of this controversy. Defendants' conduct described in this Complaint stems from  
19 common and uniform policies and practices, resulting in common violations of the FCRA, and the  
20 names and addresses of the Class Members are available from Defendants' records. This case  
21 therefore lends itself to class treatment. Furthermore, Class Members do not have an interest in  
22 pursuing separate actions against Defendants, as the amount of each Class Member's individual  
23 claims is small compared to the expense and burden of individual prosecution. Class certification will  
24 also obviate the need for unduly duplicative litigation that might result in inconsistent judgments  
25 concerning Defendants' practices. Finally, Plaintiff is unaware of any difficulty that will be  
26 encountered in the management of this litigation and that would preclude class certification.

27       /////

1 **FIRST CAUSE OF ACTION**

2 **Failure to Make Proper Disclosure in Violation of FCRA**

3 **(15 U.S.C. § 1681b(b)(2)(A)(ii))**

4 47. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

5 48. Defendants violated the FCRA by the use of an employment application and purported  
6 FCRA authorization form that contain extraneous information other than the disclosure that a  
7 consumer report may be procured for employment purposes.

8 49. The foregoing violations were willful, as Defendants were aware of their obligation to  
9 provide a clear and conspicuous disclosure in a document consisting solely of the disclosure.

10 50. Based upon facts likely to have evidentiary support after a reasonable opportunity for  
11 further investigation and discovery, Defendants had and have a policy and practice of failing to  
12 provide adequate written disclosures to job applicants and employees, before procuring consumer  
13 reports or causing consumer reports to be procured. Pursuant to that policy and practice, Defendants  
14 procured consumer reports, or caused consumer reports to be procured, for Plaintiff and Class  
15 Members without first providing a written disclosure in compliance with § 1681b(b)(2)(A) of the  
16 FCRA.

17 51. Defendants' willful conduct is reflected by, among other things, the following facts:

18 a. The FCRA was enacted in 1970, so Defendants have had many years to become  
19 compliant;

20 b. Defendants are large companies with access to legal advice through their own  
21 General Counsel's office and outside employment counsel;

22 c. Defendants' conduct is inconsistent with the FTC's longstanding regulatory  
23 guidance, judicial interpretation, and the plain language of the statute;

24 d. Defendants knew, or had reason to know, from their communications with their  
25 consumer-report vendor(s) that Defendants' conduct violated the FCRA;

26 e. Defendants repeatedly and routinely used the Application and Authorization  
27 used with Plaintiff prior to procuring consumer reports;

28 f. Despite the clear statutory text and depth of guidance on the subject,

1 Defendants systematically procured consumer reports without first disclosing in writing to the  
2 consumer, *in a document that consists solely of the disclosure*, that a consumer report may be obtained  
3 for employment purposes; and

4 g. By adopting such a policy, Defendants voluntarily ran a risk of violating the  
5 law substantially greater than the risk associated with a reading that was merely careless.

6 52. Plaintiff and Class Members are entitled to statutory damages of not less than \$100,  
7 and not more than \$1,000, for each and every one of these violations, pursuant to 15 U.S.C.  
8 § 1681n(a)(1)(A).

9 53. Plaintiff and Class Members are also entitled to punitive damages for these violations  
10 pursuant to 15 U.S.C. § 1681n(a)(2).

11 54. Plaintiff and Class Members are further entitled to recover their costs and attorneys'  
12 fees pursuant to 15 U.S.C. § 1681n(a)(3).

## 13 **SECOND CAUSE OF ACTION**

### 14 **Failure to Obtain Proper Authorization in Violation of FCRA**

#### 15 **(15 U.S.C. § 1681b(b)(2)(A)(ii))**

16 55. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

17 56. Because Defendants failed to make a clear and conspicuous disclosure that a consumer  
18 report may be procured in a document consisting solely of the disclosure, Defendants violated the  
19 FCRA by procuring consumer reports relating to Plaintiff and other Class Members without proper  
20 authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).

21 57. The foregoing violations were willful. Defendants acted in deliberate or reckless  
22 disregard of their obligations and the rights of Plaintiff and other Class Members under 15 U.S.C.  
23 § 1681b(b)(2)(A)(ii). Defendants' willful conduct is reflected by, among other things, the facts  
24 previously set forth.

25 58. Plaintiff and Class Members are entitled to statutory damages of not less than \$100,  
26 and not more than \$1,000, for each and every one of these violations, pursuant to 15 U.S.C.  
27 § 1681n(a)(1)(A).

28 59. Plaintiff and Class Members are also entitled to punitive damages for these violations

1 pursuant to 15 U.S.C. § 1681n(a)(2).

2         60. Plaintiff and Class Members are further entitled to recover their costs and attorneys’  
3 fees, pursuant to 15 U.S.C. § 1681n(a)(3).

4                                   **THIRD CAUSE OF ACTION**

5                                   **Violation of PAGA**

6                                   **(Cal. Lab. Code § 2698 *et seq.*)**

7         61. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

8         62. From approximately January 2019 to approximately May 2020, Defendants employed  
9 Plaintiff as a non-exempt employee at certain of their properties, first as a day porter (*i.e.*, in a  
10 janitorial capacity) and then as a utility engineer. Generally speaking, as a day porter, Plaintiff earned  
11 a straight-time hourly wage of approximately \$15.00; as a utility engineer, he earned a straight-time  
12 hourly wage of approximately \$18.16. Also generally speaking, throughout his employment with  
13 Defendants, Plaintiff was often scheduled to work, and did work, at least eight hours per workday.

14         63. Since at least the time that Plaintiff began working for Defendants, Defendants required  
15 various non-exempt employees, including maintenance employees, to carry and monitor handheld  
16 devices (*e.g.*, radios) throughout their workdays. Plaintiff was one such employee. As part of this  
17 policy, all such non-exempt employees were required to keep their devices powered on during all of  
18 their meal and rest periods, so that they could monitor the devices for work purposes. By requiring all  
19 such non-exempt employees to keep their devices powered on and to monitor the devices during meal  
20 and rest periods, Defendants failed to provide these employees with statutorily mandated meal and rest  
21 periods.

22         64. In any event, even if Defendants did not have such a policy, Defendants still regularly  
23 required Plaintiff and other non-exempt employees to take their breaks late, to cut them short, or to not  
24 take them at all, due to press of business and understaffing. In addition, Defendants regularly required  
25 Plaintiff and other non-exempt employees to work “off the clock”—*i.e.*, before their scheduled shifts  
26 started and after they had ended—likewise due to press of business and understaffing. Plaintiff and  
27 these other non-exempt employees were not compensated for this work.

28         65. Plaintiff further alleges that, because Defendants never paid all wages due and owing

1 as alleged above, Defendants failed to pay all outstanding wages to former non-exempt employees  
2 upon the termination of employment, and failed to furnish wage statements itemizing the correct hours  
3 worked and wages earned.

4 66. More specifically, California Labor Code section 226.7 provides that “[a]n employer  
5 shall not require an employee to work during a meal or rest . . . period mandated pursuant to an  
6 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

7 Cal. Lab. Code § 226.7(b). Section 512 of the Labor Code, in turn, provides:

8 An employer shall not employ an employee for a work period  
9 of more than five hours per day without providing the employee with  
10 a meal period of not less than 30 minutes, except that if the total work  
11 period per day of the employee is no more than six hours, the meal  
12 period may be waived by mutual consent of both the employer and  
13 employee. An employer shall not employ an employee for a work  
14 period of more than 10 hours per day without providing the employee  
with a second meal period of not less than 30 minutes, except that if  
the total hours worked is no more than 12 hours, the second meal  
period may be waived by mutual consent of the employer and the  
employee only if the first meal period was not waived.

15 *Id.* § 512(a). Similarly, the Industrial Welfare Commission’s wage order 5 provides:

16 No employer shall employ any person for a work period of  
17 more than five (5) hours without a meal period of not less than 30  
18 minutes, except that when a work period of not more than six (6)  
19 hours will complete the day’s work the meal period may be waived  
20 by mutual consent of the employer and employee. Unless the  
21 employee is relieved of all duty during a 30 minute meal period, the  
22 meal period shall be considered an “on duty” meal period and  
counted as time worked. An “on duty” meal period shall be  
permitted only when the nature of the work prevents an employee  
from being relieved of all duty and when by written agreement  
between the parties an on-the-job paid meal period is agreed to.

23 8 Cal. Code Regs. § 11050 subsec. 11(A). Wage order 5 likewise provides:

24 Every employer shall authorize and permit all employees to  
25 take rest periods, which insofar as practicable shall be in the middle  
26 of each work period. The authorized rest period time shall be based  
27 on the total hours worked daily at the rate of ten (10) minutes net rest  
28 time per four (4) hours or major fraction thereof. However, a rest  
period need not be authorized for employees whose total daily work  
time is less than three and one-half (3 ½) hours.

1 *Id.* § 11050 subsec. 12(A). If a proper meal or rest period is not provided in accordance with the  
2 foregoing requirements, then the affected employee is entitled to additional compensation under  
3 section 226.7 of the California Labor Code:

4                   If an employer fails to provide an employee a meal or rest . . .  
5                   period in accordance with a state law, including, but not limited to, an  
6                   applicable statute or applicable regulation, standard, or order of the  
7                   Industrial Welfare Commission, . . . the employer shall pay the  
8                   employee one additional hour of pay at the employee's regular rate of  
9                   compensation for each workday that the meal or rest . . . period is not  
10                  provided.

11 Cal. Lab. Code § 226.7(c). According to the California Supreme Court, this includes when an  
12 employee is required to remain on call during his or her meal or rest periods:

13                   Employees forced to remain on call during [breaks] must fulfill  
14                   certain duties: carrying a device or otherwise making arrangements  
15                   so the employer can reach the employee during a break, responding  
16                   when the employer seeks contact with the employee, and performing  
17                   other work if the employer so requests. These obligations are  
18                   irreconcilable with employees' retention of freedom to use [breaks]  
19                   for their own purposes.

20 *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016).

21           67. Plaintiff and other non-exempt employees did not execute on-duty meal- or rest-break  
22           agreements. Accordingly, on account of the above-alleged device policy, Defendants did not  
23           relinquish control over their employees and so did not provide proper meal and rest periods to Plaintiff  
24           and others. Also as alleged above, despite keeping Plaintiff and other non-exempt employees on-call  
25           during all of their meal and rest periods, Defendants never paid the additional hour of pay mandated  
26           by section 226.7.

27           68. Furthermore, because Defendants required Plaintiff and other employees to clock out  
28           for their meal periods even though they were still on call for the duration of those breaks, they are  
29           owed additional amounts on top of the compensation required by section 226.7. In other words,  
30           because the extra half-hour during which employees were clocked out should have been treated as on-  
31           the-clock time, the employees were not paid all owed straight-time compensation, overtime  
32           compensation, or double-time compensation, depending on how many hours each employee worked

1 during any given day. *See* Cal. Lab. Code §§ 204(a) (mandating that employees receive at least  
2 minimum wage for all straight-time hours worked, and overtime compensation for all overtime hours  
3 worked), 510(a) (stating that “[e]ight hours of labor constitutes a day’s work”; that “[a]ny work in  
4 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and  
5 the first eight hours worked on the seventh day of work in any one workweek shall be compensated at  
6 the rate of no less than one and one-half times the regular rate of pay for an employee”; and that “[a]ny  
7 work in excess of 12 hours in one day,” as well as “any work in excess of eight hours on any seventh  
8 day of a workweek,” shall be compensated “at the rate of no less than twice the regular rate of pay for  
9 an employee”). *See also* 8 Cal. Code Regs. § 11050 subsec. 3(A) (describing circumstances triggering  
10 overtime and double-time pay). At the very least, Defendants failed to pay minimum wages to these  
11 employees for this time.

12         69.       Alternatively—and also as alleged above—even if Defendants did not require Plaintiff  
13 and other non-exempt employees to remain on-call during their breaks, Defendants still violated  
14 sections 204, 226.7, 510, and 512 of the California Labor Code, as well as Industrial Welfare  
15 Commission wage order 5, by requiring Plaintiff and employees to work off-the-clock, to take their  
16 respective meal and rest breaks late, to interrupt or cut their respective meal and rest breaks short, or  
17 to not take their respective meal and rest breaks at all, due to press of business and understaffing.

18         70.       In addition, California Labor Code section 201 provides that, “[i]f an employer  
19 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable  
20 immediately.” Cal. Lab. Code § 201(a). Similarly, California Labor Code section 202 provides:

21                     If an employee not having a written contract for a definite  
22                     period quits his or her employment, his or her wages shall become  
23                     due and payable not later than 72 hours thereafter, unless the  
24                     employee has given 72 hours previous notice of his or her intention to  
                         quit, in which case the employee is entitled to his or her wages at the  
                         time of quitting.

25 *Id.* § 202(a). The violation of sections 201 or 202 of the California Labor Code leads to the remedy  
26 set forth in section 203 of the California Labor Code. Section 203 provides:

27                     If an employer willfully fails to pay, without abatement or  
28                     reduction, in accordance with [s]ections 201 . . . [or] 202, . . . any  
                         wages of an employee who is discharged or who quits, the wages of

1 the employee shall continue as a penalty from the due date thereof at  
2 the same rate until paid or until an action therefor is commenced; but  
the wages shall not continue for more than 30 days.

3 *Id.* § 203(a). As a result of the above-alleged practices, Defendants failed to pay Plaintiff and other  
4 non-exempt former employees all wages due. Pursuant to California Labor Code section 203,  
5 Plaintiff and other non-exempt former employees therefore are entitled to continuing wages for  
6 Defendants' violation of sections 201 and 202 of the California Labor Code.

7 71. Furthermore, during the entirety of the relevant statutory period, Defendants issued  
8 biweekly wage statements to Plaintiff and other non-exempt employees. As to wage statements,  
9 California Labor Code section 226 provides:

10 An employer, semimonthly or at the time of each payment of  
11 wages, shall furnish to his or her employee, either as a detachable part  
12 of the check, draft, or voucher paying the employee's wages, or  
separately if wages are paid by personal check or cash, an accurate  
13 itemized statement in writing showing (1) *gross wages earned*, (2)  
*total hours worked by the employee*, . . . (3) the number of piece-rate  
14 units earned and any applicable piece rate if the employee is paid on a  
piece-rate basis, (4) all deductions, provided that all deductions made  
15 on written orders of the employee may be aggregated and shown as  
one item, (5) *net wages earned*, (6) the inclusive dates of the period  
16 for which the employee is paid, (7) the name of the employee and  
only the last four digits of his or her social security number or an  
17 employee identification number other than a social security number,  
(8) the name and address of the legal entity that is the employer . . . ,  
18 and (9) *all applicable hourly rates in effect during the pay period and*  
19 *the corresponding number of hours worked at each hourly rate by the*  
*employee . . . .*

20 *Id.* § 226(a) (emphasis supplied). As a result of the practices described above, the wage statements  
21 that Defendants issued to Plaintiff and other non-exempt employees failed to include the actual hours  
22 worked, the actual gross and net wages earned, all applicable hourly rates in effect, and the  
23 corresponding number of hours worked at each hourly rate.

24 72. Plaintiff is entitled to collect civil penalties for Defendants' above-alleged violations of  
25 the California Labor Code. Specially, PAGA—section 2698 *et seq.* of the California Labor Code—  
26 provides:

27 (a) Notwithstanding any other provision of law, any provision  
28 of this [C]ode that provides for a civil penalty to be assessed and  
collected by the Labor and Workforce Development Agency or any

1 of its departments, divisions, commissions, boards, agencies, or  
2 employees, for a violation of this [C]ode, may, as an alternative, be  
3 recovered through a civil action brought by an aggrieved employee  
4 on behalf of himself or herself and other current or former employees  
5 pursuant to the procedures specified in [s]ection 2699.3.

6 . . . .

7 (f) For all provisions of this [C]ode except those for which a  
8 civil penalty is specifically provided, there is established a civil  
9 penalty for a violation of these provisions, as follows: . . . . (2) If, at  
10 the time of the alleged violation, the person employs one or more  
11 employees, the civil penalty is one hundred dollars (\$100) for each  
12 aggrieved employee per pay period for the initial violation and two  
13 hundred dollars (\$200) for each aggrieved employee per pay period  
14 for each subsequent violation. . . .

15 (g)(1) . . . [A]n aggrieved employee may recover the civil  
16 penalty described in subdivision (f) in a civil action pursuant to the  
17 procedures specified in [s]ection 2699.3 filed on behalf of himself or  
18 herself and other current or former employees against whom one or  
19 more of the alleged violations was committed. Any employee who  
20 prevails in any action shall be entitled to an award of reasonable  
21 attorney's fees and costs, including any filing fee paid pursuant to  
22 subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph  
23 (B) of paragraph (1) of subdivision (c) of [s]ection 2699.3. Nothing  
24 in this part shall operate to limit an employee's right to pursue or  
25 recover other remedies available under state or federal law, either  
26 separately or concurrently with an action taken under this part.

27 *Id.* § 2699.

28 73. As alleged below, Plaintiff has complied with the procedures specified by section  
2699.3 of the Labor Code. Section 2699.3 provides:

(a) A civil action by an aggrieved employee pursuant to  
subdivision (a) or (f) of [s]ection 2699 alleging a violation of any  
provision listed in [s]ection 2699.5 shall commence only after the  
following requirements have been met:

(1)(A) The aggrieved employee or representative shall give  
written notice by online filing with the Labor and Workforce  
Development Agency and by certified mail to the employer of the  
specific provisions of this [C]ode alleged to have been violated,  
including the facts and theories to support the alleged violation. (B)  
A notice filed with the Labor and Workforce Development Agency  
pursuant to subparagraph (A) and any employer response to that  
notice shall be accompanied by a filing fee of seventy-five dollars

1 (\$75). . . .

2 (2)(A) The [A]gency shall notify the employer and the  
3 aggrieved employee or representative by certified mail that it does not  
4 intend to investigate the alleged violation within 60 calendar days of  
5 the postmark date of the notice received pursuant to paragraph (1).  
6 Upon receipt of that notice or if no notice is provided within 65  
7 calendar days of the postmark date of the notice given pursuant to  
8 paragraph (1), the aggrieved employee may commence a civil action  
9 pursuant to [s]ection 2699.

10 *Id.* § 2699.3. The California Labor Code provisions that Plaintiff alleges Defendants have violated—  
11 sections 201, 202, 203, 204, 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(9), 226.7, 510, and 512—are all  
12 listed in section 2699.5 of PAGA, triggering the procedure set forth in subsection (a) of section  
13 2699.3. *See id.* § 2699.5.

14 74. On approximately December 18, 2020, Plaintiff provided written notice by online filing  
15 with the Labor and Workforce Development Agency (“LWDA”), and by certified mail to Defendants,  
16 of the specific violations of the California Labor Code detailed above. The written notice to the  
17 LWDA was accompanied by the \$75.00 filing fee. A copy of the written notice is attached hereto as  
18 **Exhibit 3.**

19 75. As of the signing of this Complaint, Plaintiff has not received any notice from the  
20 LWDA about whether it intends to investigate the allegations set forth in his written notice. Since  
21 more than sixty-five days have passed since Plaintiff provided notice to the LWDA and Defendants,  
22 he “may commence a civil action pursuant to [s]ection 2699” to collect civil penalties under PAGA  
23 for those violations. *Id.* § 2699.3(a)(2)(A). In other words, Plaintiff may collect civil penalties for  
24 himself and other aggrieved employees for these violations, along with attorneys’ fees and costs.

25 **WHEREFORE**, Plaintiff respectfully requests that this Court issue an Order:

- 26 a. That this action may proceed as a class action under section 382 of the California Code  
27 of Civil Procedure;
- 28 b. Designating Plaintiff as class representative and designating Plaintiff’s counsel as  
counsel for the Class;
- c. Directing proper notice to be mailed to the Class at Defendants’ expense;
- d. Holding that Defendants have violated the FCRA, 15 U.S.C. § 1681b(b)(2)(A)(ii);

1 e. Holding that Defendants acted willfully in deliberate or reckless disregard of Plaintiff's  
2 and Class Members' rights, and Defendants' obligations, under the FCRA;

3 f. Awarding statutory damages in an amount of \$1,000 per violation and punitive  
4 damages as provided by the FCRA;

5 h. Awarding reasonable attorneys' fees and costs as provided by the FCRA;

6 i. Awarding civil penalties, attorneys' fees, and costs as provided by PAGA; and

7 j. Granting other and further relief, in law or equity, as this Court may deem appropriate  
8 and just.  
9

10 Dated: March 16, 2021

GREENSTONE LAW APC

11 By: s/ Mark S. Greenstone

12 Mark S. Greenstone

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Los Angeles, CA 90067

14 Telephone: (310) 201-9156

Facsimile: (310) 201-9160

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16 ZELENSKI LAW, PC

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18 david@zelenskilaw.com

19 595 Lincoln Avenue, Suite 200

Pasadena, California 91103

20 Telephone: (323) 426-9076

21 *Counsel for Plaintiff*

22 /////  
23  
24  
25  
26  
27  
28

1 ***DEMAND FOR JURY TRIAL***

2 Plaintiff requests a trial by jury as to all causes of action.

3  
4 Dated: March 16, 2021

GREENSTONE LAW APC

5  
6 By: s/ Mark S. Greenstone

Mark S. Greenstone

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13 595 Lincoln Avenue, Suite 200

14 Pasadena, California 91103

Telephone: (323) 426-9076

15 *Counsel for Plaintiff*

# ***EXHIBIT 1***

**Douglas  
Emmett****Employment Application**Dec 17, 2018Winters  
Last nameErnest  
First name\_\_\_\_\_  
Middle name

Address:

\_\_\_\_\_  
Street\_\_\_\_\_  
City\_\_\_\_\_  
State\_\_\_\_\_  
Zip Code

Contact information:

\_\_\_\_\_  
email\_\_\_\_\_  
Home phone\_\_\_\_\_  
Cell phonePosition applying for: JanitorialSalary Desired: 18.00

We appreciate your interest in Douglas Emmett. We are an equal employment opportunity employer, and we comply with all applicable state and federal laws respecting consideration of unemployment status in making hiring decisions. Our policies prohibit discrimination against any applicant or employee based on race, color, sex, gender, gender identity, gender expression, religion, national origin, age, disability, or any other basis protected by applicable federal, state, or local laws. Our policies also prohibit harassment of applicants or employees based on any of these protected categories.

I hereby make the following representations and warranties:

I am at least 18 years old.

☒ Yes ☐ No

I am currently employed.

☐ Yes ☒ No

If yes, you may contact my current employer

☐ Yes ☐ No

If hired, I can present evidence of my U.S. citizenship or proof of my legal right to live and work in this country.

☒ Yes ☐ No

If hired, I have a reliable means of transportation to and from work.

☒ Yes ☐ No

I am available to work on weekends.

☒ Yes ☐ No

I am available to work overtime, if necessary.

☒ Yes ☐ No

I can perform the essential functions of the job for which I am applying, either with or without reasonable accommodation.

☒ Yes ☐ No

If no, describe completely on a separate page. (Note: We comply with the ADA and consider reasonable accommodation measures that may be necessary for eligible applicants/employees to perform essential functions.)

I wish to be considered for:

☒ Regular full-time work☐ Regular part-time work☐ Temp. work, e.g., summer/holiday

If hired, I can start work on the following date:

12/15/2018

I am available for work on the following days and hours:

5 day 8 hr

If applying for temporary work, I will be available during the following period:

Emergency Contact:

\_\_\_\_\_  
Name\_\_\_\_\_  
Relation

Address:

\_\_\_\_\_  
Street\_\_\_\_\_  
City\_\_\_\_\_  
State\_\_\_\_\_  
Zip Code

Contact information:

\_\_\_\_\_  
Work Phone\_\_\_\_\_  
Home phone\_\_\_\_\_  
Cell phone

Douglas Emmett is an Equal Opportunity Employer

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DE-EW\_000003

**Douglas  
Emmett**

## Employment Application

Dec 17, 2011

Winters  
Last name

Ernest  
First name

\_\_\_\_\_  
Middle name

**Job History.** Please include all full time and part time jobs starting with your present or last job, including self employment (attach additional pages as necessary). You may exclude organizations which indicate any protected status (i.e., race, color, gender, national origin, disabilities or any other status protected by local, state, or federal law).

1

2

3

Douglas Emmett is an Equal Opportunity Employer

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DE-EW\_000004

\_\_\_\_\_  
*Last name*

\_\_\_\_\_  
*First name*

\_\_\_\_\_  
*Middle name*

**Job History (cont).**

|   |                                             |                                                           |
|---|---------------------------------------------|-----------------------------------------------------------|
| 4 | Employer                                    | Telephone                                                 |
|   | Address                                     | Employed (Month and Year)<br>From                      To |
|   | Name, Title, and Phone Number of Supervisor | Reason for Leaving                                        |
|   | Job Title and Work Responsibilities         |                                                           |

|   |                                             |                                                           |
|---|---------------------------------------------|-----------------------------------------------------------|
| 5 | Employer                                    | Telephone                                                 |
|   | Address                                     | Employed (Month and Year)<br>From                      To |
|   | Name, Title, and Phone Number of Supervisor | Reason for Leaving                                        |
|   | Job Title and Work Responsibilities         |                                                           |

|   |                                             |                                                           |
|---|---------------------------------------------|-----------------------------------------------------------|
| 6 | Employer                                    | Telephone                                                 |
|   | Address                                     | Employed (Month and Year)<br>From                      To |
|   | Name, Title, and Phone Number of Supervisor | Reason for Leaving                                        |
|   | Job Title and Work Responsibilities         |                                                           |

Please explain any gaps in your employment: \_\_\_\_\_

**Douglas  
Emmett**

## Employment Application

Dec, 17, 2018

Winters  
Last name

Ernest  
First name

\_\_\_\_\_  
Middle name

### Education.

|               |                 |               |                |                   |
|---------------|-----------------|---------------|----------------|-------------------|
| _____<br>name | _____<br>Street | _____<br>City | _____<br>State | _____<br>Zip Code |
| High School   |                 | Graduated?    | _____          |                   |

|               |                              |               |                 |                   |
|---------------|------------------------------|---------------|-----------------|-------------------|
| _____<br>name | _____<br>Street              | _____<br>City | _____<br>State  | _____<br>Zip Code |
| College       | From _____<br>Dates attended | Graduated?    | _____<br>Degree |                   |

|                         |                                       |               |                                                          |                   |
|-------------------------|---------------------------------------|---------------|----------------------------------------------------------|-------------------|
| _____<br>name           | _____<br>Street                       | _____<br>City | _____<br>State                                           | _____<br>Zip Code |
| _____<br>type of school | From _____ to _____<br>Dates attended | Graduated?    | <input type="checkbox"/> Yes <input type="checkbox"/> No | _____<br>Degree   |

I am proficient in the following languages other than English: \_\_\_\_\_

### References. List 3 persons not related to you who know about your work performance within the last 3 years:

|                                                                                             |                   |                |
|---------------------------------------------------------------------------------------------|-------------------|----------------|
| Name: _____<br>Last name First name                                                         | _____<br>Employer | _____<br>Title |
| In what capacity and for how long did you work with this reference? _____<br>_____<br>Phone |                   |                |
| Name: _____<br>Last name First name                                                         | _____<br>Employer | _____<br>Title |
| In what capacity and for how long did you work with this reference? _____<br>_____<br>Phone |                   |                |
| Name: _____<br>Last name First name                                                         | _____<br>Employer | _____<br>Title |
| In what capacity and for how long did you work with this reference? _____<br>_____<br>Phone |                   |                |

**Criminal History.** Douglas Emmett will consider criminal histories in a manner consistent with all applicable local, state, and federal laws, including but not limited to the Los Angeles Fair Chance Initiative and other federal, state, and local laws. Where required by applicable law, Douglas Emmett will not inquire into an applicant's criminal history (either from the applicant or any third party) until a conditional offer of employment has been made. Once a conditional offer of employment has been made, Douglas Emmett will investigate the criminal history of all applicants, and may choose to withdraw conditional offers based on the results of these investigations, to the extent permitted by applicable law. By submitting this application, employee understands and consents to a background check in accordance with standard company policy.

Douglas Emmett is an Equal Opportunity Employer

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**Douglas  
Emmett**

## Employment Application

Dec 17, 2018

Winters

Last name

Ernest

First name

Middle name

**Who/how were you referred to Douglas Emmett?**

☐

Douglas Emmett Website

☐

Direct contact from Douglas Emmett

☐

Online Advertisement

☒

Friend: \_\_\_\_\_

☐

LinkedIn

☐

Other: \_\_\_\_\_

I have applied to or worked for Douglas Emmett before: ☐ Yes ☒ No If yes, when? \_\_\_\_\_

I have relatives who work or have worked for Douglas Emmett: ☐ Yes ☒ No If yes, please complete below.

Name(s) \_\_\_\_\_

Relationship \_\_\_\_\_

**Please Read Carefully, Initial Each Paragraph, Sign and Date Below:**

EW  
initial

I hereby certify that (i) I have not knowingly withheld any information and that the answers given by me are true and correct to the best of my knowledge and that (ii) I have personally completed this application. I understand that any omission or misstatement of fact on this application or on any documents used to secure employment which is deemed material by Douglas Emmett shall be grounds for rejection of this application or for immediate discharge if I am employed, regardless of the time elapsed before discovery.

EW  
initial

I hereby authorize Douglas Emmett and its agents to thoroughly investigate my suitability for employment and to obtain a consumer report investigation that includes personal information regarding me, including but not limited to, my educational history, work habits, performance and experience, general reputation, character, mode of living, driving record and (to the extent legal and in accordance with the "Criminal History" section above) drug testing and criminal convictions and arrest records. I hereby authorize any person, school, current employer (except as restricted above), past employer, government and law enforcement agency and the references I have listed to provide to Douglas Emmett or any affiliate or subsidiary and their agents any and all public and non-public information, opinions, letters and reports relevant to such investigation, without giving me prior notice of such disclosure.

EW  
initial

I hereby release Douglas Emmett, its affiliates and subsidiaries, and my employers and all other persons or entities gathering or providing information in connection with or participating in the process of considering or investigating my application, and their respective officers, directors, shareholders, agents, including subcontractors, from any and all claims, demands or liabilities arising out of or in any way related to (i) such process or any disclosure, (ii) the furnishing of any information or opinions in such process, including any errors or omissions provided or omitted or (iii) the making, or use of, a consumer report and/or investigative report.

EW  
initial

I understand that nothing contained in this application, or conveyed during any conversations is intended to create an employment contract between me and Douglas Emmett or any affiliate or subsidiary. In addition, I understand and agree that if I am employed my employment is expected to be "at-will", and that I would be free to leave employment at any time, with or without a reason and with or without notice. Douglas Emmett also would have the right to end my employment at any time, with or without a reason and with or without notice. Any agreement for employment for a specific period of time or contrary to the policy of at-will employment must be in writing signed by me and by either Douglas Emmett's Chief Executive Officer or its Chief Operating Officer.

My signature below certifies that I agree to be bound by the terms and conditions stated in this application, which contains all the understandings between Douglas Emmett and me concerning the topics addressed herein, and supersedes any prior inconsistent understandings between Douglas Emmett and me on such issues.

X Ernest Winters  
(Applicant) SIGNATURE

12/17/2018  
DATE

Douglas Emmett is an Equal Opportunity Employer

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DE-EW\_000007

# ***EXHIBIT 2***

**Douglas  
Emmett**

## Pre-Employment Background Check Information

Winters  
Last name

Ernest  
First name

\_\_\_\_\_  
Middle name

\_\_\_\_\_  
Date of Birth\*

\_\_\_\_\_  
Social security number

\_\_\_\_\_  
Driver's license #

\_\_\_\_\_  
State

Driver's license in  
another state  
within last 3 years?

\_\_\_\_\_

Other names/alias used? ☐ Yes ☒ No Please list: \_\_\_\_\_

Address

\_\_\_\_\_  
Street

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Years at this address

Contact  
information

\_\_\_\_\_  
email

\_\_\_\_\_  
Home phone

\_\_\_\_\_  
Cell phone

\_\_\_\_\_  
Name of spouse

\*Date of Birth is being requested in order to obtain accurate retrieval of records.

Please Read Carefully, Initial Each Paragraph, Sign and Date Below:

EW  
Initial

I hereby authorize Douglas Emmett and its agents to thoroughly investigate my suitability for employment and to obtain a consumer report investigation at any time after receipt of this authorization and throughout my employment, if applicable, that includes personal information regarding me, including but not limited to, my educational history, work habits, performance and experience, general reputation, character, mode of living, driving record and (if legal) drug testing and criminal convictions and arrest records. I hereby authorize any person, school, current employer (except as restricted above), past employer, government and law enforcement agency and the references I have listed to provide to Douglas Emmett or any affiliate or subsidiary and their agents any and all public and non-public information, opinions, letters and reports relevant to such investigation, without giving me prior notice of such disclosure.

x Ernest Winters 1/4/2019  
(Applicant) SIGNATURE DATE



**CALIFORNIA APPLICANTS OR EMPLOYEES ONLY:** By signing above, you also acknowledge receipt of the NOTICE REGARDING BACKGROUND INVESTIGATIONS PURSUANT TO CALIFORNIA LAW and certify that you have read and understand that document. Please check this box if you would like to receive a copy of an investigative consumer report at no charge if one is obtained by Douglas Emmett whenever you have a right to receive one under California law.

CID#

\_\_\_\_\_



## Pre-Employment Background Check Information

Winters

Last name

Ernest

First name

Middle name

**Criminal History.** Douglas Emmett will consider criminal histories in a manner consistent with all applicable local, state, and federal laws, including but not limited to the Los Angeles Fair Chance Initiative.

**BEFORE** answering the following questions, please read the following instructions carefully.

You only have to answer these questions if you have already received a conditional offer of employment from Douglas Emmett. Douglas Emmett will not inquire into an applicant's criminal history until a conditional offer of employment has been made.

**Do NOT identify**

- any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been dismissed by a court.
  - any adjudication by a juvenile court or any other court order or action with respect to a person who is under the process and jurisdiction of the juvenile court law.
  - a record of any adult or juvenile arrest, detention or conviction that has been sealed, expunged, annulled, erased, pardoned or statutorily eradicated, set aside or otherwise dismissed by court order.
  - marijuana-related convictions entered by the court more than 2 years ago that involve: unlawful possession of marijuana; transportation or giving away of up to 28.5 grams of marijuana, other than concentrated cannabis, or the offering to transport or give away up to 28.5 grams of marijuana, other than concentrated cannabis; possession of paraphernalia used to smoke marijuana; being in a place with knowledge that marijuana was being used; or being under the influence of marijuana.
  - any arrest or detention that did not result in a conviction, or any information concerning a referral to, and participation in, any pretrial or post trial diversion program.
- **Hawaii Applicants:** Indicate whether you have been convicted of a crime within the past ten (10) years, excluding any period of time when you were incarcerated.

Have you ever been convicted or pled guilty or no contest to a crime?  
If you answered "Yes," please provide the following additional information:

☐ Yes ☒ No

If you have more than one conviction (or guilty or no contest plea), please use additional paper to provide the information requested above.

Please note that answering "Yes" to this question will not automatically bar you from employment. Only those crimes which are substantially related to the position you are seeking will be considered.

# ***EXHIBIT 3***

**GREENSTONE LAW APC**

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December 18, 2020

**VIA ONLINE FILING**

California Labor and Workforce Development Agency  
ATTN: PAGA Administrator

**VIA CERTIFIED MAIL**

Rafael Gonzalez  
MULLEN & HENZELL L.L.P.  
112 East Victoria Street  
Santa Barbara, California 93101

**Re: Ernest Winters v. Douglas Emmett Management, LLC  
California Labor Code Private Attorneys General Act (“PAGA”)**

To the California Labor and Workforce Development Agency (“LWDA”) and to Douglas Emmett Management, LLC (“Douglas Emmett”):

This office represents Ernest Winters, a former employee of Douglas Emmett. Mr. Winters contends that Douglas Emmett violated various provisions of the California Labor Code, and he seeks to prosecute a civil action under PAGA, Labor Code section 2698 *et seq.*, to collect civil penalties based on those violations. The purpose of this letter is to comply with PAGA’s procedural requirements for bringing such an action.

Douglas Emmett is a commercial real-estate company that owns and operates multiple locations in California. From approximately January 2019 to approximately May 2020, Douglas Emmett employed Mr. Winters as a non-exempt employee at certain of its properties, first as a day porter (*i.e.*, in a janitorial capacity) and then as a utility engineer. Generally speaking, as a day porter, Mr. Winters earned a straight-time hourly wage of approximately \$15.00; as a utility engineer, he earned a straight-time hourly wage of approximately \$18.16. Also generally speaking, throughout his employment with Douglas Emmett, Mr. Winters was often scheduled to work, and did work, at least eight hours per workday.

Since at least the time that Mr. Winters began working for Douglas Emmett, Douglas Emmett required various non-exempt employees, including maintenance employees, to carry and monitor handheld devices (*e.g.*, radios) throughout their workdays. Mr. Winters was one such employee. As part of this policy, all such non-exempt employees were required to keep their devices powered on during all of their meal and rest periods, so that they could monitor the devices for work purposes. By requiring all such non-exempt employees to keep their devices powered on and to monitor the devices during meal and rest periods, Douglas Emmett failed to provide these

employees with statutorily mandated meal and rest periods.

In any event, even if Douglas Emmett did not have such a policy, Douglas Emmett still regularly required Mr. Winters and other non-exempt employees to take their breaks late, to cut them short, or to not take them at all, due to press of business and understaffing. In addition, Douglas Emmett regularly required Mr. Winters and other non-exempt employees to work “off the clock”—*i.e.*, before their scheduled shifts started and after they ended—likewise due to press of business and understaffing. Mr. Winters and these other non-exempt employees were not compensated for this work.

Mr. Winters further alleges that, because Douglas Emmett never paid all wages due and owing as alleged above, Douglas Emmett failed to pay all outstanding wages to former non-exempt employees upon the termination of employment, and failed to furnish wage statements itemizing the correct hours worked and wages earned.

More specifically, Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest . . . period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” Cal. Lab. Code § 226.7(b). Section 512 of the Labor Code, in turn, provides:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Similarly, the Industrial Welfare Commission’s wage order 5 provides:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

8 Cal. Code Regs. § 11050 subsec. 11(A). Wage order 5 similarly provides:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.

The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours.

*Id.* § 11050 subsec. 12(A). Labor Code section 226.7 also provides:

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

Cal. Lab. Code § 226.7(c).

According to the California Supreme Court:

Employees forced to remain on call during [breaks] must fulfill certain duties: carrying a device or otherwise making arrangements so the employer can reach the employee during a break, responding when the employer seeks contact with the employee, and performing other work if the employer so requests. These obligations are irreconcilable with employees' retention of freedom to use [breaks] for their own purposes.

*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016). Mr. Winters and other non-exempt employees did not execute on-duty meal- or rest-break agreements. Accordingly, on account of the above-alleged device policy, Douglas Emmett did not relinquish control over its employees and so did not provide proper meal and rest periods to Mr. Winters and others. Also as alleged above, despite keeping Mr. Winters and other non-exempt employees on-call during all of their meal and rest periods, Douglas Emmett never paid the additional hour of pay mandated by section 226.7.

Furthermore, because Douglas Emmett required Mr. Winters and other employees to clock out for their meal periods even though they were still on call for the duration of those breaks, they are owed additional amounts on top of the compensation required by section 226.7. In other words, because the extra half-hour during which employees were clocked out should have been treated as on-the-clock time, the employees were not paid all owed straight-time compensation, overtime compensation, or double-time compensation, depending on how many hours each employee worked during any given day. *See* Cal. Lab. Code §§ 204(a) (mandating that employees receive at least the minimum wage for all straight-time hours worked, and overtime compensation for all overtime hours worked), 510(a) (stating that “[e]ight hours of labor constitutes a day’s work”; that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee”; and that “[a]ny work in excess of 12 hours in one day,” as well as “any work in

excess of eight hours on any seventh day of a workweek,” shall be compensated “at the rate of no less than twice the regular rate of pay for an employee”). *See also* 8 Cal. Code Regs. § 11050 subsec. 3(A) (describing the circumstances triggering overtime and double-time pay). At the very least, Douglas Emmet failed to pay minimum wages to these employees for this time.

Alternatively—and also as alleged above—even if Douglas Emmett did not require Mr. Winters and other non-exempt employees to remain on-call during their breaks, Douglas Emmett still violated sections 204, 226.7, 510, and 512 of the Labor Code, as well as Industrial Welfare Commission wage order 5, by requiring Mr. Winters and employees to work off-the-clock, to take their respective meal and rest breaks late, to interrupt or cut their respective meal and rest breaks short, or to not take them at all, due to press of business and understaffing.

In addition, Labor Code section 201 provides that, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a). Similarly, Labor Code section 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

*Id.* § 202(a). The violation of sections 201 or 202 of the Labor Code leads to the remedy set forth in section 203 of the Labor Code. Section 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with [s]ections 201 . . . [or] 202, . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

*Id.* § 203(a). As a result of the above-alleged practices, Douglas Emmett failed to pay Mr. Winters and other non-exempt former employees all wages due. Pursuant to Labor Code section 203, Mr. Winters and other non-exempt former employees therefore are entitled to continuing wages for Douglas Emmett’s violation of sections 201 and 202 of the Labor Code.

Furthermore, during the entirety of the relevant statutory period, Douglas Emmett issued biweekly wage statements to Mr. Winters and other non-exempt employees. As to wage statements, Labor Code section 226 provides:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) *gross wages earned*, (2) *total hours worked by the employee*, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate

basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) *net wages earned*, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) *all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . . .*

*Id.* § 226(a) (emphasis supplied). As a result of the practices described above, the wage statements that Douglas Emmett issued to Mr. Winters and other non-exempt employees failed to include the actual hours worked, the actual gross and net wages earned, all applicable hourly rates in effect, and the corresponding number of hours worked at each hourly rate.

Based on the foregoing, Mr. Winters wishes to bring a representative action under PAGA on behalf of himself and the State of California, as well as on behalf of all other non-exempt aggrieved employees, for the above-described violations. Concurrently with the online filing of this letter, Mr. Winters will remit the \$75.00 filing fee to the LWDA.

Please direct all future notices under PAGA to my office. Thank you.

Very truly yours,

/s/ Mark S. Greenstone

GREENSTONE LAW APC  
Mark S. Greenstone