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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF CONTRA COSTA
11

12 KEVIN JOHNSON and NOE ARREOLA,
as aggrieved employees pursuant to the
13 Private Attorneys General Act ("PAGA"),
on behalf of the State of California and
14 other aggrieved employees,

15 Plaintiffs,

16 vs.

17 EQUITY RESIDENTIAL SERVICES,
L.L.C., a Delaware limited liability
18 company; EQUITY RESIDENTIAL
SERVICES II, LLC, an Illinois limited
19 liability company; EQUITY
RESIDENTIAL MANAGEMENT, L.L.C.,
20 a Delaware limited liability company; and
DOES 1 through 10, inclusive,
21

22 Defendants.
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28

ELECTRONICALLY
FILED

11/22/2021

K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK

Case No.: C19-02145

Honorable Edward G. Weil, Dept. 39

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiffs Kevin Johnson and Noe Arreola, as aggrieved employees and on behalf of the
2 State of California and all other aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on August 6, 2019, until judgment (“non-party Aggrieved Employees”). Plaintiffs’
13 share of civil penalties sought in this action does not exceed \$75,000.
14

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiffs’ share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ persons in this county, and employed Plaintiff Johnson in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Kevin Johnson is a resident of Pittsburg, in Contra Costa County, California. Defendants employed Plaintiff Johnson as an hourly paid, non-exempt Leasing Consultant from approximately August 2016 through August 16, 2018. Plaintiff Johnson worked for Defendants at their Wood Creek Apartments complex location located at 637 Stonebridge Way, Pleasant Hill, California 94523. During his employment, Plaintiff Johnson typically worked eight (8) hours or more per day, five (5) days per week, and 40 hours per week. At the time Plaintiff Johnson's employment with Defendants ended, he earned approximately \$19.19 per hour plus commissions. His job duties included, without limitation, maintaining individual tenant files, touring apartments with prospective tenants, compiling and processing new lease paperwork, reviewing and responding to emails, drafting and maintaining apartment availability status reports, answering phone calls, maintaining a clean office area, and cleaning apartments as needed.

7. Plaintiff Noe Arreola is a resident of Burlingame, in San Mateo County, California. Defendants employed Plaintiff Arreola as an hourly paid, non-exempt Service Technician from approximately 2015 through September 2020. Plaintiff Arreola worked for Defendants at their Arches property in Sunnyvale, California, City Gate property in Cupertino, California, and Verde property in San Jose, California. During his employment, Plaintiff Arreola typically worked approximately eight (8) to ten (10) hours per day, five (5) to six (6) days per week, and forty (40) to sixty (60) hours per week. At the time Plaintiff Arreola's employment with Defendants ended, he earned approximately \$32.44 per hour plus

1 nondiscretionary bonuses. His job duties included “turning” or “flipping” apartments for move-
2 ins, performing maintenance on the units and property, coordinating vendors for repairs and
3 maintenance, and purchasing supplies.

4 8. On information and belief, Defendants required some employees, including
5 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of their
6 hire or during their employment. On further information and belief, Defendants’ dispute
7 resolution policy and/or arbitration agreement was and is both procedurally and substantively
8 unconscionable. Specifically, Defendants presented new hires with an “Arbitration Policy &
9 Agreement” (“Arbitration Agreement”) during the onboarding process, which had to be
10 reviewed and signed immediately. In fact, upon information and belief, the Arbitration
11 Agreement was one of several documents presented to new employees for signature during the
12 orientation process, including Anti-Harassment Policy, California Meal Waiver, and Code of
13 Ethics and Business Conduct, among other documents. Also, employees did not have a
14 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
15 provided to Defendants’ employees for them to sign on a take-it or leave-it basis at the time
16 they were hired, along with all of the other on-boarding documents. Further, Defendants did
17 not set forth in the agreement or otherwise provide employees with the rules which will govern
18 the arbitration, instead forcing employees to seek this information out on their own (“Equity
19 strongly encourages you to review the [American Arbitration Association’s] National Rules
20 carefully before signing this Agreement. A copy can be obtained from Human Resources or the
21 Legal Department and may also be found on the AAA website at www.adr.org.”)

22 9. EQUITY RESIDENTIAL SERVICES, L.L.C. was and is, upon information and
23 belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
24 employer whose employees are engaged throughout this county, the State of California, or the
25 various states of the United States of America.

26 10. EQUITY RESIDENTIAL SERVICES II, LLC was and is, upon information and
27 belief, an Illinois limited liability company, and at all times hereinafter mentioned, an employer
28 whose employees are engaged throughout this county, the State of California, or the various

1 states of the United States of America.

2 11. EQUITY RESIDENTIAL MANAGEMENT, L.L.C. was and is, upon
3 information and belief, a Delaware limited liability company, and at all times hereinafter
4 mentioned, an employer whose employees are engaged throughout this county, the State of
5 California, or the various states of the United States of America.

6 12. Plaintiffs are unaware of the true names or capacities of the Defendants sued
7 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
8 the complaint and serve such fictitiously named Defendants once their names and capacities
9 become known.

10 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
11 were the partners, agents, owners, or managers of EQUITY RESIDENTIAL SERVICES,
12 L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; and EQUITY RESIDENTIAL
13 MANAGEMENT, L.L.C., at all relevant times.

14 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, EQUITY
16 RESIDENTIAL SERVICES, L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; EQUITY
17 RESIDENTIAL MANAGEMENT, L.L.C.; and/or DOES 1 through 10 (collectively,
18 “Defendants” or “EQUITY”), each acting as the agent, employee, alter ego, and/or joint
19 venturer of, or working in concert with, each of the other co-Defendants and was acting within
20 the course and scope of such agency, employment, joint venture, or concerted activity with legal
21 authority to act on the others’ behalf. The acts of any and all Defendants were in accordance
22 with, and represent, the official policy of Defendants.

23 15. At all relevant times, Defendants, and each of them, ratified each and every act
24 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all the other Defendants in proximately causing
26 the damages herein alleged.

27 16. Plaintiffs are informed and believe, and thereon allege, that each of said
28 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,

omissions, occurrences, and transactions alleged herein.

17. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiffs and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiffs and other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and other non-party Aggrieved Employees because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiffs and other non-party Aggrieved Employees;
- (b) jointly exercised meaningful control over Plaintiffs’ and other non-party Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiffs and other non-party Aggrieved Employees;
- (c) jointly required that Plaintiffs and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiffs and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiffs and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiffs and other non-party Aggrieved

1 Employees and determined their working conditions, and who jointly
2 reaped the benefits from the underpayment of their wages and
3 noncompliance with other statutory provisions governing their
4 employment.

5 19. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
6 there has existed a unity of interest and ownership between Defendants such that any
7 individuality and separateness between the entities has ceased.

8 20. EQUITY RESIDENTIAL SERVICES, L.L.C.; EQUITY RESIDENTIAL
9 SERVICES II, LLC; EQUITY RESIDENTIAL MANAGEMENT, L.L.C.; and DOES 1 through
10 10 are therefore alter egos of each other.

11 21. Adherence to the fiction of the separate existence of Defendants would permit an
12 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
13 liability for the wrongful acts committed by them under the name EQUITY.

14 22. Plaintiffs further allege, upon information and belief, that Defendants EQUITY
15 RESIDENTIAL SERVICES, L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; and
16 EQUITY RESIDENTIAL MANAGEMENT, L.L.C. are alter egos of each other for the
17 following reasons:

18 (a) On the California Secretary of State's website
19 (<https://businesssearch.sos.ca.gov/>), EQUITY RESIDENTIAL
20 SERVICES, L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; and
21 EQUITY RESIDENTIAL MANAGEMENT, L.L.C. have the same entity
22 address and/or mailing address, which is "TWO NORTH RIVERSIDE
23 PLAZA, SUITE 400, CHICAGO IL 60606";

24 (b) According to their most recent "Statement of Information" forms filed
25 with the California Secretary of State, EQUITY RESIDENTIAL
26 SERVICES, L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; and
27 EQUITY RESIDENTIAL MANAGEMENT, L.L.C. share the same agent
28 for service of process, C T CORPORATION SYSTEM (C0168406); and

(c) On information and belief, EQUITY RESIDENTIAL SERVICES, L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; and EQUITY RESIDENTIAL MANAGEMENT, L.L.C. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

23. Defendants acquire, develop, and manage rental apartment properties in seven (7) states, including California. In California, Defendants own and manage approximately 110 rental apartment properties. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Chicago, Illinois, which is responsible for recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

24. In particular, Plaintiffs and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

25. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Chicago, Illinois, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

1 26. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

3 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
4 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
5 advisors knowledgeable about California labor and wage law, employment and personnel
6 practices, and about the requirements of California law.

7 28. Plaintiffs are is informed and believe, and thereon allege, that Plaintiffs and other
8 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
9 were not recorded.

10 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
12 receive certain wages for overtime compensation and that they were not receiving certain wages
13 for overtime compensation.

14 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
16 be paid at a regular rate of pay, and corresponding overtime rate of pay, that included as eligible
17 income all income derived from commissions, incentive pay, nondiscretionary bonuses, and/or
18 other forms of compensation, but failed to do so.

19 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 receive at least minimum wages for compensation and that they were not receiving at least
22 minimum wages for work that was required to be done off-the-clock. In violation of the
23 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
24 least minimum wages for work done off-the-clock.

25 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
27 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
28 payment of one (1) additional hour of pay at their regular rates of pay when they were not

1 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and other
2 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
3 additional hour of pay at their regular rates of pay when they did not receive a timely,
4 uninterrupted, thirty (30) minute meal period.

5 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
8 payment of one (1) additional hour of pay at their regular rates of pay when they were not
9 authorized and permitted to take a compliant rest period. In violation of the California Labor
10 Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted
11 to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party
12 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
13 pay when they were not authorized and permitted to take a compliant rest period.

14 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
16 receive complete and accurate wage statements in accordance with California law. In violation
17 of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not
18 provided complete and accurate wage statements.

19 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that they had a duty to maintain accurate and complete payroll records in
21 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
22 knowingly, and intentionally failed to do so.

23 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 timely payment of all wages earned upon termination of employment. In violation of the
26 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
27 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
28 reporting time pay, and/or meal and rest period premiums, within permissible time periods.

1 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 timely payment of wages during their employment. In violation of the California Labor Code,
4 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
5 including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal
6 and rest period premiums, within permissible time periods.

7 38. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
9 and expenses Plaintiffs and other non-party Aggrieved Employees incurred obtaining
10 mandatory physical examinations and/or drug tests, but willfully, knowingly, and intentionally
11 failed to do so.

12 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 be paid reporting time pay when they reported to work for their scheduled shift but were put to
15 work for less than half of the regular schedule. In violation of the California Labor Code and
16 applicable IWC Wage Order, Defendants did not pay Plaintiff Arreola and other non-party
17 Aggrieved Employees all reporting time pay due.

18 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 receive reimbursement for all business-related expenses and costs they incurred during the
21 course and scope of their employment and that they did not receive reimbursement of applicable
22 business-related expenses and costs incurred.

23 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
26 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
27 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
28 that they were properly denied wages, all in order to increase Defendants' profits.

1 42. At all times herein set forth, PAGA provides that any provision of law under the
2 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
3 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
4 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
5 behalf of themselves and other current or former employees pursuant to procedures outlined in
6 California Labor Code section 2699.3.

7 43. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
8 person who was employed by the alleged violator and against whom one or more of the alleged
9 violations was committed.”

10 44. Plaintiffs and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
12 or former employees and one or more of the alleged violations were committed against them.

13 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
14 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
15 following requirements have been met:

16 (a) The aggrieved employee shall give written notice by online filing
17 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
18 the employer of the specific provisions of the California Labor Code
19 alleged to have been violated, including the facts and theories to support
20 the alleged violations.

21 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
22 2699.3(a) and any employer response to that notice shall be accompanied
23 by a filing fee of seventy-five dollars (\$75).

24 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within sixty (60) calendar days
27 of the postmark date of the Employee’s Notice. Upon receipt of the
28 LWDA Notice, or if the LWDA Notice is not provided within sixty-five

(65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

46. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

47. On August 6, 2019, Plaintiff Johnson provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Johnson's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The

1 LWDA PAGA Administrator has confirmed receipt of Plaintiff Johnson's written notice and
2 assigned Plaintiff Johnson PAGA Case Number LWDA-CM-728300-19. A true and correct
3 copy of Plaintiff Johnson's written notice to the LWDA and Defendants dated August 6, 2019,
4 is attached hereto as "Exhibit 1."

5 48. On May 19, 2021, Plaintiff Arreola provided written notice by online filing to
6 the LWDA and by certified mail to Defendants of the specific provisions of the California Labor
7 Code alleged to have been violated, including facts and theories to support the alleged
8 violations, in accordance with California Labor Code section 2699.3. Plaintiff Arreola's written
9 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
10 PAGA Administrator has confirmed receipt of Plaintiff Arreola's written notice and assigned
11 Plaintiff Arreola PAGA Case Number LWDA-CM-832689-21. A true and correct copy of
12 Plaintiff Arreola's written notice to the LWDA and Defendants dated May 19, 2021 is attached
13 hereto as "Exhibit 2."

14 49. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
15 sent their initial LWDA Notices described above, and the LWDA has not responded that it
16 intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

17 50. Thus, Plaintiffs have satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
20 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

21 51. Labor Code section 558(a) provides "[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare Commission
24 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
25 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
26 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
27 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
28 provides "[t]he civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.” Plaintiffs, acting in the public interest as private attorneys
2 general, seek assessment and collection of civil penalties under Labor Code section 558 for
3 themselves, all other non-party Aggrieved Employees, and the State of California against
4 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
5 IWC Wage Order. Plaintiffs, acting in the public interest as private attorneys general, do not
6 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
7 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

8 52. Defendants, at all times relevant to this complaint, were employers or persons
9 acting on behalf of an employer(s) who violated Plaintiffs’ and other non-party Aggrieved
10 Employees’ rights by violating various sections of the California Labor Code as set forth above.

11 53. As set forth below, Defendants have violated numerous provisions of both the
12 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
13 Order.

14 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
15 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private
16 attorney generals, seek assessment and collection of civil penalties for themselves, all other
17 non-party Aggrieved Employees, and the State of California against Defendants for violations
18 of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516,
19 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

20 **FIRST CAUSE OF ACTION**

21 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

22 **(Against all Defendants)**

23 55. Plaintiffs incorporates by reference and re-allege as if fully stated herein each
24 and every allegation set forth above.

25 56. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
26 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
27 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a),
28 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits

aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

57. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;

- 1 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
2 earned wages upon termination, as set forth below;
- 3 (i) Violation of Labor Code section 222.5 for failing to compensate Plaintiffs
4 and other non-party Aggrieved Employees for mandatory physical
5 examinations and/or drug testing, as set forth below;
- 6 (j) Violation of California Labor Code section 1198 and the applicable IWC
7 Wage Order for failing to pay reporting time pay, as set forth below; and
- 8 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
9 and other non-party Aggrieved Employees for all business expenses
10 necessarily incurred, as set forth below.

11 **FAILURE TO PAY OVERTIME**

12 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

13 58. Labor Code section 1198 makes it illegal to employ an employee under
14 conditions of labor that are prohibited by the applicable wage order. California Labor Code
15 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
16 be the . . . standard conditions of labor for employees. The employment of any employee . . .
17 under conditions of labor prohibited by the order is unlawful.”

18 59. California Labor Code section 1198 and the applicable IWC Wage Order provide
19 that it is unlawful to employ persons without compensating them at a rate of pay either time-
20 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
21 worked by the person on a daily or weekly basis.

22 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
24 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
25 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
26 hours in a workweek.

27 61. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiffs and other non-party Aggrieved Employees working more than twelve

(12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

62. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

63. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

64. First, during the relevant time period, Defendants had, and continue to have, a company-wide policy of understaffing their locations, resulting in a failure to provide Plaintiffs and other non-party Aggrieved Employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. At the same time, Defendants engaged in a company-wide practice and/or policy of pressuring Plaintiffs and other non-party Aggrieved Employees to maintain a quota based on the percentage of occupied apartments in the complex as a whole. This resulted in Plaintiffs and other non-party Aggrieved Employees having to remain available for residents' and supervisors' requests at all times in order to meet the quota, by keeping current and prospective residents satisfied. As a result of this lack of meal period coverage and the pressure to maintain a quota of occupied apartments, Plaintiffs and other non-party Aggrieved Employees missed their meals entirely or had their meal periods interrupted by work in order to meet supervisors' demands or respond to current or prospective residents' requests. For example, Plaintiff Johnson would spend 5-10 minutes answering questions from

1 a supervisor or co-worker, or responding to a request from a current or potential resident, while
2 clocked out for his meal period. Plaintiff Arreola would miss meal periods approximately four
3 (4) times a month to attend to time-sensitive tasks such as maintenance on a unit or picking up
4 materials from the hardware store and would have his meal periods cut short approximately
5 twice a week due to emergency tasks or to respond to demands by supervisors or residents. To
6 the extent these hours worked qualified for overtime, Defendants did not pay Plaintiffs and other
7 non-party Aggrieved Employees for the time they continued to perform tasks during their meal
8 periods.

9 65. Second, Defendants had, and continue to have, company-wide policies and/or
10 practices of discouraging employees from accruing overtime hours while pressuring employees
11 to maintain a quota of occupied apartments, as stated above. Because Defendants discouraged
12 overtime accrual by, among other things, requiring employees to obtain pre-approval of
13 overtime hours from Defendants' supervisors, Plaintiffs and other non-party Aggrieved
14 Employees were required to complete assigned tasks outside of their scheduled shifts without
15 being compensated for their work.

16 66. For example, two or three days a week, Plaintiff Johnson would spend
17 approximately 10-15 minutes responding questions or requests from residents before he was
18 able to clock in for his shift. In addition, in order to control overtime accrual, Defendants
19 instructed employees to clock out at the end of their scheduled shifts, which caused employees
20 to continue to perform assigned tasks off-the-clock. For example, Plaintiff Johnson would clock
21 out at the end of his scheduled shift and spend approximately 5-10 minutes responding to
22 requests from current and potential residents. In addition, at least three times during his
23 employment, Plaintiff Johnson had to clock out and continue helping potential residents who
24 had arrived within minutes of the end of his shift for over one (1) hour. Similarly, two (2) or
25 three (3) days a week, Plaintiff Arreola would spend approximately 20-30 minutes after his shift
26 walking around the property to ensure all the lights were out. At all times, Plaintiffs and other
27 non-party Aggrieved Employees remained under Defendants' control. This off-the-clock work
28 could have been recorded by Defendants, but they refused to do so to avoid payment of

1 additional wages to Plaintiffs and other non-party Aggrieved Employees.

2 67. Third, Defendants' policies and/or practices of understaffing their locations,
3 strict limitations on overtime accrual, and maintaining an occupancy quota also led to Plaintiffs
4 and other non-party Aggrieved Employees performing work off-the-clock, on their days off,
5 and outside of their scheduled shifts, in order to respond to all residents' and management's
6 requests and complete their assigned tasks. For example, Defendants' management would call
7 and send text messages to Plaintiff Johnson on his days off or outside of his scheduled shifts
8 about work-related issues, including questions about residents and the rental properties.
9 Plaintiff Johnson estimates he spent approximately one (1) hour per month off-the-clock
10 responding to calls and text messages from his managers to his personal cellular phone.
11 Defendants' management would also call and send text messages to Plaintiff Arreola on his
12 days off or outside of his scheduled shifts about work-related issues, including emergency
13 maintenance requests made by residents, and he would be disciplined if he failed to respond.
14 Plaintiff Arreola estimates he spent approximately one (1) hour per week off-the-clock
15 responding to calls and text messages from his managers to his personal cellular phone.
16 Additionally, when Plaintiffs and other non-party Aggrieved Employees drove to cover shifts
17 at other property locations or attend mandatory off-site quarterly sales meetings, they were not
18 compensated for their travel time. For instance, when Plaintiff Arreola worked at Defendants'
19 property in San Jose for a period of time, he would have to cover shifts for other Service
20 Technicians at a property in San Francisco once a month, which was a 90-minute drive each
21 way, but would not be paid for his travel time. Again, this off-the-clock work could have been
22 recorded by Defendants, but they refused to do so to avoid payment of additional wages to
23 Plaintiffs and other non-party Aggrieved Employees.

24 68. Fourth, during the relevant period, Defendants had a company-wide "on-call"
25 policy, whereby they scheduled Plaintiff Arreola and other non-party Aggrieved Employees to
26 work "on-call," or on standby. During an "on-call" shift, Plaintiff Arreola and other non-party
27 Aggrieved Employees had to be available and report to work upon receiving a call from
28 Defendants notifying them that they needed to come in and work. When scheduled to be "on-

1 call,” Plaintiff Arreola and other non-party Aggrieved Employees were, in essence, on
2 controlled standby for Defendants because they could not use that time freely for their own
3 purposes and were forced to put their lives on hold. For example, Plaintiff Arreola refrained
4 from making plans altogether while “on-call” for a standby shift because he knew that he had
5 to drop whatever he was doing at a moment’s notice if he received a call from Defendants to
6 report to work. However, Defendants did not pay Plaintiff Arreola and other non-party
7 Aggrieved Employees for the time during which they were waiting to receive a call from
8 Defendants and unable to use their time for their own purposes.

9 69. Defendants knew or should have known that, as a result of these company-wide
10 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
11 their assigned duties off-the-clock, and were suffered or permitted to perform work for which
12 they were not paid. Defendants also knew, or should have known, that they did not compensate
13 Plaintiffs and other non-party Aggrieved Employees applicable overtime rates of pay for
14 overtime hours that they worked. Because Plaintiffs and other non-party Aggrieved Employees
15 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
16 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and other non-
17 party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
18 actually worked.

19 70. Furthermore, Defendants did not pay Plaintiffs and other non-party Aggrieved
20 Employees the correct overtime rate for the recorded overtime hours that they generated. In
21 addition to an hourly wage, Defendants paid Plaintiffs and other non-party Aggrieved
22 Employees commissions, incentive pay, and/or nondiscretionary bonuses. However, in
23 violation of the California Labor Code, Defendants failed to incorporate all remunerations,
24 including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of
25 the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
26 times when Plaintiffs and other non-party Aggrieved Employees worked overtime and received
27 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all
28 overtime wages by paying a lower overtime rate than required.

1 71. Specifically, Plaintiffs and other non-party Aggrieved Employees received
2 commissions, incentive pay, and/or nondiscretionary bonuses from Defendants. Plaintiff
3 Johnson and other non-party Aggrieved Employees earned commissions based on the number of
4 renters from whom the employee secured a lease had subsequently moved in during a specified
5 time period. Additionally, Plaintiff Johnson and other non-party Aggrieved Employees earned
6 commissions based on the number of renewal leases secured. This commission pay appeared
7 on Plaintiff Johnson's and other non-party Aggrieved Employees' wage statements as "Leasing
8 Commission." Also, Plaintiffs and other non-party Aggrieved Employees received incentive pay
9 from Defendants for yearly employment anniversaries, listed on wage statements as "Service
10 Anniv," and for medical care visits, which was paid out in gift cards and occasionally listed on
11 wage statements as "Vitality Rewards."

12 72. In the same pay periods in which these commissions, nondiscretionary bonuses,
13 and/or incentive pay were earned, Plaintiffs and other non-party Aggrieved Employees also
14 worked overtime hours for which they were paid overtime wages. However, Defendants failed
15 to incorporate these other earned forms of pay into Plaintiffs' and other non-party Aggrieved
16 Employees' regular rate of pay and, as a result, paid them at an incorrect and lower rate of pay
17 for overtime hours worked. Specifically, due to Defendants' inaccurate wage statements as
18 described below, the calculation of an employee's "Overtime Pay Premium" is also inaccurate.
19 Defendants' failure to properly calculate the overtime rate of pay based on all remuneration paid
20 has resulted in an underpayment of overtime wages to Plaintiffs and other non-party Aggrieved
21 Employees.

22 73. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees the
23 balance of overtime compensation as required by California law, violates the provisions of
24 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
25 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
26 2699(a), (f), and (g).

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1 **FAILURE TO PAY MINIMUM WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

3 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
5 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
6 Compensable work time is defined by the applicable wage order as “the time during which an
7 employee is subject to the control of an employer, and includes all the time the employee is
8 suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, §
9 11050(2)(K) (defining “Hours Worked”).

10 75. As set forth above, due to Defendants’ uniform policies and/or practices of
11 understaffing while simultaneously demanding that employees maintain a quota of occupied
12 properties, along with the resultant lack of meal period coverage, Plaintiffs and other non-party
13 Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they
14 were entitled, resulting in them working off-the-clock. Additionally, due to Defendants’
15 restrictions on overtime accrual while pressuring employees to meet the occupancy quota,
16 Plaintiffs and other non-party Aggrieved Employees were required to work off-the-clock before
17 and after their scheduled shifts, such as completing assigned tasks and answering calls and text
18 messages from management on their days off, work for which they were not paid. Furthermore,
19 as stated, Plaintiff Arreola and other non-party Aggrieved Employees were required to cover
20 shifts at other property locations and attend mandatory training sessions and meetings, but were
21 not compensated for their travel time. Also, as stated, Defendants systematically, and on a
22 company-wide basis, required Plaintiff Arreola and other non-party Aggrieved Employees to
23 work “on-call” shifts during which they had to put their lives on hold and were restricted from
24 using that time freely for their own purposes. Even though Plaintiff Arreola and other non-
25 party Aggrieved Employees were subject to Defendants’ control during an “on-call” shift,
26 Defendants did not pay Plaintiff Arreola and other non-party Aggrieved Employees at least
27 minimum wages for all hours that they were suffered or permitted to work.

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1 76. Further, Defendants maintained and implemented a company-wide policy of
2 requiring all employees to travel to a medical facility on their own time and using their own
3 personal vehicles to undergo mandatory drug testing and/or physical examinations. However,
4 Defendants did not compensate Plaintiffs and other non-party Aggrieved Employees for the
5 time they spent traveling to and from the medical facilities or for the time they spent undergoing
6 testing and/or physical examinations. At all times, Defendants were in control of scheduling
7 the date and time for the testing and/or physical examinations, selecting the provider or facility
8 where the testing and/or physical examinations were to take place, and determining the scope
9 of the testing and/or physical examinations. Plaintiffs followed Defendants' instructions and
10 traveled to a medical facility designated by Defendants. For example, Plaintiff Johnson spent
11 approximately one (1) hour and 40 minutes traveling to and from Quest Diagnostics in
12 Brentwood, California, and undergoing mandatory drug testing. Defendants did not compensate
13 Plaintiffs and other non-party Aggrieved Employees for the time they spent traveling to and
14 undergoing the mandatory drug testing and/or physical examinations.

15 77. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs
16 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
17 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
18 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
19 1197, and 1198.

20 78. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
21 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
22 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516 AND 1198**

26 79. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs and
28 other non-party Aggrieved Employees' employment by Defendants.

1 80. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is not
5 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
6 and the employee. Under California law, first meal periods must start after no more than five
7 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

8 81. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 82. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
12 1198, and the applicable IWC Wage Order also require employers to provide a second meal
13 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
14 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
15 the total hours worked is no more than twelve (12) hours, the second meal period may be waived
16 by mutual consent of the employer and the employee only if the first meal period was not
17 waived.

18 83. During the relevant time period, as stated, Defendants had, and continue to have,
19 a uniform policy and/or practice of understaffing their locations while pressuring employees to
20 maintain a quota of occupied properties, which resulted in a lack of meal period coverage and
21 impeded Plaintiffs and other non-party Aggrieved Employees from taking all timely,
22 uninterrupted meal periods to which they were entitled. Plaintiffs and other non-party
23 Aggrieved Employees also had to remain available to respond to requests from current or
24 potential residents or to answer co-workers' or supervisors' questions, including during their
25 meal periods. For example, three (3) times a week, Plaintiff Johnson would work over five (5)
26 hours straight before Defendants permitted him to take his meal period. In addition, three (3)
27 times a month, Plaintiff Johnson would work through his lunch, and, six (6) times a month, he
28 would clock out for his meal period and work for 5-10 minutes answering questions from a

1 supervisor or co-worker or responding to a request from a current or potential resident.
2 Likewise, Plaintiff Arreola would miss his meal periods approximately four (4) times a month
3 to attend to time-sensitive tasks such as maintenance on a unit or picking up materials from the
4 hardware store, was rarely able to take a meal period on time due to an overburdened workload,
5 and would have his meal periods cut short approximately twice a week due to emergency tasks
6 or to respond to demands by supervisors or residents. Other non-party Aggrieved Employees
7 also missed or had their meal periods interrupted or took them late to respond to residents and
8 answer questions from supervisors.

9 84. In addition, Defendants did not schedule second meal periods and had no policy
10 for permitting Plaintiffs and other non-party Aggrieved Employees to take second 30-minute
11 meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiffs and
12 other non-party Aggrieved Employees did not receive second 30-minute meal periods on days
13 that they worked in excess of ten (10) hours in one day. For example, when both Plaintiffs
14 worked in excess of ten (10) hours in a day, Defendants did not schedule them to take a second
15 meal period and did not provide them with the opportunity to take a second meal period.
16 Instead, Plaintiffs continued to work until they clocked out for the day. Plaintiffs and other non-
17 party Aggrieved Employees did not sign valid meal period waivers on days that they were
18 entitled to meal periods and were not relieved of all duties.

19 85. Moreover, Defendants had a company-wide policy of requiring all newly hired
20 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
21 the position that non-exempt, hourly paid employees had waived their rights to first meal
22 periods for the entirety of their employment and, on that basis, did not provide them with all
23 meal periods to which they were entitled. Specifically, Defendants' "California Meal Period
24 Waiver" form provides that the waiver remains in effect until the employee provides his or her
25 supervisor with a written note of his or her decision to revoke: "I know I can revoke this waiver
26 by giving a written note to my Regional Human Resources department or my supervisor. . . ."
27 Defendants' company-wide use of blanket meal period waivers signed at or near the time of
28 hire and imposition on employees to revoke the waivers in writing, discouraged and impeded

1 Plaintiffs and other non-party Aggrieved Employees from taking all meal periods. And,
2 Defendants' presumption that meal periods would not be provided for shifts in excess of five
3 (5) hours but less than six (6) hours due to blanket meal period waivers discouraged Plaintiffs
4 and other non-party Aggrieved Employees from taking meal periods.

5 86. Defendants knew or should have known that as a result of their policies,
6 including systemic understaffing, pressuring employees to maintain a quota, and failure to
7 schedule second meal periods, that Plaintiffs and other non-party Aggrieved Employees were
8 not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
9 knew or should have known that they did not pay Plaintiffs and other non-party Aggrieved
10 Employees meal period premiums when they were missed, late, short, and/or interrupted.

11 87. Defendants also have engaged in a company-wide practice and/or policy of not
12 paying meal period premiums owed when compliant meal periods are not provided. Because
13 of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not
14 received premium pay for missed meal periods. Alternatively, to the extent that Defendants did
15 pay meal period premiums to Plaintiffs and other non-party Aggrieved Employees, they did so
16 at the incorrect rates. Because Defendants did not properly calculate Plaintiffs' and other non-
17 party Aggrieved Employees' regular rates of pay by including all remunerations, such as
18 commissions, nondiscretionary bonuses, and/or incentive pay, any premiums paid for meal
19 period violations were also paid at an incorrect rate and resulted in an underpayment of meal
20 period premiums.

21 88. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
22 Employees compliant meal periods and failed to pay the full meal period premiums due.
23 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
24 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are
25 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
26 (g).

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FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

89. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other non-party Aggrieved Employees' employment by Defendants.

90. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

91. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

92. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

93. As with meal periods, Defendants' company-wide policy and practice of understaffing their locations while pressuring employees to maintain a quota of occupied properties, which resulted in a lack of rest period coverage, prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which further impeded and prevented

1 Plaintiffs and other non-party Aggrieved Employees from taking compliant rest periods.

2 94. Moreover, upon information and belief, Defendants maintained and implemented
3 a company-wide on-premises rest period policy, which mandated that Plaintiffs and other non-
4 party Aggrieved Employees remain on Defendants' premises during their rest periods. Because
5 Plaintiffs and other non-party Aggrieved Employees were restricted from leaving the premises
6 during rest periods, they were denied the ability to use their rest periods freely for their own
7 purposes, such as running personal errands. Thus, Defendants effectively maintained control
8 over Plaintiffs and other non-party Aggrieved Employees during rest periods.

9 95. As a result of Defendants' practices and policies, Plaintiffs and other non-party
10 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
11 excess of 10 hours without receiving all ten (10) minute rest periods to which they were entitled.
12 For example, both Plaintiffs missed almost every rest period during their employment due to a
13 lack of rest period coverage. In addition, when Plaintiff Johnson was able to take his rest period,
14 he was made to work over four (4) hours straight before Defendants permitted him to take a rest
15 period.

16 96. Defendants also have engaged in a company-wide practice and/or policy of not
17 paying all rest period premiums owed when compliant rest periods are not authorized or
18 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
19 Employees have not received premium pay for all missed rest periods. Alternatively, to the
20 extent that Defendants did pay rest period premiums to Plaintiffs and other non-party Aggrieved
21 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
22 Plaintiffs' and other non-party Aggrieved Employees' regular rates of pay by including all
23 remunerations, such as commissions, nondiscretionary bonuses, and/or incentive pay, any
24 premiums paid for rest period violations were also paid at an incorrect rate and resulted in an
25 underpayment of rest period premiums.

26 97. Defendants' conduct violates the applicable IWC Wage Order and California
27 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
28 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and

1 (g).

2 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

3 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

4 98. At all relevant times herein, California Labor Code section 226(a) provides that
5 every employer shall furnish each of his or her employees an accurate and complete itemized
6 wage statement in writing, including, but not limited to, the name and address of the legal entity
7 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
8 rates of pay.

9 99. During the relevant time period, Defendants have knowingly and intentionally
10 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
11 inaccurate wage statements. For example, Defendants issued uniform wage statements to
12 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages earned;
13 total hours worked; net wages earned; and all applicable hourly rates in effect during the pay
14 period, including rates of pay for overtime and/or meal and rest period premiums, and the
15 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
16 sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

17 100. First, Defendants failed to correctly list all applicable hourly rates in effect during
18 the pay period, namely, correct hourly, vacation, holiday and sick pay rates in compliance with
19 section 226(a)(9). For example, Defendants issued wage statements to Plaintiff Johnson that
20 incorrectly indicate that he was paid at a rate of \$19.19 for “Regular Hours,” when the correct
21 hourly rate at which Plaintiff Johnson was actually paid was \$19.1875 ($51.88 \times \$19.19 =$
22 $\$995.58$ not $\$995.45$). Similarly, Defendants issued wage statements that incorrectly indicated
23 hourly rates for vacation pay ($16.00 \times \$19.19 = \307.04 not $\$306.98$), holiday pay ($8.00 \times$
24 $\$19.19 = \153.52 not $\$153.49$), and sick pay ($9.76 \times \$29.45 = \287.43 not $\$287.40$).

25 101. Alternatively, Defendants failed to correctly list the correct amount of total hours
26 worked by Plaintiffs and other non-party Aggrieved Employees in compliance with section
27 226(a)(2). For example, Defendants issued wage statements to Plaintiff Johnson that incorrectly
28 indicate that he was paid for 51.88 hours at an hourly rate of \$19.19, when the correct amount

of total hours worked would be 51.87337 if the hours worked were as stated on the paystub (**51.88** x \$19.19 = \$995.58, not \$995.45). Similarly, Defendants issued wage statements to Plaintiff Johnson that incorrectly indicated total hours for vacation pay (**16.00** x \$19.19 = \$307.04 not \$306.98), holiday pay (**8.00** x \$19.19 = \$153.52 not \$153.49), and sick pay (**9.76** x \$29.45 = \$287.43 not \$287.40).

102. As another option, Defendants did not calculate and list the correct amount of gross and net wages earned by Plaintiffs and other non-party Aggrieved Employees in compliance with sections 226(a)(1) and 226(a)(5), respectively. For example, Defendants issued wage statements to Plaintiff Johnson that incorrectly indicate that he earned \$995.45 for working 51.88 hours at an hourly rate of \$19.19, when the correct gross amount should be \$995.58 when calculated using that hourly rate. Similarly, Defendants issued wage statements to Plaintiff Johnson that incorrectly indicated gross and net wages for vacation pay (16.00 x \$19.19 = \$307.04 not **\$306.98**), holiday pay (8.00 x \$19.19 = \$153.52 not **\$153.49**), and sick pay (9.76 x \$29.45 = \$287.43 not **\$287.40**).

103. Second, because Defendants did not record the time Plaintiffs and other non-party Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount of gross wages earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

104. Third, because Defendants did not calculate Plaintiffs' and other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned by Plaintiffs and other non-party Aggrieved Employees in violation of section 226(a)(5). Defendants also

1 failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct
2 rates of pay for overtime and/or meal and rest premiums, in violation of section 226(a)(9).

3 105. The wage statement deficiencies also include, without limitation, failing to list
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
5 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
6 the last four digits of his or her social security number or an employee identification number
7 other than a social security number; failing to list the name and address of the legal entity that
8 is the employer; failing to list the inclusive dates of the period for which aggrieved employees
9 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
10 worked off-the-clock.

11 106. California Labor Code section 1198 provides that the maximum hours of work
12 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
13 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
14 of any employees for longer hours than those fixed by the order or under conditions of labor
15 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
16 are required to keep accurate time records showing when the employee begins and ends each
17 work period and meal period. During the relevant time period, Defendants failed, on a
18 company-wide basis, to keep accurate records of meal period start and stop times for Plaintiffs
19 and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light
20 of Defendants’ failure to provide Plaintiffs and other non-party Aggrieved Employees with
21 second 30-minute meal periods to which they were entitled, Defendants kept no records of meal
22 start and end times for second meal periods.

23 107. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
3 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as
4 a result of failing to record the off-the-clock hours that they worked.

5 108. Defendants’ conduct violates the applicable IWC Wage Order and California
6 Labor Code sections 226(a), 1174(d), and 1198. Plaintiffs and other non-party Aggrieved
7 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3,
8 1174.5, and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

10 **VIOLATION OF LABOR CODE SECTION 204**

11 109. At all relevant times herein set forth, California Labor Code section 204 requires
12 that all wages earned by any person in any employment between the 1st and the 15th days,
13 inclusive, of any calendar month, other than those wages due upon termination of an employee,
14 are due and payable between the 16th and the 26th day of the month during which the labor was
15 performed. Labor Code section 204 further provides that all wages earned by any person in any
16 employment between the 16th and the last day, inclusive, of any calendar month, other than
17 those wages due upon termination of an employee, are due and payable between the 1st and the
18 10th day of the following month.

19 110. At all relevant times herein, California Labor Code section 204 also requires that
20 all wages earned for labor in excess of the normal work period shall be paid no later than the
21 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
22 Code section 204 provides that the requirements of this section are deemed satisfied by the
23 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
24 than seven (7) calendar days following the close of the payroll period.

25 111. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
26 other non-party Aggrieved Employees all wages due to them within any time period specified by
27 California Labor Code section 204 including, but not limited to, overtime wages, minimum
28 wages, reporting time pay, and/or meal and rest period premiums.

112. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

113. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

114. For example, Plaintiff Johnson was terminated on August 16, 2018. However, Plaintiff Johnson did not receive his final paycheck until over a week and a half later. In addition, Defendants have failed, and continue to fail, to pay Plaintiff Johnson up to \$3,900 in earned leasing commissions. Thus, Defendants failed to pay Plaintiff Johnson his final wages immediately, in violation of Labor Code section 201.

115. In addition, Defendants willfully failed to pay Plaintiffs and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

116. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

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1 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

2 **VIOLATION OF LABOR CODE SECTION 222.5**

3 117. At all relevant times herein, California Labor Code section 222.5 requires
4 employers to pay for the costs an employee incurs for obtaining any required medical or physical
5 examination.

6 118. During the relevant time period, Defendants implemented, on a company-wide
7 basis, an employer-imposed requirement that Plaintiffs and other non-party Aggrieved
8 Employees undergo mandatory drug tests and/or physical examinations, but required them to
9 do so at their own expense. As stated, Defendants had a company-wide policy requiring that
10 all employees, including Plaintiffs and other non-party Aggrieved Employees, travel to a
11 specified medical facility on their own time and use their own means of transportation to
12 undergo drug testing and/or physical examinations. At all times, Defendants were in control of
13 scheduling the date and time for the drug testing and/or physical examinations, selecting the
14 provider/facility where the drug testing and/or physical examinations were to take place, and
15 determining the scope of the drug test and/or physical examinations.

16 119. For example, Plaintiff Johnson was instructed by Defendants to travel to a Quest
17 Diagnostics facility in the city of Brentwood, California, and obtain a drug test. Plaintiff
18 Johnson followed Defendants' instructions, traveled approximately 30 miles roundtrip, and
19 underwent the required drug testing. Plaintiff Johnson spent approximately one (1) hour and 40
20 minutes traveling to and from Quest Diagnostics and taking the required drug test.

21 120. However, Defendants did not compensate Plaintiffs and other non-party
22 Aggrieved Employees for the time they spent traveling to and from their drug tests and/or
23 physical examinations, or for the time they spent undergoing the testing and/or examinations,
24 or reimburse them for the travel expenses they incurred getting to and from the medical
25 facilities. Defendants' policy and/or practice of not paying for all costs Plaintiffs and other non-
26 party Aggrieved Employees incurred obtaining mandatory drug tests and physical examinations
27 tests is in violation of California Labor Code section 222.5.

28 ///

1 121. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

3 **FAILURE TO PAY REPORTING TIME PAY**

4 **VIOLATION OF LABOR CODE SECTION 1198**

5 122. California Labor Code section 1198 makes it illegal to employ an employee
6 under conditions of labor that are prohibited by the applicable wage order. California Labor
7 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
8 shall be the . . . standard conditions of labor for employees. The employment of any employee
9 . . . under conditions of labor prohibited by the order is unlawful.”

10 123. California Code of Regulations, Title 8, section 11050(5)(A) provides that
11 “[e]ach workday an employee is required to report for work and does report, but is not put to
12 work or is furnished less than half said employee’s usual or scheduled day’s work, the employee
13 shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
14 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be
15 less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to
16 guarantee at least partial compensation for employees who report to work expecting to work a
17 specified number of hours, and who are deprived of that amount because of inadequate
18 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
19 App. 4th 556 (2012).

20 124. Upon information and belief, Defendants violated California Labor Code section
21 1198 and California Code of Regulations, Title 8, section 11050(5), because Defendants failed
22 to pay Plaintiff Arreola and other non-party Aggrieved Employees reporting time pay when they
23 reported to work for their scheduled shift but were put to work for less than half of the regular
24 schedule.

25 125. As described above, Defendants had a company-wide “on-call” policy, whereby
26 they scheduled Plaintiff Arreola and other non-party Aggrieved Employees to work “on-call,”
27 or on standby. When scheduled for an “on-call” or standby shift, Plaintiff Arreola and other
28 non-party Aggrieved Employees regularly presented themselves as ready for work by working

1 “on-call” shifts and awaiting instructions on whether to show up at the property, but ultimately
2 were not called. Defendants did not pay Plaintiff Arreola and other non-party Aggrieved
3 Employees for at least half of their scheduled day’s work when they were subject to Defendants’
4 on-call policy and were not called or told not to come in to the property. For example, Plaintiff
5 Arreola monitored his phone during “on-call” shifts as required by Defendants’ on-call policy
6 or practice, but was sometimes not called in. When this occurred, Defendants did not pay him
7 for at least half of his scheduled standby time or the required minimum reporting time pay.
8 Accordingly, Plaintiff Arreola and other non-party Aggrieved Employees were not properly
9 compensated with reporting time pay in violation of California Labor Code section 1198 and
10 California Code of Regulations, Title 8, section 11050(5).

11 126. Plaintiff Arreola and other non-party Aggrieved Employees are therefore entitled
12 to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g)

13 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

14 **VIOLATION OF LABOR CODE SECTION 2802**

15 127. At all times herein set forth, California Labor Code section 2802 provides that
16 an employer must reimburse employees for all necessary expenditures and losses incurred by
17 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
18 to prevent employers from passing off their cost of doing business and operating expenses on
19 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
20 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen the
21 employer requires the use of tools or equipment or they are necessary to the performance of a
22 job, such tools and equipment shall be provided and maintained by the employer, except that an
23 employee whose wages are at least two (2) times the minimum wage may provide and maintain
24 hand tools and equipment customarily required by the particular trade or craft.”

25 128. First, during the relevant time period, as stated, Defendants had a company-wide
26 policy of requiring Plaintiffs and other non-party Aggrieved Employees to travel in their own
27 personal vehicles to medical clinics to undergo mandatory drug testing and/or physical
28 examinations, but did not reimburse them for their travel expenses, including mileage. For

1 example, as described above, Plaintiff Johnson drove for approximately 30 miles roundtrip to
2 obtain a mandatory drug test and/or physical examination per Defendants' instructions, but was
3 not reimbursed for his mileage to and from the medical clinic. Plaintiff Arreola was also
4 required to drive to obtain a mandatory drug test and/or physical examination per Defendants'
5 instructions, but was not reimbursed for his mileage to and from the medical clinic. Although
6 Defendants required Plaintiffs and other non-party Aggrieved Employees to undergo drug
7 testing and/or physical examinations, Defendants never reimbursed them for all of their travel
8 expenses.

9 129. Second, Defendants, on a company-wide basis, required Plaintiffs and other non-
10 party Aggrieved Employees to utilize their own personal vehicles to carry out company
11 business, but failed to reimburse them for all costs of travel, including mileage. For example,
12 Plaintiff Johnson was required to drive his own vehicle approximately 23 miles one-way from
13 his Wood Creek location to cover shifts at Defendants' other properties, such as residential
14 complexes in Dublin, Livermore, and Pleasanton, California. Plaintiff Arreola was required to
15 drive his own vehicle up to forty (40) miles each way to cover shifts at other properties
16 approximately once a month. Plaintiff Arreola also had to obtain material from hardware stores,
17 driving approximately ten (10) miles per month. Furthermore, Plaintiff Arreola drove to and
18 from training sessions at Defendants' locations in South San Francisco and San Mateo, and
19 traveled to and from annual meetings, which were approximately 50 miles roundtrip. Further,
20 other non-party Aggrieved Employees were required to drive to mandatory quarterly sales
21 meetings in Foster City or run errands for their supervisors, such as purchasing party supplies
22 for residents' gatherings hosted by Defendants. Although Defendants required that Plaintiffs
23 and other non-party Aggrieved Employees use their own vehicles and complete these tasks as
24 part of their job duties, Defendants never reimbursed them for all of their travel expenses.

25 130. Third, during the relevant time period, Defendants, on a company-wide basis,
26 required that Plaintiffs and other non-party Aggrieved Employees utilize their own personal
27 cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse
28 them for the costs of their cellular phone and/or data plans. For example, Plaintiff Johnson

1 estimates he spent approximately an hour per month responding to calls and texts from
2 Defendants' management to his personal cellular phone regarding work-related issues,
3 including questions about various residents and their rental properties. As another example,
4 Plaintiff Arreola estimates he spent approximately an hour per week responding to calls and
5 text messages from Defendants' management to his personal cellular phone regarding work-
6 related issues, including emergency maintenance requests. Although Defendants required
7 Plaintiffs and other non-party Aggrieved Employees to regularly utilize their personal cellular
8 phones to carry out work-related responsibilities, Defendants failed to reimburse them for this
9 cost.

10 131. Fourth, during the relevant time period, Defendants, on a company-wide basis,
11 required that Plaintiff Arreola and other non-party Aggrieved Employees supply their own tools
12 for work-related tasks. For instance, Plaintiff Arreola spent approximately \$200 on a drill,
13 pliers, screwdrivers, and other tools. Although Defendants required that Plaintiff Arreola and
14 other non-party Aggrieved Employees use their own tools and complete these tasks as part of
15 their job duties, Defendants never reimbursed them for all of their tool expenses.

16 132. Defendants could have provided Plaintiffs and other non-party Aggrieved
17 Employees with the actual tools for use on the job, including company vehicles and company
18 phones to be used for fulfilling work-related tasks, or reimbursed employees for their mileage,
19 travel, tools, and cellular phone expenses, but instead, Defendants passed these operating costs
20 off onto Plaintiffs and other non-party Aggrieved Employees. Thus, Defendants had, and
21 continue to have, a company-wide policy and/or practice of not reimbursing employees for
22 expenses necessarily incurred. At all relevant times, Plaintiffs did not earn at least two (2) times
23 the minimum wage.

24 133. Defendants' company-wide policy and/or practice of passing on their operating
25 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
26 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
27 other non-party Aggrieved Employees for necessary business-related expenses and costs.

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134. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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- 5. For pre-judgment and post-judgment interest as provided by law; and
- 6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 22, 2021

Respectfully submitted,
Capstone Law APC

By: 
Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiffs Kevin Johnson and Noe Arreola

EXHIBIT “1”

BROOKE WALDROP
310.712.8033 Direct
Brooke.Waldrop@capstonelawyers.com

August 6, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/207>)

Subject: *Kevin Johnson v. Equity Residential Services, L.L.C., et al.*

Dear PAGA Administrator:

This office represents Kevin Johnson in connection with his claims under the California Labor Code. Mr. Johnson was an employee of EQUITY RESIDENTIAL SERVICES, L.L.C.; QRS-EMPLOYER, INC.; EQUITY RESIDENTIAL SERVICES II, LLC; EQUITY RESIDENTIAL MANAGEMENT, L.L.C.; ERP OPERATING LIMITED PARTNERSHIP; and/or QRS-RWE, INC. (collectively, "EQUITY").

The employers may be contacted directly at the addresses below:

EQUITY RESIDENTIAL SERVICES, L.L.C.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

ERP OPERATING LIMITED PARTNERSHIP
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

EQUITY RESIDENTIAL SERVICES II, LLC
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

QRS-EMPLOYER, INC.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

EQUITY RESIDENTIAL MANAGEMENT,
L.L.C.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

QRS-RWE, INC.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

Mr. Johnson intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Johnson seeks relief on behalf of himself, the State of California, and other persons who were employed by EQUITY in California as a non-exempt, hourly paid employee ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

EQUITY employed Mr. Johnson as an hourly paid, non-exempt employee from approximately August 2016 through August 16, 2018. Mr. Johnson worked for EQUITY as a Leasing Consultant at their Wood Creek Apartments complex location located at 637 Stonebridge Way, Pleasant Hill, California 94523. Mr. Johnson worked approximately eight (8) or more hours per day, five (5) days per week, and forty (40) hours per week. At the time Mr. Johnson's employment with EQUITY ended, he earned approximately \$19.19 per hour plus commissions. His job duties as a Leasing Consultant included maintaining individual tenant files, touring apartments with prospective tenants, compiling and processing new lease paperwork, reviewing and responding to emails, drafting and maintaining apartment availability status reports, answering phone calls, maintaining a clean office area, and cleaning apartments as needed.

EQUITY committed one or more of the following Labor Code violations against Mr. Johnson, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c).¹ Mr. Johnson's relevant claims are as follows:

EQUITY's Company-Wide and Uniform Payroll and HR Practices

EQUITY acquires, develops and manages rental apartment properties in seven (7) states, including California. In California, EQUITY owns and manages approximately 110 rental apartment properties. EQUITY RESIDENTIAL SERVICES, L.L.C. and EQUITY RESIDENTIAL MANAGEMENT, L.L.C. are Delaware limited liability companies. QRS-EMPLOYER, INC. is a Delaware corporation. EQUITY RESIDENTIAL SERVICES II, LLC is an Illinois limited liability company. ERP OPERATING LIMITED PARTNERSHIP is an Illinois limited partnership. QRE-RWE, INC. is a Texas corporation. All have their principal place of business located in Chicago, Illinois. Upon information and belief, EQUITY maintains a centralized Human Resources (HR) department at their corporate headquarters in Chicago, Illinois, for all non-exempt, hourly paid employees working for EQUITY in California, including Mr. Johnson and other aggrieved employees. At all relevant times, EQUITY issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Johnson and other aggrieved employees, regardless of their location or position.

Upon information and belief, EQUITY maintains a centralized Payroll department at their corporate headquarters in Chicago, Illinois, which processes payroll for all non-exempt, hourly paid employees working for EQUITY in California, including Mr. Johnson and other aggrieved employees. Further, EQUITY issues the same uniform and formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their location, position, or manner in which each employee's employment ended. EQUITY's centralized Payroll department processed payroll for non-exempt, hourly paid employees in the same manner throughout California. In other words, EQUITY utilized the same methods and formulas when calculating wages due to Mr. Johnson and other aggrieved employees in California.

¹ These facts, theories, and claims are based on Mr. Johnson's experience and counsel's review of those records currently available relating to Mr. Johnson's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Johnson reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

EQUITY willfully failed to pay all overtime wages owed to Mr. Johnson and other aggrieved employees. During the relevant time period, Mr. Johnson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, EQUITY had, and continues to have, a company-wide policy of understaffing their locations, resulting in a failure to provide Mr. Johnson and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. At the same time, EQUITY engaged in a company-wide practice and/or policy of pressuring Mr. Johnson and other aggrieved employees to maintain a quota based on the percentage of occupied apartments in the complex as a whole. This resulted in Mr. Johnson and other aggrieved employees having to remain available for residents’ and supervisors’ requests at all times in order to meet the quota, by keeping current and prospective residents satisfied. As a result of this lack of meal period coverage and the pressure to maintain a quota of occupied apartments, Mr. Johnson and other aggrieved employees missed their meals entirely or had their meal periods interrupted by work in order to meet supervisors’ demands or respond to current or prospective residents’ requests. For example, Mr. Johnson would spend 5-10 minutes answering questions from a supervisor or co-worker, or responding to a request from a current or potential resident, while clocked out for his meal period. To the extent these hours worked qualified for overtime, EQUITY did not pay Mr. Johnson and other aggrieved employees for the time they continued to perform tasks during their meal periods.

Second, EQUITY has, and continues to have, company-wide policies and/or practices of discouraging employees from accruing overtime hours while pressuring employees to maintain a quota of occupied apartments, as stated above. Because EQUITY discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from EQUITY’s supervisors, Mr. Johnson and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for their work. For example, two or three days a week, Mr. Johnson would spend approximately 10-15 minutes responding questions or requests from residents before he was able to clock in for his shift. In addition, in order to control overtime accrual, EQUITY instructed employees to clock out at the end of their scheduled shifts, which caused employees to continue to perform assigned tasks off-the-clock. For example, Mr. Johnson would clock out at the end of his scheduled shift and spend approximately 5-10 minutes responding to requests from current and potential residents. In addition, at least three times during his employment, Mr. Johnson had to clock out and continue helping potential residents who had arrived within minutes of the end of his shift for over to one (1) hour. At all times, Mr. Johnson and other aggrieved

employees remained under EQUITY's control. This off-the-clock work could have been recorded by EQUITY, but it refused to do so to avoid payment of additional wages to Mr. Johnson and other aggrieved employees.

Third, EQUITY's policies and/or practices of understaffing its locations, strict limitations on overtime accrual, and maintaining an occupancy quota also led to Mr. Johnson and other aggrieved employees performing work off-the-clock, on their days off and outside of their scheduled shifts, in order to respond to all residents' and management's requests and complete their assigned tasks. For example, EQUITY's management would call and text Mr. Johnson on his days off or outside of his scheduled shifts about work-related issues, including questions about residents and the rental property. Mr. Johnson estimates he spent approximately one hour per month off-the-clock responding to calls and texts from his managers to his personal cellular phone. Additionally, when other aggrieved employees drove to attend mandatory off-site quarterly sales meetings, they were not compensated for their travel time. Again, this off-the-clock work could have been recorded by EQUITY, but it refused to do so to avoid payment of additional wages to Mr. Johnson and other aggrieved employees.

EQUITY knew or should have known that as a result of these company-wide practices, Mr. Johnson and other aggrieved employees were working during meal periods and before or after their scheduled shifts (including on their days off), and were suffered or permitted to perform work for which they were not paid. EQUITY also knew, or should have known, that it did not compensate Mr. Johnson and other aggrieved employees for this off-the-clock work. Because Mr. Johnson and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, twelve (12) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Johnson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. EQUITY's failure to pay Mr. Johnson and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, EQUITY did not pay Mr. Johnson and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, EQUITY paid Mr. Johnson and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, EQUITY failed to incorporate all remunerations, including commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Johnson and other aggrieved employees worked overtime and received these other forms of pay, EQUITY failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, Mr. Johnson and other aggrieved employees received commissions, incentive pay, and/or nondiscretionary bonuses from EQUITY. Mr. Johnson and other aggrieved employees earned commissions based on the number of renters from whom the employee secured a lease had subsequently moved in during a specified time period. Additionally, Mr. Johnson and other aggrieved employees earned commissions based on the number of renewal leases secured. This commission pay appeared on Mr. Johnson's and other aggrieved employees' wage statements as "Leasing Commission." Also, Mr. Johnson and other aggrieved employees received incentive pay from EQUITY for yearly employment anniversaries, listed on wage statements as "Service Anniv," and for medical care visits, which was paid out in gift cards and occasionally listed on wage statements as "Vitality Rewards." In the same pay periods in which these commissions, nondiscretionary bonuses, and/or incentive pay were earned, Mr. Johnson and other aggrieved employees also worked overtime

hours for which they were paid overtime wages. However, EQUITY failed to incorporate these other earned forms of pay into Mr. Johnson's other aggrieved employees' regular rate of pay and, as a result, paid them at an incorrect and lower rate of pay for overtime hours worked. Specifically, due to EQUITY's inaccurate wage statements as described in a section below, the calculation of an employee's "Overtime Pay Premium" is also inaccurate. EQUITY's failure to properly calculate the overtime rate of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Johnson and other aggrieved employees.

Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to EQUITY's uniform policies and/or practices of understaffing while simultaneously demanding that employees maintain a quota of occupied properties, along with the resultant lack of meal period coverage, Mr. Johnson and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled, resulting in them working off-the-clock. Additionally, due to EQUITY's restrictions on overtime accrual while pressuring employees to meet the occupancy quota, Mr. Johnson and other aggrieved employees were required to work off-the-clock before and after their scheduled shifts, such as completing assigned tasks and answering calls and texts from management on their days off, work for which they were not paid.

Further, EQUITY maintained and implemented a company-wide policy of requiring all employees to travel to a medical clinic on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. However, EQUITY did not compensate Mr. Johnson and other aggrieved employees for the time they spent traveling to and from the medical facilities or for the time they spent undergoing testing and/or physical examinations. At all times, EQUITY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations was to take place, and determining the scope of the testing and/or physical examinations. Mr. Johnson followed EQUITY's instructions and traveled to a medical facility designated by EQUITY. Mr. Johnson spent approximately one (1) hour and 40 minutes traveling to and from Quest Diagnostics in Brentwood, California and undergoing mandatory drug testing. EQUITY did not compensate Mr. Johnson and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, EQUITY did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, EQUITY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, EQUITY regularly failed to pay at least minimum wages to Mr. Johnson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Johnson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a) and 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, EQUITY has, and continues to have, company-wide policies and/or practices of understaffing their locations while pressuring employees to maintain a quota of occupied properties, which resulted in a lack of meal period coverage and impeded Mr. Johnson and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Mr. Johnson and other aggrieved employees also had to remain available to respond to requests from current or potential residents or to answer co-workers' or supervisors' questions, including during their meal periods. For example, three times a week, Mr. Johnson would work over five (5) hours straight before EQUITY permitted him to take his meal period. In addition, three (3) times a month, Mr. Johnson would work through his lunch, and, six (6) times a month, he would clock out for his meal period and work for 5-10 minutes answering questions from a supervisor or co-worker or responding to a request from a current or potential resident. Other aggrieved employees also missed or had their meal periods interrupted or took them late to respond to residents and answer questions from supervisors.

In addition, EQUITY did not schedule second meal periods and had no policy for permitting Mr. Johnson and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Johnson and other aggrieved employees did not receive second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, when Mr. Johnson worked in excess of ten (10) hours in a day, EQUITY did not schedule him to take a second meal period and did not provide him with the opportunity to take a second meal period. Instead, Mr. Johnson continued to work until he clocked out for the day. Mr. Johnson and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, EQUITY had a company-wide policy of requiring all newly-hired employees to sign blanket Meal Period Waivers at or near their time of hire. EQUITY took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and on that basis did not provide them with all meal periods to which they were entitled. Specifically, EQUITY's "California Meal Period Waiver" form provides that the waiver remains in effect until the employee provides his or her supervisor with a written note of his or her decision to revoke. *Excerpt below:*

"I know I can revoke this waiver by giving a written note to my Regional Human Resources department or my supervisor..."

EQUITY's company-wide use of blanket meal waivers signed at or near the time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged and impeded Mr. Johnson and other aggrieved employees from taking all meal periods to which they were entitled. And, EQUITY's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers discouraged Mr. Johnson and other aggrieved employees from taking meal periods.

What's more, an employer's obligation to provide a meal break is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

The fact that EQUITY requires aggrieved employees to sign Meal Waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because EQUITY's obligation to provide Mr. Johnson and other aggrieved employees with meal breaks did not arise until it had employed them for a full five (5) hours.

EQUITY knew or should have known that as a result of its policies, Mr. Johnson and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. EQUITY further knew or should have known that they did not pay Mr. Johnson and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted. As a result, Mr. Johnson and other aggrieved employees worked through some or all of their meal periods, had their meal periods interrupted to return to work, and/or waited extended periods of time before taking meal periods.

EQUITY also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Johnson and other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that EQUITY did pay meal rest period premium wages to Mr. Johnson and other aggrieved employees, it did so at the incorrect rates. Because EQUITY did not

properly calculate Mr. Johnson's and other aggrieved employees' regular rates of pay by including all remunerations, such as commissions, nondiscretionary bonuses, and/or incentive pay, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, EQUITY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), and 1198. Mr. Johnson and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7 and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

As with meal periods, EQUITY's company-wide policy and practice of understaffing their locations while pressuring employees to maintain a quota of occupied properties, which resulted in a lack of rest period coverage, prevented Mr. Johnson and other aggrieved employees from being relieved of all duty to take compliant rest periods. Furthermore, EQUITY had no policy of scheduling rest periods for employees, which further impeded Mr. Johnson and other aggrieved employees from taking compliant rest periods. As a result, Mr. Johnson and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of six (6) hours, and/or in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Mr. Johnson missed almost every rest period during his employment with EQUITY due to lack of rest period coverage. In addition, when Mr. Johnson was able to take his rest period, he was made to work over four (4) hours straight before EQUITY permitted him to take a rest break. Thus, EQUITY did not authorize or permit Mr. Johnson to take timely, compliant rest periods.

Additionally, EQUITY maintained and implemented a company-wide practice and/or policy requiring that Mr. Johnson and other aggrieved employees remain on premises during their rest breaks. Because Mr. Johnson and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, EQUITY effectively maintained control over Mr. Johnson and other aggrieved employees during rest periods, and, as a result of this rest period policy, EQUITY did not relinquish control over Mr. Johnson and other aggrieved employees during rest periods.

EQUITY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Johnson and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that EQUITY did pay rest period premium wages to Mr. Johnson and other aggrieved employees, it did so at the incorrect rates. Because EQUITY did not properly calculate Mr. Johnson's and other aggrieved employees' regular rates of pay by including all forms of compensation, such as commissions, nondiscretionary bonuses, and/or incentive pay, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, EQUITY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7 and 1198. Mr. Johnson and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. EQUITY has not provided Mr. Johnson and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, EQUITY has knowingly and intentionally provided Mr. Johnson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, EQUITY issued uniform wage statements to Mr. Johnson and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, EQUITY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, EQUITY failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct hourly, vacation, holiday and sick pay rates in compliance with section 226(a)(9). For example, EQUITY issued wage statements to Mr. Johnson that incorrectly indicate that he was paid at a rate of \$19.19 for "Regular Hours," when the correct hourly rate at which they were actually paid was \$19.1875 ($51.88 \times \$19.19 = \995.58 not \$995.45). Similarly, EQUITY issued wage statements that incorrectly indicated hourly rates for vacation pay ($16.00 \times \$19.19 = \307.04 not \$306.98), holiday pay ($8.00 \times \$19.19 = \153.52 not \$153.49), and sick pay ($9.76 \times \$29.45 = \287.43 not \$287.40). *See example of violating paystub below.*

Earnings Description	Begin Date	End Date	Hours	Rate	Multiple	Amount
Vacation Pay			16.00	19.19	1.00	306.98
Regular Hours			51.88	19.19	1.00	995.45
Overtime Pay Premium			0.25	45.59	0.50	5.70
Overtime Pay			0.25	19.19	1.00	4.80
Holiday Pay			8.00	19.19	1.00	153.49
Sick Pay			9.76	29.45	1.00	287.40

Second, EQUITY failed to correctly list the correct amount of total hours worked by Mr. Johnson and other aggrieved employees in compliance with section 226(a)(2). For example, EQUITY issued wage statements to Mr. Johnson that incorrectly indicate that he was paid for 51.88 hours at an hourly rate of \$19.19, when the correct amount of total hours worked would be 51.87337 if the hours worked were as stated on the paystub (**51.88** x \$19.19 = \$995.58, not \$995.45). Similarly, EQUITY issued wage statements that incorrectly indicated total hours for vacation pay (**16.00** x \$19.19 = \$307.04 not \$306.98), holiday pay (**8.00** x \$19.19 = \$153.52 not \$153.49), and sick pay (**9.76** x \$29.45 = \$287.43 not \$287.40). *See example of same violating paystub below.*

Earnings Description	Begin Date	End Date	Hours	Rate	Multiple	Amount
Vacation Pay			16.00	19.19	1.00	306.98
Regular Hours			51.88	19.19	1.00	995.45
Overtime Pay Premium			0.25	45.59	0.50	5.70
Overtime Pay			0.25	19.19	1.00	4.80
Holiday Pay			8.00	19.19	1.00	153.49
Sick Pay			9.76	29.45	1.00	287.40

Third, EQUITY did not calculate and list the correct amount of gross and net wages earned by Mr. Johnson and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5), respectively. For example, EQUITY issued wage statements to Mr. Johnson that incorrectly indicate that he earned \$995.45 for working 51.88 hours at an hourly rate of \$19.19, when the correct gross amount should be \$995.58 when calculated using that hourly rate. Similarly, EQUITY issued wage statements that incorrectly indicated gross and net wages for vacation pay (**16.00** x \$19.19 = \$307.04 not **\$306.98**), holiday pay (**8.00** x \$19.19 = \$153.52 not **\$153.49**), and sick pay (**9.76** x \$29.45 = \$287.43 not **\$287.40**). *See example of same violating paystub below.*

Earnings Description	Begin Date	End Date	Hours	Rate	Multiple	Amount
Vacation Pay			16.00	19.19	1.00	306.98
Regular Hours			51.88	19.19	1.00	995.45
Overtime Pay Premium			0.25	45.59	0.50	5.70
Overtime Pay			0.25	19.19	1.00	4.80
Holiday Pay			8.00	19.19	1.00	153.49
Sick Pay			9.76	29.45	1.00	287.40

Fourth, because EQUITY did not record the time Mr. Johnson and other aggrieved employees spent working off-the-clock, EQUITY did not list the correct amount of gross wages and net wages earned by Mr. Johnson and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5), respectively. For the same reason, EQUITY failed to accurately list the total number of the hours worked by Mr. Johnson and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because EQUITY did not calculate Mr. Johnson's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, EQUITY did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1). For the same reason, EQUITY failed to list the correct amount of net wages earned by Mr. Johnson and other aggrieved employees in violation of section 226(a)(5). EQUITY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), EQUITY willfully failed to maintain accurate payroll records for Mr. Johnson and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, EQUITY failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Johnson and other aggrieved employees, in violation of section 1198. Furthermore, in light of EQUITY's failure to provide Mr. Johnson and other aggrieved employees with second 30-minute meal periods to which they were entitled, EQUITY kept no records of meal start and end times for second meal periods.

Because EQUITY failed to provide the accurate number of total hours worked on wage statements, Mr. Johnson and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Johnson and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, EQUITY failed to pay Mr. Johnson and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Johnson and aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

For example, Mr. Johnson was terminated on August 16, 2018. However, Mr. Johnson did not receive his final paycheck until over a week and a half later. In addition, EQUITY has failed, and continues to fail, to pay Mr. Johnson up to \$3,900 in earned leasing commissions. Thus, EQUITY failed to pay Mr. Johnson his final wages immediately, in violation of Labor Code section 201.

In addition, EQUITY willfully failed to pay Mr. Johnson and other aggrieved employees who are no longer employed by EQUITY all their earned wages, including, but not limited to, commission pay, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving EQUITY's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, EQUITY implemented, on a company-wide basis, an employer-imposed requirement that Mr. Johnson and other aggrieved employees undergo a mandatory drug test and/or physical examination, but required them to do so at their own expense. As stated, EQUITY had a company-wide policy requiring that all employees, including Mr. Johnson and other aggrieved employees, travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, EQUITY was in control of scheduling the date and time for the drug testing and/or physical examination, selecting the provider/facility where the drug testing and/or physical examination was to take place, and determining the scope of the drug test and/or physical examination.

For example, Mr. Johnson was instructed by EQUITY to travel to a Quest Diagnostics facility in the city of Brentwood, California and obtain a drug test. Mr. Johnson followed EQUITY's instructions, traveled approximately 30 miles roundtrip, and underwent the required drug testing. Mr. Johnson spent approximately one (1) hour and 40 minutes traveling to and from Quest Diagnostics and taking the required drug test.

However, EQUITY did not compensate Mr. Johnson and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and examination, or reimburse them for the travel expenses they incurred getting to and from the medical clinic. EQUITY's policy and/or practice of not paying for all costs Mr. Johnson and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Mr. Johnson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, as stated, EQUITY had a company-wide policy of requiring Mr. Johnson and other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, as described above, Mr. Johnson drove for

approximately 30 miles roundtrip to obtain a mandatory drug test and/or physical examination per EQUITY's instructions, but was not reimbursed for his mileage to and from the medical clinic.

Second, EQUITY, on a company-wide basis, required Mr. Johnson and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Johnson was required to drive his own vehicle approximately 23 miles one-way from his Wood Creek location to cover shifts at other EQUITY properties, such as residential complexes in Dublin, Livermore, and Pleasanton, California. Further, other aggrieved employees were required to drive to mandatory quarterly sales meetings in Foster City or run errands for their supervisors, such as purchasing party supplies for EQUITY-hosted residents' gatherings. Although EQUITY required that Mr. Johnson and other aggrieved employees use their own vehicles and complete these tasks as part of their job duties, EQUITY never reimbursed them for all of their travel expenses.

Third, during the relevant time period, EQUITY, on a company-wide basis, required that Mr. Johnson and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Johnson estimates he spent approximately an hour per month responding to calls and texts from EQUITY management to his personal cellular phone regarding work-related issues, including questions about various residents and their rental properties. Although EQUITY required Mr. Johnson and other aggrieved employees to regularly utilize their personal cellular phone to carry out work-related responsibilities, EQUITY failed to reimburse them for this cost.

EQUITY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. EQUITY could have provided Mr. Johnson and other aggrieved employees with the actual tools for use on the job, including company phones and company vehicles to be used for fulfilling work-related tasks, or reimbursed employees for their cellular phone usage, mileage, and travel expenses, but instead, EQUITY passed these operating costs off onto Mr. Johnson and other aggrieved employees. At all relevant times, Mr. Johnson did not earn at least two (2) times the minimum wage.

EQUITY's policy and/or practice of passing its operating costs on to Mr. Johnson and other aggrieved employees is in violation of California Labor Code section 2802. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." EQUITY, at all relevant times, was an employer or person acting on behalf of an employer(s) who

violated Mr. Johnson's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Johnson seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Johnson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against EQUITY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Johnson seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Brooke Waldrop
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8033

Best Regards,



Brooke Waldrop

Copy: EQUITY RESIDENTIAL SERVICES, L.L.C. (via U.S. Certified Mail); QRS-EMPLOYER, INC. (via U.S. Certified Mail); EQUITY RESIDENTIAL SERVICES II. LLC (via U.S. Certified Mail); EQUITY RESIDENTIAL MANAGEMENT, L.L.C. (via U.S. Certified Mail); ERP OPERATING LIMITED PARTNERSHIP (via U.S. Certified Mail); QRS-RWE, INC. (via U.S. Certified Mail)

AW APC
Park East, Ste 1000
CA 90067



7019 0700 0001 7649 4429

EQUITY RESIDENTIAL SERVICES, L.L.C.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

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Postage \$ 1.42	
Total Postage and Fees \$ 7.72	
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CHICAGO, IL 60606



9590 9402 4882 9032 7234 60

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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X ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express[®]
☐ Registered MailTM
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature ConfirmationTM
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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1. Article Addressed to:

ERP OPERATING LIMITED PARTNERSHIP
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606



9590 9402 4882 9032 7234 77

2. Article Number (Transfer from service label)

7019 0700 0001 7649 4412

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

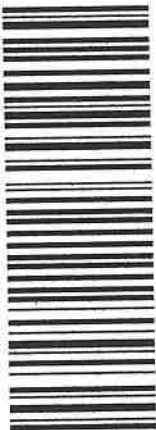
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

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- | | |
|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.30 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.42

Total Postage and Fees

\$ 7.72

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Johnson v. ERP
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Partnership,

one
AW APC
Park East, Ste 1000
CA 90067

one
AW APC
Park East, Ste 1000
CA 90067



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EQUITY RESIDENTIAL SERVICES II, LLC
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☐ Return Receipt (electronic) \$ _____
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☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage
\$ 1.42
Total Postage and Fees
\$ 7.72
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Johnson v. Equity
Residential Services
II, LLC

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9590 9402 4882 9032 7234 46

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A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

UNITED STATES POSTAGE
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0000666553 AUG 06 2019
MAILED FROM ZIP CODE 90067



one
AW APC
Park East, Ste 1000
CA 90067



7019 0700 0001 7649 4399

QRS-EMPLOYER, INC.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

7019 0700 0001 7649 4399

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Extra Services & Fees (check box, add fees as appropriate)	
☒ Return Receipt (hardcopy) \$ 2.80	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.42	
Total Postage and Fees \$ 7.72	
Sent To	
Street and Apt. No.	QRS-EMPLOYER, INC.
City, State, ZIP+4®	TWO NORTH RIVERSIDE PLAZA, SUITE 400 CHICAGO, IL 60606
PS Form 3800, A	



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1. Article Addressed to: QRS-EMPLOYER, INC. TWO NORTH RIVERSIDE PLAZA, SUITE 400 CHICAGO, IL 60606	B. Received by (Printed Name) C. Date of Delivery
2. Article Number (Transfer from service label) 7019 0700 0001 7649 4399	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery
PS Form 3811, July 2015 PSN 7530-02-000-9053	
Domestic Return Receipt	

UNITED STATES POSTAGE
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 \$007.720
 02 1P
 0000666553 AUG 06 2019
 MAILED FROM ZIP CODE 60607



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1. Article Addressed to:
 EQUITY RESIDENTIAL MANAGEMENT, L.L.C.
 TWO NORTH RIVERSIDE PLAZA, SUITE 400
 CHICAGO, IL 60606



9590 9402 4882 9032 7234 22

2. Article Number (Transfer from service label)
 7019 0700 0001 7649 3637

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature ☐ Agent
☐ Addressee
X
 B. Received by (Printed Name) C. Date of Delivery
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

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☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
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Postage
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 Total Postage and Fees
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Johnson v. Equity
 Residential
 Management, LLC

PS Form 3800, A

one
 AW APC
 Park East, Ste 1000
 CA 90067



7019 0700 0001 7649 3637

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 02 1P
 0000666553 AUG 06 2019
 MAILED FROM ZIP CODE 90067



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1. Article Addressed to:

QRS-RWE, INC.
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9590 9402 4882 9032 7234 39

2. Article Number (Transfer from service label)

7019 0700 0001 7649 3620

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

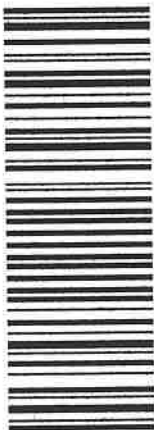
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

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Total Postage and Fees

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PS Form 3800, Apr

QRS-RWE, INC.

TWO NORTH RIVERSIDE PLAZA, SUITE 400
 CHICAGO, IL 60606

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Johnson v. QRS-Ru
 Inc.

one
 AW APC
 Park East, Ste 1000
 CA 90067

7019 0700 0001 7649 3620

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1. Article Addressed to:

EQUITY RESIDENTIAL MANAGEMENT, L.L.C.
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CHICAGO, IL 60606



9590 9402 4882 9032 7234 22

2. Article Number (Transfer from service label)

7019 0700 0001 7649 3637

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name) Harold J. Smith Date of Delivery 8/12/2019

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

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- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
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CHICAGO, IL 60606



9590 9402 4882 9032 7234 77

2. Article Number (Transfer from service label)

7019 0700 0001 7649 4412

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No



3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted
Delivery

☐ Return Receipt for
Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation
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1. Article Addressed to:

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CHICAGO, IL 60606



9590 9402 4882 9032 7234 60

2. Article Number (Transfer from service label)

7019 0700 0001 7649 4429

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

Hortense D. Andrade

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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1. Article Addressed to:

EQUITY RESIDENTIAL SERVICES II, LLC
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606



9590 9402 4882 9032 7234 46

2. Article Number (Transfer from service label)

7019 0700 0001 7649 4405

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X HORACE DANRABE ☒ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- | | |
|---|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Registered Mail Restricted Delivery (over \$500) | |

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

QRS-EMPLOYER, INC.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60605



9590 9402 4882 9032 7234 53

2. Article Number (Transfer from service label)

7019 0700 0001 7649 4399

COMPLETE THIS SECTION ON DELIVERY

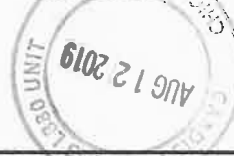
A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name) Hornez, L. M. B. 10/10/96 Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

QRS-RWE, INC.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606



9590 9402 4882 9032 7234 39

2. Article Number (Transfer from service label)

7019 0700 0001 7649 3620

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

ured Mail Restricted Delivery
(over \$500)

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT “2”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

DANIEL JONATHAN
310.712.8007 Direct
Daniel.Jonathan@capstonelawyers.com

May 19, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Noe Arreola v. Equity Residential Services, L.L.C., et al.*

Dear PAGA Administrator:

This office represents Noe Arreola in connection with his claims under the California Labor Code. Mr. Arreola was an employee of EQUITY RESIDENTIAL SERVICES, L.L.C.; EQUITY RESIDENTIAL SERVICES II, LLC; and/or EQUITY RESIDENTIAL MANAGEMENT, L.L.C. For the purpose of this letter, Mr. Arreola collectively refers to these entities as "EQUITY."

The employers may be contacted directly at the addresses below:

EQUITY RESIDENTIAL SERVICES, L.L.C.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

EQUITY RESIDENTIAL MANAGEMENT, L.L.C.
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

EQUITY RESIDENTIAL SERVICES II, LLC
TWO NORTH RIVERSIDE PLAZA, SUITE 400
CHICAGO, IL 60606

Mr. Arreola intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Arreola seeks relief on behalf of himself, the State of California, and other persons who were employed by EQUITY in California as a non-exempt, hourly paid employee ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

EQUITY employed Mr. Arreola as an hourly paid, non-exempt employee from approximately 2015 through September 2020. Mr. Arreola worked for EQUITY as a Service Technician at its Arches property located in Sunnyvale, California, its City Gate property in Cupertino, California, and its Verde property in San Jose, California—where he became a Service Manager. Mr. Arreola worked approximately eight (8) to ten (10) hours per day, five (5) to six (6) days per week, and 40-60 hours per week. At the time Mr. Arreola's employment with EQUITY ended, he earned approximately \$32.44 per hour plus nondiscretionary bonuses. His job duties included "turning" or "flipping"

apartments for move-ins, performing maintenance on the units and property, coordinating vendors for repairs and maintenance, and purchasing supplies.

EQUITY committed one or more of the following Labor Code violations against Mr. Arreola, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Mr. Arreola’s relevant claims are as follows:

EQUITY’s Company-Wide and Uniform Payroll and HR Practices

EQUITY acquires, develops, and manages rental apartment properties in seven (7) states, including California. In California, EQUITY owns and manages approximately 110 rental apartment properties. EQUITY RESIDENTIAL SERVICES, L.L.C. and EQUITY RESIDENTIAL MANAGEMENT, L.L.C. are Delaware limited liability companies. EQUITY RESIDENTIAL SERVICES II, LLC is an Illinois limited liability company. All have their principal place of business located in Chicago, Illinois. Upon information and belief, EQUITY maintains a centralized Human Resources (HR) department at their corporate headquarters in Chicago, Illinois, for all non-exempt, hourly paid employees working for EQUITY in California, including Mr. Arreola and other aggrieved employees. At all relevant times, EQUITY issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Arreola and other aggrieved employees, regardless of their location or position.

Upon information and belief, EQUITY maintains a centralized Payroll department at their corporate headquarters in Chicago, Illinois, which processes payroll for all non-exempt, hourly paid employees working for EQUITY in California, including Mr. Arreola and other aggrieved employees. Further, EQUITY issues the same uniform and formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. EQUITY’s centralized Payroll department processed payroll for non-exempt, hourly paid employees in the same manner throughout California. In other words, EQUITY utilized the same methods and formulas when calculating wages due to Mr. Arreola and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for

¹ These facts, theories, and claims are based on Mr. Arreola’s experience and counsel’s review of those records currently available relating to Mr. Arreola’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Arreola reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

EQUITY willfully failed to pay all overtime wages owed to Mr. Arreola and other aggrieved employees. During the relevant time period, Mr. Arreola and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, EQUITY had, and continues to have, a company-wide policy of understaffing its locations, resulting in a failure to provide Mr. Arreola and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. At the same time, EQUITY engaged in a company-wide practice and/or policy of pressuring Mr. Arreola and other aggrieved employees to quickly flip units to maintain a high occupancy level in Defendants' properties and to rapidly respond to residents' demands. This resulted in Mr. Arreola and other aggrieved employees being overburdened with time-sensitive tasks and having to remain available for residents' and supervisors' requests at all times to satisfy residents and meet occupancy goals. As a result of this lack of meal period coverage and the pressure to satisfy residents' demands and meet occupancy goals, Mr. Arreola and other aggrieved employees missed their meals entirely or had their meal periods interrupted by work to order to meet supervisors' demands or respond to residents' requests. For example, Mr. Arreola would miss meal periods approximately four (4) times a month to attend to time-sensitive tasks such as maintenance on a unit or picking up materials from the hardware store and would have his meal periods cut short approximately twice a week due to emergency tasks or to respond to demands by supervisors or residents. To the extent these hours worked qualified for overtime, EQUITY did not pay Mr. Arreola and other aggrieved employees for the time they continued to perform tasks during their meal periods.

Second, EQUITY has, and continues to have, company-wide policies and/or practices of discouraging employees from accruing overtime hours while pressuring employees to assist in maintaining a quota of occupied apartments, as stated above. Because EQUITY discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from EQUITY's supervisors, Mr. Arreola and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for their work. In addition, in order to control overtime accrual, EQUITY instructed employees to clock out at the end of their scheduled shifts, which caused employees to continue to perform assigned tasks off-the-clock. For example, two or three days a week, Mr. Arreola would spend approximately 20-30 minutes after his shift walking around the property to ensure all lights were out. At all times, Mr. Arreola and other aggrieved employees remained under EQUITY's control. This off-the-clock work could have been recorded by EQUITY, but it refused to do so to avoid payment of additional wages to Mr. Arreola and other aggrieved employees.

Third, EQUITY's policies and/or practices of understaffing its locations, strict limitations on overtime accrual, and maintaining an occupancy quota also led to Mr. Arreola and other aggrieved employees performing work off-the-clock, on their days off and outside of their scheduled shifts, in order to respond to all residents' and management's requests and complete their assigned tasks. For example, EQUITY's management would call and text message Mr. Arreola on his days off or outside of his scheduled shifts about work-related issues, including emergency maintenance requests made by residents, and he would be disciplined if he failed to respond. Mr. Arreola estimates he spent approximately one hour per week off-the-clock responding to calls and text messages from his

managers to his personal cellular phone. Additionally, Mr. Arreola and other aggrieved employees were required to occasionally cover shifts at other property locations and attend mandatory training sessions and meetings, but were not compensated for their travel time. For instance, when Mr. Arreola worked at an EQUITY property in San Jose for a period of time, he would have to cover shifts for other Service Technicians at a property in San Francisco once a month, which was a 90-minute drive each way, but would not be paid for his travel time. Again, this off-the-clock work could have been recorded by EQUITY, but it refused to do so to avoid payment of additional wages to Mr. Arreola and other aggrieved employees.

Fourth, during the relevant period, EQUITY had a company-wide “on-call” policy, whereby it scheduled Mr. Arreola and other aggrieved employees to work “on-call,” or on standby. During an “on-call” shift, Mr. Arreola and other aggrieved employees had to be available and report to work upon receiving a call from EQUITY notifying them that they needed to come in and work. When scheduled to be “on-call,” Mr. Arreola and other aggrieved employees were, in essence, on controlled standby for EQUITY because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Arreola refrained from making plans altogether while “on-call” for a standby shift because he knew that he had to drop whatever he was doing at a moment’s notice if he received a call from EQUITY to report to work. However, EQUITY did not pay Mr. Arreola and other aggrieved employees for the time during which they were waiting to receive a call from EQUITY and unable to use their time for their own purposes.

EQUITY knew or should have known that as a result of these company-wide practices, Mr. Arreola and other aggrieved employees were performing their assigned duties during meal periods and before or after their scheduled shifts (including on their days off) and were suffered or permitted to perform work for which they were not paid. Because Mr. Arreola and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, twelve (12) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, EQUITY did not pay Mr. Arreola and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, EQUITY paid Mr. Arreola and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, EQUITY failed to incorporate all remunerations, including commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Arreola and other aggrieved employees worked overtime and received these other forms of pay, EQUITY failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, Mr. Arreola and other aggrieved employees received commissions, incentive pay, and/or nondiscretionary bonuses from EQUITY. Mr. Arreola and other aggrieved employees earned a bonus based on the performance of the property at which they worked and incentive pay for annual employment anniversaries. Additionally, other aggrieved employees earned commissions based on the number of renewal leases secured, appearing on other aggrieved employees’ wage statements as “Leasing Commission.” In the same pay periods in which these commissions, nondiscretionary bonuses, and/or incentive pay were earned, Mr. Arreola and other aggrieved employees also worked overtime hours for which they were paid overtime wages. However, EQUITY failed to incorporate these other earned forms of pay into Mr. Arreola’s other aggrieved employees’ regular rate of pay and, as a result, paid them at an incorrect and lower rate of pay for overtime hours worked. Specifically, due to EQUITY’s inaccurate wage statements as described in a section below, the

calculation of an employee's "Overtime Pay Premium" is also inaccurate. EQUITY's failure to properly calculate the overtime rate of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Arreola and other aggrieved employees.

EQUITY's failure to pay Mr. Arreola and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to EQUITY's uniform policies and/or practices of understaffing while simultaneously demanding that employees assist in maintaining a quota of occupied properties, along with the resultant lack of meal period coverage, Mr. Arreola and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled, resulting in them working off-the-clock. Additionally, due to EQUITY's restrictions on overtime accrual while pressuring employees to meet the occupancy quota, Mr. Arreola and other aggrieved employees were required to work off-the-clock before and after their scheduled shifts, such as completing assigned tasks and answering calls and text messages from management on their days off, work for which they were not paid. Furthermore, as stated, Mr. Arreola and other aggrieved employees were required to cover shifts at other property locations and attend mandatory training sessions and meetings, but were not compensated for their travel time. Also, as stated, EQUITY systematically, and on a company-wide basis, required Mr. Arreola and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Arreola and other aggrieved employees were subject to EQUITY's control during an "on-call" shift, EQUITY did not pay Mr. Arreola and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

Further, EQUITY maintained and implemented a company-wide policy of requiring all employees to travel to a medical clinic on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. However, EQUITY did not compensate Mr. Arreola and other aggrieved employees for the time they spent traveling to and from the medical facilities or for the time they spent undergoing testing and/or physical examinations. At all times, EQUITY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations was to take place, and determining the scope of the testing and/or physical examinations. Mr. Arreola followed EQUITY's instructions and traveled to a medical facility designated by EQUITY. EQUITY did not compensate Mr. Arreola and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, EQUITY did not pay minimum wages for all hours worked by Mr. Arreola and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, EQUITY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, EQUITY regularly failed to pay at least minimum wages to Mr. Arreola and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, EQUITY has, and continues to have, company-wide policies and/or practices of understaffing its locations while pressuring employees to assist in maintaining a quota of occupied properties, which resulted in a lack of meal period coverage and impeded Mr. Arreola and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Mr. Arreola and other aggrieved employees also had to remain available to respond to requests from residents or supervisors and remedy maintenance emergencies, including during their meal periods. For example, Mr. Arreola would miss his meal periods approximately four (4) times a month to attend to time-sensitive tasks such as maintenance on a unit or picking up materials from the hardware store, was rarely able to take a meal period on time due to an overburdened workload, and would have his meal periods cut short approximately twice a week due to emergency tasks or to respond to demands by supervisors or residents. Other aggrieved employees also missed or had their meal periods interrupted or took them late to address issues with residents or supervisors.

In addition, EQUITY did not schedule second meal periods and had no policy for permitting Mr. Arreola and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Arreola and other aggrieved employees did not receive second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, when Mr. Arreola worked in excess of ten (10) hours in a day, EQUITY did not schedule him to take a second meal period and did not provide him with the opportunity to take a

second meal period. Mr. Arreola and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, EQUITY had a company-wide policy of requiring all newly-hired employees to sign blanket Meal Period Waivers at or near their time of hire. EQUITY took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and on that basis did not provide them with all meal periods to which they were entitled. Specifically, EQUITY's "California Meal Period Waiver" form provides that the waiver remains in effect until the employee provides his or her supervisor with a written note of his or her decision to revoke: "I know I can revoke this waiver by giving a written note to my Regional Human Resources department or my supervisor"

EQUITY's company-wide use of blanket meal waivers signed at or near the time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged and impeded Mr. Arreola and other aggrieved employees from taking all meal periods to which they were entitled. And, EQUITY's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers discouraged Mr. Arreola and other aggrieved employees from taking meal periods.

What's more, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that EQUITY requires aggrieved employees to sign Meal Waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because EQUITY's obligation to provide Mr. Arreola and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

EQUITY knew or should have known that as a result of its policies, Mr. Arreola and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. EQUITY further knew or should have known that they did not pay Mr. Arreola and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted. As a result, Mr. Arreola and other aggrieved employees worked through some or all of their meal periods, had their meal periods interrupted to return to work, and/or waited extended periods of time before taking meal periods.

EQUITY also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Arreola and other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that EQUITY did pay Mr. Arreola and other aggrieved employees for missed, late, and interrupted meal periods, EQUITY did not pay Mr. Arreola and other

aggrieved employees at the correct rate of pay for premiums because EQUITY systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, EQUITY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Arreola and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

As with meal periods, EQUITY's company-wide policy and practice of understaffing its locations while pressuring employees to assist in maintaining a quota of occupied properties, which resulted in a lack of rest period coverage, prevented Mr. Arreola and other aggrieved employees from being relieved of all duty to take compliant rest periods. Furthermore, EQUITY had no policy of scheduling rest periods for employees, which further impeded Mr. Arreola and other aggrieved employees from taking compliant rest periods. As a result, Mr. Arreola and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of six (6) hours, and/or in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Mr. Arreola missed almost every rest period during his employment with EQUITY due to lack of rest period coverage. Thus, EQUITY did not authorize or permit Mr. Arreola to take timely, compliant rest periods.

Additionally, EQUITY maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Arreola and other aggrieved employees remain on premises during their rest periods. Because Mr. Arreola and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, EQUITY effectively maintained control over Mr. Arreola and other aggrieved employees during rest periods.

EQUITY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Arreola and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that EQUITY did pay Mr. Arreola and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, EQUITY did not pay Mr. Arreola and other aggrieved employees at the correct rate of pay for premium wages because EQUITY failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, EQUITY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Arreola and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. EQUITY has not provided Mr. Arreola and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, EQUITY has knowingly and intentionally provided Mr. Arreola and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, EQUITY issued uniform wage statements to Mr. Arreola and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, EQUITY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, EQUITY failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct hourly, vacation, holiday and sick pay rates in compliance with section 226(a)(9). Second, EQUITY failed to correctly list the correct amount of total hours worked by other aggrieved employees in compliance with section 226(a)(2). Third, EQUITY did not calculate and list the correct amount of gross and net wages earned by other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5), respectively. Fourth, because EQUITY did not record the time Mr. Arreola and other aggrieved employees spent working off-the-clock, EQUITY did not list the correct amount of gross wages and net wages earned by Mr. Arreola and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5), respectively. For the same reason, EQUITY failed to accurately list the total number of the hours worked by Mr. Arreola and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in

effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because EQUITY did not calculate Mr. Arreola's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, EQUITY did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1). For the same reason, EQUITY failed to list the correct amount of net wages earned by Mr. Arreola and other aggrieved employees in violation of section 226(a)(5). EQUITY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), EQUITY willfully failed to maintain accurate payroll records for Mr. Arreola and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, EQUITY failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Arreola and other aggrieved employees, in violation of section 1198. Furthermore, in light of EQUITY's failure to provide Mr. Arreola and other aggrieved employees with second 30-minute meal periods to which they were entitled, EQUITY kept no records of meal start and end times for second meal periods.

Because EQUITY failed to provide the accurate number of total hours worked on wage statements, Mr. Arreola and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Arreola and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, EQUITY failed to pay Mr. Arreola and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

EQUITY willfully failed to pay Mr. Arreola and other aggrieved employees who are no longer employed by EQUITY all their earned wages, including, but not limited to, commission pay, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving EQUITY's employ.

Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, EQUITY implemented, on a company-wide basis, an employer-imposed requirement that Mr. Arreola and other aggrieved employees undergo a mandatory drug test and/or physical examination, but required them to do so at their own expense. As stated, EQUITY had a company-wide policy requiring that all employees, including Mr. Arreola and other aggrieved employees, travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, EQUITY was in control of scheduling the date and time for the drug testing and/or physical examination, selecting the provider/facility where the drug testing and/or physical examination was to take place, and determining the scope of the drug test and/or physical examination. For example, Mr. Arreola was instructed by EQUITY to travel to a designated medical facility and obtain a drug test. Mr. Arreola followed EQUITY's instructions, traveled there roundtrip, and underwent the required drug testing.

However, EQUITY did not compensate Mr. Arreola and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and examination, or reimburse them for the travel expenses they incurred getting to and from the medical clinic. EQUITY's policy and/or practice of not paying for all costs Mr. Arreola and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, EQUITY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because EQUITY failed to pay Mr. Arreola and other aggrieved employees reporting time pay when they presented themselves ready for work by working “on-call” shifts and awaiting instructions on whether to show up at the property, but ultimately were not called. EQUITY did not pay Mr. Arreola and other aggrieved employees for at least half of their scheduled day's work when they were subject to EQUITY's on-call policy and were not called or told not to come in to the property. For example, Mr. Arreola monitored his phone during “on-call” shifts as required by EQUITY's on-call policy or practice, but was sometimes not called in. When this

occurred, EQUITY did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay. Accordingly, Mr. Arreola and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Arreola and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, as stated, EQUITY had a company-wide policy of requiring Mr. Arreola and other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, EQUITY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. EQUITY gave Mr. Arreola and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Mr. Arreola and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of EQUITY. For example, as described above, Mr. Arreola was required to drive to obtain a mandatory drug test and/or physical examination per EQUITY's instructions, but was not reimbursed for his mileage to and from the medical clinic. Although EQUITY required Mr. Arreola and other aggrieved employees to undergo drug testing and/or physical examinations, EQUITY never reimbursed them for all of their travel expenses.

Second, EQUITY, on a company-wide basis, required Mr. Arreola and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Arreola was required to drive his own vehicle up to forty (40) miles each way to cover shifts at other properties approximately once a month. Mr. Arreola also had to obtain material from hardware stores, driving approximately ten (10) miles per month. Furthermore, Mr. Arreola drove to and from training sessions at other EQUITY locations in South San Francisco or San Mateo, and traveled to and from annual meetings which were approximately 50 miles roundtrip. Although EQUITY required that Mr. Arreola and other aggrieved employees use their own vehicles and complete these tasks as part of their job duties, EQUITY never reimbursed them for all of their travel expenses.

Third, during the relevant time period, EQUITY, on a company-wide basis, required that Mr. Arreola and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Arreola estimates he spent approximately an hour per week responding

to calls and text messages from EQUITY management to his personal cellular phone regarding work-related issues, including emergency maintenance requests. Although EQUITY required Mr. Arreola and other aggrieved employees to regularly utilize their personal cellular phone to carry out work-related responsibilities, EQUITY failed to reimburse them for this cost.

Fourth, during the relevant time period, EQUITY, on a company-wide basis, required that Mr. Arreola and other aggrieved employees supply their own tools for work-related tasks. For instance, Mr. Arreola spent approximately \$200 on a drill, pliers, screwdrivers, and other tools. Although EQUITY required that Mr. Arreola and other aggrieved employees use their own tools and complete these tasks as part of their job duties, EQUITY never reimbursed them for all of their tool expenses.

EQUITY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. EQUITY could have provided Mr. Arreola and other aggrieved employees with the actual tools for use on the job, including company phones and company vehicles to be used for fulfilling work-related tasks, or reimbursed employees for their cellular phone usage, mileage, travel expenses, and tools but instead, EQUITY passed these operating costs off onto Mr. Arreola and other aggrieved employees. At all relevant times, Mr. Arreola did not earn at least two (2) times the minimum wage.

EQUITY's policy and/or practice of passing its operating costs on to Mr. Arreola and other aggrieved employees is in violation of California Labor Code section 2802. Mr. Arreola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." EQUITY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Arreola's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Arreola seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Arreola, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against EQUITY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Arreola seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Daniel S. Jonathan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8007

Best Regards,

A handwritten signature in dark ink, appearing to read "D. S. Jonathan", with a stylized flourish at the end.

Daniel S. Jonathan

Copy: EQUITY RESIDENTIAL SERVICES, L.L.C. (via U.S. Certified Mail); EQUITY RESIDENTIAL SERVICES II, LLC (via U.S. Certified Mail); EQUITY RESIDENTIAL MANAGEMENT, L.L.C. (via U.S. Certified Mail); Julie R. Trotter, Esq., Jacqueline Beaumont, Esq., Delavan J. Dickson, Esq., Call & Jensen, 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660 (via U.S. Certified Mail)



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Julie R. Trotter, Esq., Jacqueline Beaumont, Esq.,
Delavan J. Dickson, Esq.
Call & Jensen
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660



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Call & Jensen
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Newport Beach, CA 92660



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Arreola v. Equity
Residential

PS Form 3800, April 2015 PSN 7530-02-000-9047

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **November 22, 2021**, I served the document(s) described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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SERVICES II, LLC, and EQUITY
RESIDENTIAL MANAGEMENT, L.L.C.,

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

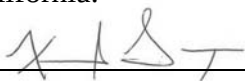
☐ **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

☒ **BY ELECTRONIC SERVICE:** A true and correct copy of the above-referenced document(s) was electronically served on counsel of record by means of transmitting the document to File & ServeXpress (www.fileandservexpress.com) in accordance with the Court’s Order.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

Executed on **November 22, 2021**, at Los Angeles, California.

Xochitl Tapia
Type or Print Name


Signature