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Attorneys for Plaintiff ERIC ELLIS,
individually and on behalf of all other
persons similarly situated, and on behalf
of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ERIC ELLIS, individually and on behalf of
all other persons similarly situated, and on
behalf of the general public,

Plaintiff,

v.

WARREN PROPERTIES, INC., a
California corporation, and Does 1
through 30, inclusive,

Defendants.

Case No. 21STCV26336

*Assigned to the Hon. Carolyn Kuhl
Dept. 12*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES:**

1. Failure to Pay Overtime Wages;
2. Failure to Pay Vacation Wages;
3. Failure to Timely Pay Wages;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Reimburse Business Expenses;
6. Violation of California's Investigative Consumer Reporting Agencies Act;
7. Violation of California Unfair Competition Law;
8. California Labor Code Private Attorneys General Act (PAGA).

Complaint Filed: July 16, 2021

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC ELLIS (“PLAINTIFF” or “ELLIS”) brings this action against Defendant
2 WARREN PROPERTIES, INC., a California corporation (“WARREN”), and DOES 1 through
3 30, inclusive (collectively “DEFENDANTS”), on behalf of himself and all others similarly
4 situated, and alleges upon information and belief, except as to the allegations concerning
5 PLAINTIFF or his counsel, which are made upon PLAINTIFF’s personal knowledge, as
6 follows:

7 **NATURE OF ACTION**

8 1. This action is brought on behalf of PLAINTIFF and a class of: (1) all hourly-paid
9 employees employed by, or formerly employed by, DEFENDANTS within the State of
10 California, to recover unpaid overtime compensation, unpaid vacation wages, unreimbursed
11 business expenses, statutory penalties, civil penalties, restitution, as well as other damages owed
12 pursuant to the California Labor Code and California Business and Professions Code section
13 17200 et seq. (the “Hourly Class”); and, (2) all former similarly-situated employees of
14 DEFENDANTS that did not receive the timely payment of their wages upon the separation
15 from their employment to recover statutory penalties, civil penalties, and damages owed
16 pursuant to California Labor Code section 203 (the “Waiting Time Class”); all persons residing
17 in California who applied for a job with DEFENDANTS in the State of California and who
18 requested a copy of the consumer report by checking a box on DEFENDANTS’ disclosure and
19 authorization form, but did not receive a copy of the investigative consumer report within three
20 business days of the date that the report was provided to DEFENDANTS (the “Consumer
21 Report Class”) to recover actual damages, statutory damages, penalties and punitive damages.

22 2. As a result of DEFENDANTS’ company-wide policies and practices,
23 PLAINTIFF and other members of the Hourly Class were denied overtime wages because
24 DEFENDANTS: (1) failed to include bonuses earned when determining PLAINTIFF’s and
25 other members of the class’ regular rate of pay for calculating their overtime premium wages;
26 (2) failed to include the fair market value of employer-provided lodging when determining
27 PLAINTIFF’s and other members of the class’ regular rate of pay for calculating their overtime
28 premium wages; and/or (3) failed to pay for all hours worked in excess of eight in one workday

1 or forty in one workweek or for the first eight hours of the seventh consecutive day of work.
2 PLAINTIFF and other members of the Hourly Class were not provided paid vested vacation
3 wages at their final rate of pay upon their separation of employment. PLAINTIFF and other
4 members of the Hourly Class were also not reimbursed for necessary business expenses because
5 DEFENDANTS required PLAINTIFF and other members of the class to have personal cell
6 phones so that they could be reached at all times but did not reimburse PLAINTIFF and other
7 members of the Hourly Class for expenses for personal cell phones and usage of personal cell
8 phones. PLAINTIFF, the Hourly Class, and the Waiting Time Class were not paid all wages
9 due upon their termination because they did not timely receive all compensation due including
10 overtime and vacation wages. PLAINTIFF and other members of the Hourly Class did not
11 receive accurate itemized wage statements that complied with California Labor Code section
12 226, subdivision (a), because the wage statements did not accurately state gross wages earned,
13 all applicable hourly rates in effect during the pay period and the corresponding number of
14 hours worked at each hourly rate, number of overtime hours worked, and net wages earned due
15 to DEFENDANTS' failure to properly calculate and pay overtime wages and vested vacation
16 wages. PLAINTIFF and other members of the Consumer Report Class did not receive a copy of
17 the investigative consumer report within three business days of the date that the report was
18 provided to DEFENDANTS even though they had indicated on a written form, by means of a
19 box to check, that they wish to receive a copy of any report that was to be prepared.

20 3. Upon information and belief, in an effort to boost profits, DEFENDANTS
21 systematically ignored their obligations under California wage and hour laws as set forth above.
22 PLAINTIFF is informed and believes and thereon alleges that these violations are continuing to
23 this day.

24 4. PLAINTIFF and the members of the Hourly Class were denied overtime wages
25 due to DEFENDANTS' failure to: (1) include bonuses earned when determining PLAINTIFF's
26 and other members of the class' regular rate of pay for calculating their overtime premium
27 wages; (2) include the fair market value of employer-provided lodging when determining
28 PLAINTIFF's and other members of the class' regular rate of pay for calculating their overtime

premium wages; and/or (3) pay for all hours worked in excess of eight in one workday or forty in one workweek or for the first eight hours of the seventh consecutive day of work.

5. PLAINTIFF and the members of the Hourly Class were not paid their vacation wages at their final rate of pay upon termination of their employment.

6. PLAINTIFF and the members of the Hourly Class were not reimbursed for necessary business-related expenses and costs such as costs for required personal cell phone use.

7. At all times relevant to this action, DEFENDANTS also had, and continue to have, a uniform policy and practice of knowingly and intentionally failing to furnish PLAINTIFF and the Hourly Class at the time of each payment of wages, an itemized statement in writing accurately showing all of the information required by the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

8. At all times relevant to this action, DEFENDANTS also had, and continue to have, a uniform policy and practice of failing to pay PLAINTIFF and the Hourly Class and Waiting Time Class wages earned in a timely manner upon separation of employment.

9. PLAINTIFF is informed and believes and thereon alleges that these violations are continuing to this day.

10. PLAINTIFF is a member of and the named representative for the “classes” as defined in paragraph 60 below. Specifically, PLAINTIFF is a member of and named representative of the Hourly Class, the Waiting Time Class, and Consumer Report Class, as defined in paragraph 60.

11. PLAINTIFF is a member of and the named representative for the “Overtime Subclass” as defined in paragraph 61 below. The term “Overtime Wage Subclass” includes PLAINTIFF and all other persons similarly situated.

12. PLAINTIFF is a member of and the named representative for the “Vacation Wage Subclass” as defined in paragraph 61 below. The term “Vacation Wage Subclass” includes PLAINTIFF and all other persons similarly situated.

1 13. PLAINTIFF is a member of and the named representative for the “Business
2 Expense Reimbursement Subclass” as defined in paragraph 61 below. The term “Business
3 Expense Reimbursement Subclass” includes PLAINTIFF and all other persons similarly
4 situated.

5 14. PLAINTIFF is a member of and the named representative for the “Itemized
6 Wage Statement Subclass” as defined in paragraph 61 below. The term “Itemized Wage
7 Statement Subclass” includes PLAINTIFF and all other persons similarly situated.

8 15. PLAINTIFF is a member of and the named representative for the “Waiting Time
9 Penalties Subclass” as defined in paragraph 61 below. The term “Waiting Time Penalties
10 Subclass” includes PLAINTIFF and all other persons similarly situated.

11 16. PLAINTIFF is a member of and the named representative for the “ICRAA
12 Consumer Report Subclass” as defined in paragraph 61 below. The term “ICRAA Consumer
13 Report Subclass” includes PLAINTIFF and all other persons similarly situated.

14 17. As a result of DEFENDANTS’ violations alleged herein, PLAINTIFF and the
15 Hourly Class are entitled to the following remedies: (1) one and one-half times the regular rate
16 of pay pursuant to California Labor Code section 1194 for work that exceeded eight (8) hours
17 in one workday and/or forty (40) hours per workweek in violation of California Labor Code
18 section 510; (2) payment of vested vacation wages at their final rate of pay pursuant to
19 California Labor Code section 227.3; (3) reimbursement of business expenses that have not
20 been reimbursed in violation of California Labor Code section 2802; (4) waiting-time penalties
21 under California Labor Code section 203 for untimely payment of final wages in violation of
22 California Labor Code sections 201, 201.3, and/or 202; (5) actual damages and/or penalties
23 under California Labor Code section 226, subdivisions (e) and (g); (6) restitution under
24 California Business and Professions Code section 17203 for the unlawful and unfair business
25 practices; (7) penalties under California Private Attorneys General Act of 2004 (“PAGA”),
26 codified in California Labor Code section 2698 et seq.; and (8) an award of reasonable
27 attorneys’ fees and costs under California Labor Code sections 218.5, 1194, 2699, subdivision
28 (g), and California Code of Civil Procedure section 1021.5 and/or other applicable law.

18. As a result of DEFENDANTS' violations alleged herein, PLAINTIFF and the Waiting Time Class are entitled to the following remedies: (1) waiting-time penalties under California Labor Code section 203 for untimely payment of final wages in violation of California Labor Code sections 201, 201.3, and/or 202; (2) restitution under California Business and Professions Code section 17203 for the unlawful and unfair business practices; (3) penalties under California Private Attorneys General Act of 2004 ("PAGA"), codified in California Labor Code section 2698 et seq.; and (4) an award of reasonable attorneys' fees and costs under California Labor Code sections 218.5, 2699, subdivision (g), and/or other applicable law.

19. As a result of DEFENDANTS' violations alleged herein, PLAINTIFF and the Consumer Report Class are entitled to the following remedies: (1) actual damages and/or statutory damages under the California Investigative Consumer Report Act ("ICRAA"); (2) an award of punitive damages under the ICRAA; and (3) an award of reasonable attorneys' fees and costs under California Civil Code section 1786.50, and/or other applicable law.

JURISDICTION AND VENUE

20. The Court has jurisdiction over this matter because PLAINTIFF alleges state law claims pursuant to the California Labor Code, IWC Wage Order, and California Business and Professions Code.

21. At all times mentioned herein, DEFENDANTS were qualified to do business in the State of California.

22. Venue is proper in this district because DEFENDANTS maintained their corporate headquarters and were qualified to do business in the State of California. DEFENDANTS maintained, and currently maintain offices and employ a substantial number of employees in Los Angeles County. A class is proper under California Business and Professions Code section 17200 because most, if not all, of the improper conduct emanated out of California.

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PARTIES

The Representative Plaintiff

23. PLAINTIFF and proposed class representative, ERIC ELLIS, is an individual and at all times mentioned in this First Amended Class Action Complaint for Damages (“FAC”), has been a resident of the State of California in the County of Los Angeles.

24. PLAINTIFF and proposed class representative, ERIC ELLIS, was employed by DEFENDANTS from approximately July 6, 2020 to March 10, 2021 as a leasing representative. At all times during his employment, PLAINTIFF performed his job duties at DEFENDANTS’ properties located at 5401 Sepulveda Blvd., Sherman Oaks, California 91411; 7745 Reseda Blvd., Reseda California, 91335; and/or other properties located across Southern California. The obligations and responsibilities of PLAINTIFF as a leasing representative included leasing, maintaining, and managing apartment units. PLAINTIFF’s hourly rate of pay was \$18.00 and he also received lodging and bonuses. PLAINTIFF was hired by DEFENDANTS pursuant to written and implied contracts of employment, impliedly or explicitly, promising to pay in conformance with California wage and hour requirements. The texts of any written terms of contract are contained within DEFENDANTS’ records.

25. Throughout PLAINTIFF’s employment with DEFENDANTS, PLAINTIFF regularly worked more than eight (8) hours per workday and forty (40) hours per workweek, but was not paid the overtime premiums that he was entitled to because DEFENDANTS did not include PLAINTIFF’s bonuses and/or the fair market value of employer-provided lodging when determining PLAINTIFF’s regular rate of pay.

26. DEFENDANTS failed to pay PLAINTIFF all of his unused vested vacation wages at his final rate of pay when they terminated him.

27. DEFENDANTS required PLAINTIFF to use a personal cell phone for work each day but DEFENDANTS did not reimburse PLAINTIFF for the expense of his personal cell phone and usage of his personal cell phone.

28. DEFENDANTS failed to pay PLAINTIFF all wages owed at the separation of employment as a result of their failure to properly pay overtime/double-time wages and failure

1 to pay vested vacation wages. DEFENDANTS also failed to timely pay PLAINTIFF all wages
2 owed on the date that he was separated from employment.

3 29. The members of the Hourly Class that PLAINTIFF seeks to represent are
4 hourly-paid current or former employees of DEFENDANTS in California who, on information
5 and belief: (1) did not receive overtime premiums, and/or received improperly calculated
6 double-time premiums, for all hours worked in excess of eight (8) in one workday, twelve (12)
7 in one workday, or forty (40) in one workweek; (2) were not paid their vested vacation wages
8 at their final rate of pay upon termination; (3) were not paid all wages due at the separation of
9 their employment; (4) did not receive accurate itemized wage statements; and (5) were not
10 reimbursed for necessarily incurred business expenses.

11 30. The members of the Waiting Time Class that PLAINTIFF seeks to represent are
12 former employees of DEFENDANTS in California who, on information and belief, were not
13 timely paid all wages due upon the separation from their employment. The members of the
14 Consumer Report Class that PLAINTIFF seeks to represent are all prospective employees
15 and/or current employees employed by, or formerly employed by DEFENDANTS in California
16 who requested a copy of the investigative consumer report by checking a box on
17 DEFENDANTS' disclosure and authorization form, but did not receive a copy of the
18 investigative consumer report within three business days of the date that the report was
19 provided to DEFENDANTS during the applicable liability period.

20 31. DEFENDANTS employ numerous leasing representatives in the State of
21 California. The obligations and responsibilities of these employees are virtually identical from
22 location-to-location and employee-to-employee. DEFENDANTS employ numerous employees
23 in the State of California. Any differences in job activities between the different employees
24 were and are legally insignificant to the issues presented by this action.

25 32. On information and belief, PLAINTIFF and each member of the classes he
26 seeks to represent were regularly subjected to, or had personal knowledge of, the violations
27 described in this FAC and/or the allegations contained herein made on information and belief
28

1 based upon investigation of counsel. Each member of the purported classes are, or did, work at
2 DEFENDANTS' worksites and are therefore witnesses to the allegations of this FAC.

3 33. DEFENDANTS' leasing representative positions do not involve work that fall
4 within any exception to California Labor Code section 1194 and/or the IWC Wage Order
5 applicable to DEFENDANTS' business.

6 **DEFENDANTS**

7 34. On information and belief, DEFENDANTS, individually and through their
8 affiliates, subsidiaries, successors in interest, and/or officers, own and operate a California-
9 based real estate company that acquires, develops, and/or manages real property throughout
10 California. On information and belief, DEFENDANTS own, develop, control, manage and/or
11 operate real property throughout Los Angeles County where employees perform various job
12 duties in order to maintain and provide quality housing.

13 35. DEFENDANTS are now and at all times mentioned in this FAC were
14 conducting business within the State of California and are licensed to do business and are
15 actually doing business in the State of California. At all times relevant to this action,
16 DEFENDANTS maintained their headquarters in Rancho Santa Fe, California.

17 36. DEFENDANTS' violations as described in this FAC were knowing, intentional,
18 deliberate and willful.

19 37. PLAINTIFF is ignorant of the true names or capacities of the defendants sued
20 herein under the fictitious name DOES 1 through 30, inclusive.

21 38. Each defendant acted in all respects pertinent to this action as the agent of the
22 other defendant, carried out a joint scheme, business plan or policy in all respects pertinent
23 hereto, and the acts of each defendant are legally attributable to the other defendant.

24 39. PLAINTIFF is informed and believes and thereon alleges that, at all relevant
25 times, each defendant was the principal, partners, joint venturer, successor in interest and/or
26 predecessor in interest of some or all of the other defendants so as to be liable for their conduct
27 with respect to the matters alleged below. PLAINTIFF is informed and believes and thereon
28 alleges that each defendant acted pursuant to and within the scope of the relationships alleged

1 above, that each defendant knew or should have known about, and authorized, ratified, adopted,
2 approved, controlled and abetted the conduct of all other defendants.

3 40. Upon information and belief, DEFENDANTS exercised, and continue to
4 exercise, control over the wages, hours, and/or working conditions at their worksites in
5 California by, including but not limited to: controlling the day-to-day operations and significant
6 business functions at their worksites; hiring, firing, and modifying the employment conditions
7 of the employees at their worksites; controlling matters concerning compensation and
8 promotion of employees; and, directing, supervising and arranging employee's work activities,
9 work schedules and employment conditions.

10 41. PLAINTIFF is informed and believes and thereon alleges that at all relevant
11 times, each defendant, directly or indirectly, or through agents or other persons, employed
12 PLAINTIFF and other members of the classes, and exercised control over their labor contracts,
13 policies and procedures regarding wages, hours, and working conditions, and caused or
14 permitted the violations of all of the aggrieved employees at issue in this FAC. PLAINTIFF is
15 informed and believes and thereon alleges that DEFENDANTS were joint-employers of
16 PLAINTIFF and other members of the classes and are therefore independently and jointly and
17 severally liable for violations as alleged herein. At all times relevant to this action,
18 PLAINTIFF and the other members of the classes have, directly or indirectly, performed
19 services for each of the DEFENDANTS, and to the mutual benefit of all DEFENDANTS.

20 42. DEFENDANTS were and are "employers" of PLAINTIFF and the classes, as
21 defined in the IWC Wage Orders, and caused or permitted the violations at issue in this FAC.

22 43. DEFENDANTS' violations as described in this FAC were knowing, intentional,
23 deliberate, and willful.

24 **EXHAUSTION OF REMEDIES**

25 44. The procedural requirements of a PAGA claim, pursuant to California Labor
26 Code section 2699.3, subdivision (a), require first that the aggrieved employee or representative
27 shall give written notice by online submission to the California Labor and Workforce
28

1 Development Agency and certified mail to the employer(s). PLAINTIFF ERIC ELLIS has met
2 this requirement.

3 45. Second, the procedural requirements, pursuant to California Labor Code section
4 2699.3, subdivision (a)(2)(A) provides that:

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

13 46. PLAINTIFF ERIC ELLIS has met this procedural requirement: (a) on July 16,
14 2021, PLAINTIFF ERIC ELLIS provided notice to the California Labor and Workforce
15 Development Agency and DEFENDANTS of his intent to commence a PAGA action for
16 DEFENDANTS' alleged violations; (b) 65 calendar days have passed without the California
17 Labor and Workforce Development Agency providing notice of its intent to investigate. As
18 such, PLAINTIFF ERIC ELLIS has complied with the administrative requirements of PAGA.

19 **FACTUAL BACKGROUND**

20 47. This is a class action pursuant to California Code of Civil Procedure section 382
21 to vindicate rights afforded to the class by the California Labor Code, the applicable IWC
22 Wage Orders, California Business and Professions Code section 17200 et seq., California Code
23 of Civil Procedure, and California decisional law. This action is brought on behalf of
24 PLAINTIFF and the Hourly Class comprising of all current and former hourly-paid employees
25 employed by DEFENDANTS in the State of California during the applicable liability period,
26 the Waiting Time Class comprised of all former employees of DEFENDANTS that did not
27 timely receive their wages due and owing upon separation from their employment during the
28 applicable liability period, and the Consumer Report Class comprising of all prospective

1 employees and/or current employees employed by, or formerly employed by DEFENDANTS
2 in California who, did not receive a copy of the investigative consumer report within three
3 business days of the date that the report was provided to DEFENDANTS during the applicable
4 liability period even though they had indicated on a written form, by means of a box to check,
5 that they wish to receive a copy of any report that was to be prepared.

6 48. At all times during the applicable liability period, DEFENDANTS owned and
7 operated a California-based real estate company that acquired, developed, and/or managed real
8 property throughout California.

9 49. At all times relevant to this action, DEFENDANTS controlled PLAINTIFF's
10 wages, hours, and working conditions. DEFENDANTS hired PLAINTIFF. DEFENDANTS
11 directed and supervised PLAINTIFF's work at its worksites and properties. DEFENDANTS
12 negotiated and set PLAINTIFF's rates of pay for the work he performed and the method of
13 compensation. DEFENDANTS provided PLAINTIFF with a place to work and determined his
14 hours and conditions of employment. DEFENDANTS exclusively controlled the day-to-day
15 operations at their worksites and properties. DEFENDANTS had the power to either cause
16 PLAINTIFF to work or prevent him from working on their behalf. DEFENDANTS had
17 exclusive control over PLAINTIFF's work activities, and the tasks PLAINTIFF performed
18 were for the benefit of DEFENDANTS and an integral part of DEFENDANTS' regular
19 business operations.

20 50. During the applicable liability period, PLAINTIFF and members of the Hourly
21 Class were employed to perform job duties on the behalf of DEFENDANTS and received
22 compensation on an hourly basis. During the applicable liability period, PLAINTIFF and
23 members of the Waiting Time Class were employed to perform job duties on the behalf of
24 DEFENDANTS and earned compensation for their labor. The primary obligations and
25 responsibilities of PLAINTIFF and the classes included performing job duties for the purpose
26 of serving DEFENDANTS and DEFENDANTS' customers. PLAINTIFF and members of the
27 Hourly Class are not exempt from any of the provisions of the IWC Wage Orders because they
28

1 were not compensated on a salary basis and more than half their compensation did not
2 represent commissions.

3 51. PLAINTIFF is informed and believes, and based thereon alleges,
4 DEFENDANTS currently employ hundreds of individuals, including hundreds of hourly-paid
5 employees, in the State of California.

6 52. For at least four years prior to the filing of this action and through to the present,
7 DEFENDANTS wrongfully withheld compensation for overtime hours worked and vacation
8 wages earned. DEFENDANTS systematically maintained and uniformly enforced against its
9 non-exempt hourly-paid employees unlawful employment practices and policies in violation of
10 California wage and hour laws, including:

11 (a) failing to properly pay class members, including PLAINTIFF, for overtime time
12 worked pursuant to the California Labor Code and IWC Wage Orders;

13 (b) failed to properly pay class members, including PLAINTIFF, for vested vacation
14 wages at their final rate of pay at the time of termination;

15 (c) failing to pay class members, including PLAINTIFF, all wages due upon the
16 separation of their employment;

17 (d) failing to provide class members, including PLAINTIFF, with accurate itemized
18 wage statements, as required by California law;

19 (e) failing to reimburse class members, including PLAINTIFF, for necessary
20 business-related expenses and costs;

21 (f) failing to pay class members, including PLAINTIFF, statutory penalties
22 pursuant to California Labor Code; and,

23 (g) The final cause of action is brought primarily as a non-class California Labor
24 Code PAGA claim. PLAINTIFF ERIC ELLIS has a substantive right, pursuant to the
25 California Labor Code, to stand in the shoes of the State of California for purposes of
26 this claim and no class certification is required for it, as the claim is primarily that of the
27 State of California and this claim is primarily an enforcement action. As such,
28 PLAINTIFF ERIC ELLIS wishes to pursue the PAGA claim as a non-class action claim

1 to recover penalties and wages on behalf of the State of California. In the alternative,
2 PLAINTIFF ERIC ELLIS can pursue the PAGA claim as a California Code of Civil
3 Procedure section 382 class action.

4 53. On information and belief, DEFENDANTS were well aware that PLAINTIFF
5 and the Hourly Class were not provided with the foregoing. DEFENDANTS' denial of wages
6 and other compensation due to PLAINTIFF and members of the Hourly Class was willful and
7 deliberate.

8 54. This action seeks recovery of wages and compensation due and owing to
9 PLAINTIFF and the Hourly Class under California law for the maximum period allowed.

10 55. For at least four years prior to the filing of this action and through to the present,
11 DEFENDANTS wrongfully withheld compensation due and owing by failing to timely pay
12 wages upon employees' separation of employment. DEFENDANTS' denial of wages and
13 other compensation due to PLAINTIFF and members of the Waiting Time Class was willful
14 and deliberate.

15 56. This action seeks recovery of wages and compensation due and owing to
16 PLAINTIFF and the Waiting Time Class under California law for the maximum period
17 allowed.

18 57. For at least seven years prior to the filing of this action and through to the
19 present, DEFENDANTS unlawfully conducted credit and/or background checks of job
20 applicants including PLAINTIFF and other members of the Consumer Report Class in violation
21 of state law. DEFENDANTS willfully violated the ICRAA by failing to provide a copy of the
22 consumer report within three business days of receipt of the report to PLAINTIFF and the
23 Consumer Report Class members that requested a copy of the consumer report by checking a
24 box on DEFENDANTS' disclosure and authorization form. This action seeks recovery of
25 actual damages, statutory damages, penalties and punitive damages on the behalf of
26 PLAINTIFF and the Consumer Report Class for the maximum period allowed.

27 58. Unless this case proceeds as a class action, DEFENDANTS will likely continue
28 their illegal labor law violations with impunity. PLAINTIFF and the classes are therefore

entitled to class-wide remedy, including injunctive relief, monetary damages, and all statutory penalties, plus interest, attorneys' fees and all other costs associated with DEFENDANTS' misconduct.

CLASS ACTION ALLEGATIONS

59. This action is maintainable as a class action pursuant to California Code of Civil Procedure section 382 as to claims for overtime wages, vested vacation wages, failure to timely pay wages upon separation of employment, failure to provide accurate itemized wage statements, failure to reimburse necessary business expenses, failure to provide a copy of the investigative consumer report within three business days of the date that the report was provided to DEFENDANTS, and attorneys' fees and costs under the California Labor Code, California Business and Professions Code, and California Investigative Consumer Report Act. PLAINTIFF brings this action on behalf of himself and all others similarly situated because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

60. PLAINTIFF seeks to represent the following classes:

(a) All current and former employees employed by DEFENDANTS in the State of California who were compensated by the hour within four (4) years of the date of commencement of this action through the date of final disposition of this action (the "Hourly Class");

(b) All former employees of DEFENDANTS in the State of California that did not receive the timely payment of wages due and owing upon the termination of their employment within four (4) years of the date of commencement of this action through final disposition of this action (the "Waiting Time Class");

(c) All persons residing in California who applied for a job with DEFENDANTS in the State of California and who requested a copy of the consumer report by checking a box on

1 DEFENDANTS' disclosure and authorization form, but did not
2 receive a copy of the investigative consumer report within three
3 business days of the date that the report was provided to
4 DEFENDANTS within seven (7) years of the date of
5 commencement of this action through final disposition of this
6 action (the "Consumer Report Class").

7 (The Hourly Class, Waiting Time Class, and Consumer Report
8 Class are collectively hereinafter referred to as "the Classes.")

9 61. PLAINTIFF also seeks to represent the following sub-Hourly Classes:

10 (a) All Hourly Class members who worked overtime hours
11 and were not paid overtime premium wages ("Overtime
12 Subclass");

13 (b) All Hourly Class members who worked overtime hours
14 and were not paid overtime premium wages at the correct regular
15 rate of pay ("Overtime Regular Rate of Pay Subclass");

16 (c) All Hourly Class members who were paid vacation wages
17 that were improperly calculated due to DEFENDANTS' failure
18 to pay vested vacation wages at the final rate of pay at
19 termination ("Vacation Wage Subclass");

20 (d) All Hourly Class members who were not provided with
21 final wages at the time of separation of employment ("Waiting
22 Time Penalties Subclass");

23 (e) All Hourly Class members who were not provided with
24 accurate itemized wage statements ("Itemized Wage Statement
25 Subclass");

26 (f) All Hourly Class members who incurred necessary
27 business-related expenses and costs that were not reimbursed
28 ("Business Expense Reimbursement Subclass"); and,

(g) All Hourly Class members who were required to submit to a background check and requested a copy of the consumer report by checking a box on DEFENDANTS' disclosure and authorization form, but did not receive a copy of the investigative consumer report within three business days of the date that the report was provided to DEFENDANTS ("ICRAA Consumer Report Subclass").

Excluded from the Classes are all DEFENDANTS, their officers, subsidiaries, affiliates, and any entity which DEFENDANTS have a controlling interest.

62. PLAINTIFF reserves the right under California Rules of Court, rule 3.765, to amend or modify the Class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

Numerosity of Class

63. The employees in the Classes identified above are so numerous that joinder of all members is impracticable. Although the precise number of such employees is unknown, PLAINTIFF believes hundreds of employees would fall within the putative Classes. The exact number is easily ascertained from DEFENDANTS' own employment records, which are presently within the control of DEFENDANTS. Furthermore, upon application by PLAINTIFF's counsel for certification of the Classes, the Court may be requested to also incorporate Subclasses in the interest of justice and judicial economy.

Existence and Predominance of Common Questions of Fact and Law

64. Common questions of law and fact exist as to the class members that predominate over any questions only affecting them individually and include, but are not limited to, the following:

(a) Whether DEFENDANTS were required to include bonus compensation when determining the regular rate of pay when calculating overtime compensation due to Plaintiff and other Hourly Class members;

- (b) Whether DEFENDANTS were required to include the fair market value of employer-provided lodging when determining the regular rate of pay when calculating overtime compensation due to Plaintiff and other Hourly Class members;
- (c) Whether DEFENDANTS paid PLAINTIFF's and other Hourly Class members' vested vacation wages at their final rate of pay upon termination;
- (d) Whether DEFENDANTS were required to pay all wages owed to PLAINTIFF and members of the Hourly Class and Waiting Time Class at the time of termination or within 72 hours of giving notice of intent to quit;
- (e) Whether DEFENDANTS were required to provide PLAINTIFF and other Hourly Class members with accurate itemized wage statements;
- (f) Whether DEFENDANTS were required to reimburse PLAINTIFF and other Hourly Class members for necessary business-related expenses and costs;
- (g) Whether DEFENDANTS failed to provide a copy of the consumer report within three business days of receipt of the report to PLAINTIFF and the Consumer Report Class members that requested a copy of the consumer report by checking a box on DEFENDANTS' disclosure and authorization form;
- (h) Whether DEFENDANTS violated the California Labor Code and IWC Wage Orders by the actions alleged herein;
- (i) Whether DEFENDANTS violated the ICRAA by the actions alleged herein;
- (j) Whether DEFENDANTS violated sections 17200 et seq. of the California Business and Professions Code by the actions alleged herein; and
- (k) Whether PLAINTIFF and other Hourly Class members, Waiting Time Class members, and Consumer Report Class members are entitled to damages, restitution, wages, statutory penalties, premium wages, declaratory relief, punitive damages, attorneys' fees, interest, and costs, and/or other relief pursuant to California Labor Code, IWC Wage Orders, California Business and Professions Code sections 17200 et seq., ICRAA and,

(l) The nature and extent of class-wide injuries and the measure of damages, restitution and disgorgement for the injuries.

65. There are no individualized factual or legal issues for the Court to resolve that would prevent this case from proceeding as a class action.

Typicality

66. The claims of PLAINTIFF are typical of the claims of the Classes he seeks to represent. PLAINTIFF and all members of the Classes sustained injuries and damages arising out of and caused by DEFENDANTS' common course of conduct in violation of California laws. PLAINTIFF and all Hourly Class members work, or have worked, for DEFENDANTS as non-exempt hourly-paid employees at DEFENDANTS' worksites and/or properties. PLAINTIFF and all Waiting Time Class members formerly worked for DEFENDANTS in California. PLAINTIFF and all Hourly Class members and Waiting Time Class members have the same rights to be paid for all hours worked based upon California wage and hour laws. PLAINTIFF and all Hourly Class members have not been properly compensated for all their work performed for the benefit of DEFENDANTS. PLAINTIFF and all Hourly Class members have not received all of the wages they are entitled to for all of their work performed for the benefit of DEFENDANTS. PLAINTIFF and all Hourly Class members have not been reimbursed by DEFENDANTS for necessary business-related expenses and costs. PLAINTIFF and some members of the Hourly Class and all members of the Waiting Time Class did not timely receive their wages upon the separation of their employment. PLAINTIFF and all members of the Hourly Class and the Waiting Time Class have suffered damages, including lost overtime wages, lost vacation wages, unlawfully withheld business expense reimbursements, and untimely payment of wages upon separation of employment. In addition, PLAINTIFF and the Hourly Class members and the Waiting Time Class members are entitled to equitable relief, as permitted by law, because DEFENDANTS' violations of state statutes have harmed the Classes members and constitute an unfair business practice, especially when compared to those competitors who comply with California wage and hour laws. PLAINTIFF and the Consumer Report Class were all job applicants that requested a copy of the

1 investigative consumer reports by checking a box on DEFENDANTS' disclosure and
2 authorization form, but did not receive a copy of investigative consumer reports within three
3 business days of the date that the reports were provided to DEFENDANTS.

4 **Adequacy**

5 67. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 members of the Classes. PLAINTIFF has no interest adverse to the interests of absent of the
7 members of the Classes. PLAINTIFF has retained counsel competent and experienced in
8 complex class actions and labor and employment litigation.

9 **Superiority**

10 68. A class action is superior to other available methods for the fair and efficient
11 adjudication of this litigation. The members of the Classes have been damaged and are entitled
12 to recovery as a result of DEFENDANTS' common and uniform policies, practices and
13 procedures. Although the relative damages suffered by individual members of the Classes are
14 not *de minimis*, such damages are small compared to the expense and burden of individual
15 prosecution of this litigation. Individual plaintiffs may lack the financial resources to
16 vigorously prosecute a lawsuit against corporate defendants to recover such damages. Even if
17 the individual members of the Classes could afford to prosecute their claims separately, such
18 individual prosecutions would constitute a waste of the judicial resources. In addition, class
19 litigation is superior because it will obviate the need for unduly duplicative litigation that might
20 result in inconsistent judgments about DEFENDANTS' practices.

21 **CAUSES OF ACTION**

22 69. All causes of action described herein are brought on behalf of PLAINTIFF, both
23 individually and on behalf of the Hourly Class, the Waiting Time Class and/or the Consumer
24 Report Class, against WARREN PROPERTIES, INC. and DOES 1 through 30, inclusive.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(PLAINTIFF, individually and on behalf of the Hourly Class, against WARREN and**
4 **DOES 1 through 30, inclusive)**

5 70. PLAINTIFF re-alleges and incorporates by reference each and every allegation
6 set forth in all the foregoing paragraphs as if fully set forth herein.

7 71. California Labor Code section 510, subdivision (a), provides, in pertinent part:
8 Eight hours of labor constitutes a day's work. Any work in
9 excess of eight hours in one workday and any work in excess of
10 40 hours in any one workweek and the first eight hours worked
11 on the seventh day of work in any one workweek shall be
12 compensated at the rate of no less than one and one-half times the
13 regular rate of pay for an employee. Any work in excess of 12
14 hours in one day shall be compensated at the rate of no less than
15 twice the regular rate of pay for an employee.

16 72. Pursuant to subdivision 2(K) of the applicable IWC Wage Order, "hours
17 worked" include the time during which an employee is subject to the control of an employer,
18 and includes all the time the employee is suffered or permitted to work, whether or not required
19 to do so.

20 73. Subdivision 3(A)(1)(a)-(b) of the applicable IWC Wage Order requires that
21 overtime hours be compensated as follows:

22 (a) One and one-half (1 ½) times the employee's regular rate of
23 pay for all hours worked in excess of eight (8) hours up to and
24 including 12 hours in any workday, and for the first eight (8)
25 hours worked on the seventh (7th) consecutive day of work in a
26 workweek; and,

27 (b) Double the employee's regular rate of pay for all hours
28 worked in excess of 12 hours in any workday and for all hours

1 worked in excess of eight (8) hours on the seventh (7th)
2 consecutive day of work in a workweek.

3 74. By DEFENDANTS' conduct described in this FAC, DEFENDANTS violated
4 the provisions of California Labor Code sections 510, 1194, 1198 and the IWC Wage Orders,
5 by employing PLAINTIFF and the Hourly Class in excess of the limits provided by the law
6 without time and one half or double time pay of regular rates. At all times relevant herein,
7 DEFENDANTS maintained and enforced policies and practices of refusing to pay PLAINTIFF
8 and the Hourly Class members for all hours worked as follows:

9 (a) DEFENDANTS failed to include all compensation earned, including, but not
10 limited to, bonuses and the fair market value of employer-provided lodging,
11 when determining the regular rate of pay for calculating the overtime rate of
12 pay.

13 75. WHEREFORE, PLAINTIFF and the Hourly Class members are entitled to
14 recover the unpaid overtime wages in an amount to be determined at trial, interest thereon and
15 reasonable attorney's fees and costs of suit pursuant to California Labor Code sections 218.5,
16 1194, subdivision (a). DEFENDANTS are further liable for civil penalties, attorneys' fees, and
17 costs of suit pursuant to California Labor Code section 2698 et seq.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY VESTED VACATION WAGES**

20 **(PLAINTIFF, individually and on behalf of the Hourly Class, against WARREN and**
21 **DOES 1 through 30, inclusive)**

22 76. PLAINTIFF re-alleges and incorporates by reference each and every allegation
23 set forth in all the foregoing paragraphs as if fully set forth herein.

24 77. Under California law, vacation pay is another form of wages which vests as it is
25 earned. California Labor Code section 227.3 provides that upon termination of employment,
26 all vested vacation must be paid to the employee at the final rate of pay.

27 78. At all relevant times herein, DEFENDANTS failed to include overtime,
28 bonuses, and the fair market value of employer-provided lodging when they calculated the final

1 rate of pay for PLAINTIFF's and the Hourly Class's vested vacation wages. As a result,
2 DEFENDANTS systematically failed to pay PLAINTIFF's and the Hourly Class' vested
3 vacation wages at their final rate of pay when they were terminated.

4 79. In violation of the applicable sections of the California Labor Code,
5 DEFENDANTS, as a matter of corporate policy, practice and procedure, intentionally,
6 knowingly and systematically failed to properly compensate PLAINTIFF and former
7 employees of the Hourly Class for all earned and accumulated vacation upon termination of
8 their employment because DEFENDANTS failed to pay the vacation wages at their final rate of
9 pay.

10 80. The above-mentioned uniform and systematic policies, practices and procedures
11 of DEFENDANTS were intended to purposefully avoid the payment of wages required by
12 California law which allows DEFENDANTS to illegally profit and gain an unfair advantage
13 over competitors.

14 81. WHEREFORE, PLAINTIFF and all the former employees of the Hourly Class
15 are entitled to recover wages for all the vacation time that had vested prior to termination of
16 their employment at their final rate of pay in accordance with California Labor Code section
17 227.3.

18 82. WHEREFORE, PLAINTIFF and all the current employees of the Hourly Class
19 are entitled to declaratory and all other equitable relief and to enjoin DEFENDANTS to cease
20 and desist from engaging in the practices described herein.

21 83. DEFENDANTS are further liable for pre-judgment interest, civil penalties, civil
22 attorneys' fees, and costs of suit pursuant to California Labor Code sections 218.5, 218.6, 558,
23 and 2698, et seq.

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THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES

**(PLAINTIFF, individually and on behalf of the Hourly Class and the Waiting Time Class,
against WARREN and DOES 1 through 30, inclusive)**

84. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

85. California Labor Code section 201, subdivision (a) provides, in pertinent part:
If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

86. California Labor Code section 202, subdivision (a), provides, in pertinent part:
If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

87. DEFENDANTS failed to pay PLAINTIFF all wages owed on the date that he was separated from employment. DEFENDANTS did not provide PLAINTIFF with any of his earned wages that were due and owing until at least one (1) day after DEFENDANTS terminated his employment.

88. Additionally, DEFENDANTS willfully failed to timely pay PLAINTIFF and the Hourly Class all of their wages due for work performed because DEFENDANTS failed to pay

1 them their overtime wages and/or wages for unused vacation days, and this failure continued
2 through the time in which PLAINTIFF and many members of the Hourly Class quit or were
3 discharged from their employment with DEFENDANTS. As a result, DEFENDANTS violated
4 California Labor Code section 201, 201.3, and/or 202.

5 89. DEFENDANTS willfully failed to timely pay PLAINTIFF and the Waiting
6 Time Class all of their wages due for work performed because DEFENDANTS did not timely
7 pay all wages due upon the separation of PLAINTIFF's and the Waiting Time Class members'
8 employment. As a result, DEFENDANTS violated California Labor Code section 201, 201.3,
9 and/or 202.

10 90. California Labor Code section 203 states:

11 If an employer willfully fails to pay, without abatement or
12 reduction, in accordance with Sections 201, 201.5, 202, and
13 205.5, any wages of an employee who is discharged or who quits,
14 the wages of the employee shall continue as a penalty from the
15 due date thereof at the same rate until paid or until an action
16 therefore is commenced; but the wages shall not continue for
17 more than 30 days... Suit may be filed for these penalties at any
18 time before the expiration of the statute of limitations on any
19 action for the wages from which the penalties arose.

20 91. As noted above, DEFENDANTS violated California Labor Code sections 201,
21 201.3 and/or 202 by failing to pay PLAINTIFF and Hourly Class members and Waiting Time
22 Class members who quit, were involuntarily terminated, released after a specific job
23 assignment or time duration, or were otherwise discharged, all of the wages due pursuant to the
24 timelines provided in those sections. DEFENDANTS willfully failed to pay all wages due as
25 the failure to pay was not inadvertent or accidental.

26 92. PLAINTIFF and the Hourly Class he seeks to represent are entitled to
27 compensation for all forms of wages earned, including, but not limited to, compensation for
28 overtime hours worked; wages for unused vacation days; and other claims described in this

1 FAC. But, to date, PLAINTIFF and the Hourly Class have not received such compensation,
2 therefore entitling them to penalties under California Labor Code section 203.

3 93. PLAINTIFF and the Waiting Time Class he seeks to represent are entitled to
4 compensation for all forms of wages earned during their employment. But, to date,
5 PLAINTIFF and the Waiting Time Class have not received such compensation, therefore
6 entitling them to penalties under California Labor Code section 203.

7 94. More than thirty (30) days have passed since PLAINTIFF and many affected
8 members of the Hourly Class have left DEFENDANTS' employ, and on information and
9 belief, have not received payment pursuant to California Labor Code sections 201, 201.3, 202
10 and/or 203. As a consequence of DEFENDANTS' willful conduct in not paying all earned
11 wages, PLAINTIFF and many Hourly Class members are entitled to 30 days wages as a
12 premium wage or penalty under California Labor Code section 203.

13 95. More than thirty (30) days have passed since PLAINTIFF and members of the
14 Waiting Time Class have left DEFENDANTS' employ, and on information and belief, have
15 not received payment pursuant to California Labor Code sections 201, 201.3, 202 and/or 203.
16 As a consequence of DEFENDANTS' willful conduct in not paying all earned wages,
17 PLAINTIFF and Waiting Time Class members are entitled to 30 days wages as a premium
18 wage or penalty under California Labor Code section 203.

19 96. WHEREFORE, PLAINTIFF and the Classes he seeks to represent are entitled to
20 California Labor Code section 203 penalties in amounts to be determined at trial.

21 97. DEFENDANTS are further liable for reasonable attorneys' fees and costs of suit
22 pursuant to California Labor Code section 218.5. DEFENDANTS are further liable for civil
23 penalties, attorneys' fees, and costs of suit pursuant to California Labor Code section 2698 et
24 seq.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

3 **(PLAINTIFF, individually and on behalf of the Hourly Class, against WARREN and**
4 **DOES 1 through 30, inclusive)**

5 98. PLAINTIFF re-alleges and incorporates by reference each and every allegation
6 set forth in all the foregoing paragraphs as if fully set forth herein.

7 99. California Labor Code section 226, subdivision (a), states:

8 Every employer shall, semimonthly or at the time of each
9 payment of wages, furnish each of his or her employees, either as
10 a detachable part of the check, draft, or voucher paying the
11 employee's wages, or separately when wages are paid by personal
12 check or cash, an accurate itemized statement in writing showing
13 i) gross wages earned, ii) total hours worked by the employee,
14 except for any employee whose compensation is solely based on
15 a salary and who is exempt from payment of overtime under
16 subdivision (a) of Section 515 or any applicable order of the
17 Industrial Welfare Commission, iii) the number of piece-rate
18 units earned and any applicable piece rate if the employee is paid
19 on a piece-rate basis, iv) all deductions, provided that all
20 deductions made on written orders of the employee may be
21 aggregated and shown as one item, v) net wages earned, vi) the
22 inclusive dates of the period for which the employee is paid, vii)
23 the name of the employee and his or her social security number,
24 except that by January 1, 2008, only the last four digits of his or
25 her social security number or an employee identification number
26 other than a social security number may be shown on the
27 itemized statement, viii) the name and address of the legal entity
28 that is the employer, and ix) all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee. The deductions
3 made from payments of wages shall be recorded in ink or other
4 indelible form, properly dated, showing the month, day, and year,
5 and a copy of the statement or a record of the deductions shall be
6 kept on file by the employer for at least three years at the place of
7 employment or at a central location within the State of California.

8 100. DEFENDANTS knowingly and intentionally failed to furnish the Hourly Class
9 members with itemized statements that accurately reflected all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate, all
11 overtime hours worked, gross wages, and net wages.

12 101. By failing to furnish accurate itemized statements as required by California
13 Labor Code section 226, and the IWC Wage Orders, DEFENDANTS have injured PLAINTIFF
14 and the Hourly Class. This failure has injured PLAINTIFF and the Hourly Class by depriving
15 them of wage and hour earnings information they are entitled to, making it difficult to calculate
16 the unpaid wages due, causing them not to be paid wages they are entitled to and eviscerating
17 their rights under California Labor Code section 226, subdivision (b) to review itemized wage
18 statement information by inspecting the employer's underlying records.

19 102. As a result, DEFENDANTS are liable to PLAINTIFF and the Hourly Class for
20 actual damages pursuant to California Labor Code section 226, subdivision (e).
21 DEFENDANTS are also liable for civil penalties and reasonable attorney's fees and costs of
22 suit pursuant to California Labor Code sections 226.3, and 1174.5, in the amount to be proven
23 at trial. DEFENDANTS are further liable for civil penalties, attorneys' fees, and costs of suit
24 pursuant to California Labor Code section 2698 et seq.

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FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

**(PLAINTIFF, individually and on behalf of the Hourly Class, against WARREN and
DOES 1 through 30, inclusive)**

103. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

104. California Labor Code section 2802 requires DEFENDANTS to indemnify their employees for all expenses that the employees necessarily expend as a direct result of discharge of their employment duties or at the direction of the employer.

105. Pursuant to California Labor Code sections 2800 and 2802, DEFENDANTS are required to reimburse PLAINTIFF and the Hourly Class for expenses incurred by them in the performance of their job duties, including expenses incurred for personal cell phones and usage of personal cell phones.

106. PLAINTIFFS and the Hourly Class were, and still are, required to pay expenses incurred in the discharge of their duties for DEFENDANTS, including providing and maintaining their personal cell phones. These expenses are, and were, necessarily incurred by PLAINTIFFS and the Hourly Class in the discharge of their duties and in carrying out DEFENDANTS' principal business – leasing, developing, maintaining, managing and/or operating real estate. DEFENDANTS required PLAINTIFF and the Hourly Class to provide their own personal cell phones and voice and data plans to communicate with DEFENDANTS' employees, for example, when receiving job site assignments and responding to an emergency, and also to communicate with prospective tenants interested in renting apartment units at DEFENDANTS's properties. During the class period, DEFENDANTS had a policy and practice of not reimbursing PLAINTIFFS and the Hourly Class for the above-mentioned expenses incurred in carrying out their business.

107. PLAINTIFF and the Hourly Class have not received any reimbursement for the costs incurred in purchasing personal cell phones and cell phone related expenses required by DEFENDANTS.

108. As a proximate result of DEFENDANTS' conduct, PLAINTIFF and the Hourly Class have suffered monetary loss and been deprived of their property in the form of unreimbursed expenses. PLAINTIFF and the Class have not received reimbursement or additional wages for the maintenance of their personal cell phones.

109. PLAINTIFF and the Class pray for the full amount of the expenses they incurred in the course of their job duties, attorneys' fees, costs, penalties, and interest pursuant to California Labor Code sections 2802, subdivision (c). DEFENDANTS are further liable for civil penalties, attorneys' fees, and costs of suit pursuant to California Labor Code section 2698 et seq.

SIXTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT

(PLAINTIFF, individually and on behalf of the Consumer Report Class, against
WARREN and DOES 1 through 30, inclusive)

110. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

111. DEFENDANTS and DOES 1 through 30, each, are a “person” as defined by California Civil Code section 1786.2, subdivision (n) of the Investigative Consumer Reporting Agencies Act (“ICRAA”).

112. PLAINTIFF and the Consumer Report Class members are “consumers” within the meaning of California Civil Code section 1786.2, subdivision (b) of the ICRAA, because they are “individuals.”

113. California Civil Code section 1786.2 subdivision (c) of the ICRAA defines an “investigative consumer report” as: a consumer report in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through any means.

114. Thus, DEFENDANTS' background checks qualify as an investigative consumer report under the ICRAA.

1 115. California Civil Code section 1786.16, subdivision (a)(2) of the ICRAA
2 provides, in relevant part:

3 If, at any time, an investigative consumer report is sought for
4 employment purposes... the person seeking the investigative
5 consumer report may procure the report, or cause the report to be
6 made, only if all of the following apply:

7 ...

8 (B) The person procuring or causing the report to be made
9 provides a clear and conspicuous disclosure in writing to the
10 consumer at any time before the report is procured or caused to
11 be made in a document that consists solely of the disclosure, that:

12 (i) An investigative consumer report may be obtained.

13 ...

14 (C) The consumer has authorized in writing the procurement of
15 the report.

16 116. California Civil Code section 1786.16, subdivision (b)(1) of the ICRAA further
17 provides, in relevant part:

18 Any person described in subdivision (d) of Section 1786.12 who
19 requests an investigative consumer report, in accordance with
20 subdivision (a) regarding that consumer, shall do the following:

21 (1) Provide the consumer a means by which the consumer may
22 indicate on a written form, by means of a box to check, that the
23 consumer wishes to receive a copy of any report that is prepared.

24 If the consumer wishes to receive a copy of the report, the
25 recipient of the report shall send a copy of the report to the
26 consumer within three business days of the date that the report is
27 provided to the recipient, who may contract with any other entity
28 to send a copy to the consumer.

1 117. As described above, PLAINTIFF alleges that in evaluating him and other
2 Consumer Report Class members for employment or during employment, DEFENDANTS
3 procured or caused to be prepared investigative consumer reports (e.g., background checks), as
4 defined by California Civil Code section 1786.2, subdivision (c).

5 118. DEFENDANTS violated California Civil Code section 1786.16, subdivision
6 (b)(1), by failing to provide a copy of the consumer report within three business days of receipt
7 of the report to PLAINTIFF and the Consumer Report Class members that requested a copy of
8 the consumer report by checking a box on DEFENDANTS' FCRA disclosure and authorization
9 form.

10 119. Upon information and belief, PLAINTIFF alleges that DEFENDANTS have a
11 policy and practice of failing to provide a copy of the report to PLAINTIFF and the Consumer
12 Report Class members that requested to receive a copy. Pursuant to that policy and practice,
13 DEFENDANTS violated California Civil Code section 1786.16(b)(1) of the ICRAA, as
14 described above.

15 120. DEFENDANTS' conduct in violation of California Civil Code section
16 1786.16(b)(1) of the ICRAA was and is willful and/or grossly negligent. DEFENDANTS
17 acted in deliberate or reckless disregard of its obligations and the rights of applicants and
18 employees, including PLAINTIFF and Consumer Report Class members.

19 121. As a result of DEFENDANTS' illegal procurement of background reports by
20 way of its failure to provide requested copies of the reports, as set forth above, PLAINTIFF and
21 the Consumer Report Class members have been deprived of their consumer rights and
22 prevented from making informed decisions about whether to permit DEFENDANTS to obtain
23 their personal information, and PLAINTIFF and Consumer Report Class members have been
24 injured, including, but not limited to, having their privacy and statutory rights invaded in
25 violation of the ICRAA.

26 122. PLAINTIFF, on behalf of himself and all Consumer Report Class members,
27 seeks all available remedies pursuant to California Civil Code section 1786.50, including
28 statutory damages and/or actual damages, punitive damages, and attorney fees and costs.

1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

3 **(PLAINTIFF, individually and on behalf of the Hourly Class and the Waiting Time Class,**
4 **against WARREN and DOES 1 through 30, inclusive)**

5 123. PLAINTIFF re-alleges and incorporates by reference each and every allegation
6 set forth in all the foregoing paragraphs as if fully set forth herein.

7 124. PLAINTIFF and the Class pray for the full amount of the expenses they incurred
8 in the course of their job duties, attorneys' fees, costs, penalties, and interest pursuant to
9 California Labor Code sections 2802, subdivision (c).

10 125. DEFENDANTS engaged in unlawful activity prohibited by California Business
11 and Professions Code section 17200 et seq. The actions of DEFENDANTS as alleged within
12 this FAC constitute unlawful and unfair business practices with the meaning of California
13 Business and Professions Code section 17200 et seq.

14 126. As described above, DEFENDANTS have conducted the following unlawful
15 activities:

16 (a) violation of California Labor Code sections 510 and 1194 and the IWC Wage
17 Orders by failing to pay all overtime wages owed due to their failure to: (1) include
18 bonuses earned when determining PLAINTIFF's and other members of the class'
19 regular rate of pay for calculating their overtime premium wages; (2) include the fair
20 market value of employer-provided lodging when determining PLAINTIFF's and other
21 members of the class' regular rate of pay for calculating their overtime premium wages;
22 and/or (3) pay for all hours worked in excess of eight in one workday or forty in one
23 workweek or for the first eight hours of the seventh consecutive day of work;

24 (b) violation of California Labor Code section 227.3 by failing to pay vested
25 vacation wages at PLAINTIFF's and the Hourly Class' final rate of pay upon
26 termination;

27 (c) violation of California Labor Code section 2802 by failing to reimburse
28 PLAINTIFF and the Hourly Class for necessarily incurred business expenses;

1 (d) violation of California Labor Code sections 201, 201.3, 202, 203, 204 and 206
2 by failing to pay, without condition and within the time set by the applicable article, all
3 wages, or parts thereof, conceded by DEFENDANTS to be due to PLAINTIFF, the
4 Hourly Class, and the Waiting Time Class; and,

5 (e) violation of California Labor Code section 226 by failing to provide
6 PLAINTIFF and the Hourly Class with accurate itemized wage statements.

7 127. DEFENDANTS' activities also constitute unfair practices in violation of
8 California Business and Professions Code section 17200 et seq., because DEFENDANTS'
9 practices violate the above-noted laws, and/or violate an established public policy and/or the
10 practice is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
11 PLAINTIFF and the Class.

12 128. As a result of DEFENDANTS' violations of the California Labor Code,
13 PLAINTIFF and the Hourly Class and Waiting Time Class have suffered injury-in-fact and
14 have lost money or property as a result of DEFENDANTS' practices. This injury-in-fact and
15 loss of money or property consists of the lost wages and other restitutionary remedies provided
16 by the California Labor Code as detailed in this FAC and other resulting harms. A tally of
17 these damages cannot readily be determined as the employment records are held exclusively or
18 nearly exclusively in DEFENDANTS' control. PLAINTIFF and the Classes are entitled to
19 restitution, declaratory and other equitable relief against such unlawful practices to prevent
20 future damage for which there is no adequate remedy at law, and to avoid a multiplicity of
21 lawsuits. PLAINTIFF is also seeking in the alternative, by this class action, restitutionary
22 disgorgement of such monies into a fluid recovery fund.

23 129. As a result of their unlawful acts, DEFENDANTS have reaped and continue to
24 reap unfair benefits and unlawful profits at the expense of PLAINTIFF and the Classes he
25 seeks to represent. DEFENDANTS should be enjoined from this activity and made to disgorge
26 these ill-gotten gains and restore to PLAINTIFF and the members of the Classes the wrongfully
27 withheld wages pursuant to Business and Professions Code section 17203. PLAINTIFF is
28 informed and believes, and thereon alleges, that DEFENDANTS are unjustly enriched through

1 their failure to pay legal wages, and/or other remedies. PLAINTIFF is informed and believes,
2 and thereon alleges, that PLAINTIFF and members of the Classes are prejudiced by
3 DEFENDANTS' unfair trade practices.

4 130. As a direct and proximate result of the unfair business practices of
5 DEFENDANTS, and each of them, PLAINTIFF, individually and on behalf of all employees
6 similarly situated, is entitled to full restitution and/or disgorgement of all wages which have
7 been unlawfully withheld from PLAINTIFF and members of the Classes as a result of the
8 business acts and practices described herein.

9 131. PLAINTIFF is entitled to an award of attorneys' fees and costs as set forth
10 herein and below. PLAINTIFF and the Classes he seeks to represent request relief as described
11 herein and below.

12 **EIGHTH CAUSE OF ACTION**

13 **CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (PAGA)** 14 **(PLAINTIFF, individually and on behalf of the Aggrieved Employees, against WARREN** 15 **and DOES 1 through 30, inclusive)**

16 132. PLAINTIFF re-alleges and incorporates by reference each and every allegation
17 set forth in all the foregoing paragraphs as if fully set forth herein.

18 133. PLAINTIFF submits this FAC to include allegations pursuant to California
19 Labor Code section 2698 et seq., the Private Attorneys General Act of 2004. As described
20 above, PLAINTIFF has complied with all of the administrative requirements.

21 134. PLAINTIFF is an aggrieved employee as defined in California Labor Code
22 section 2699, subdivision (a). PLAINTIFF brings this case on behalf of himself and other
23 current and former aggrieved employees affected by the labor law violations alleged in this
24 FAC.

25 135. California Labor Code section 2699, subdivision (f), provides, in pertinent part:
26 For all provisions of this code except those for which a civil
27 penalty is specifically provided, there is established a civil
28 penalty for a violation of these provisions, as follows: . . . (2) If,

1 at the time of the alleged violation, the person employs one or
2 more employees, the civil penalty is one hundred dollars (\$100)
3 for each aggrieved employee per pay period for the initial
4 violation and two hundred dollars (\$200) for each aggrieved
5 employee per pay period for each subsequent violation.

6 136. PLAINTIFF also seeks civil penalties as provided under applicable California
7 Labor Code sections for violations of the California Labor Code alleged herein pursuant to
8 California Labor Code section 2699, subdivision (a). To the extent that any violation alleged
9 herein does not carry a penalty, PLAINTIFF seeks civil penalties pursuant to California Labor
10 Code section 2699, subdivision (f), for PLAINTIFF and other current or former employees for
11 violations of those sections. PLAINTIFF is also entitled to an award of attorneys' fees and
12 costs as set forth below.

13 137. PLAINTIFF'S PAGA claims does not require class certification because these
14 claims are held by PLAINTIFF and on the behalf primarily of the State of California in this
15 action. Indeed, seventy-five percent (75%) of the net penalties obtained through PAGA accrue
16 to the State of California. Both the language of PAGA and the express intent of the Legislature
17 indicate that an aggrieved employee may bring an action on behalf of other employees without
18 complying with the requirements of a class action. California Labor Code section 2699
19 specifically states that an aggrieved employee may bring an action on behalf of other
20 employees, "[n]otwithstanding any other provision of law..." The wording of the PAGA,
21 which authorizes an aggrieved employee to bring an action "on behalf of himself or herself and
22 other current or former employees... [,]" is similar to the former wording of Business and
23 Professions Code section 17204, which authorized a person to bring an action "acting for the
24 interests of itself, its members or the general public." The Legislature has made clear that an
25 action under the PAGA is in the nature of an enforcement action, with the aggrieved employee
26 acting as a Private Attorney General to collect penalties from employers who violate labor
27 laws. Such an action is fundamentally a law enforcement action designed to protect the public
28 and penalize defendants for past illegal conduct. Restitution is not the primary object of a

1 PAGA action. An action under the PAGA is not for the purpose of recovering damages, but
2 only for the recovery of a civil penalty. Further, PAGA recoveries do not preclude an
3 employee from pursuing any other claim he/she may have available under the law, including
4 those for any unpaid wages.

5 138. As such, PLAINTIFF individually holds a substantive right to bring PAGA
6 claims by standing in the shoe of, and on behalf of, the State of California to enforce California
7 labor laws.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF, on behalf of himself and the Classes he seeks to represent
10 in this FAC, requests the following relief:

- 11 1. That the Court determines this action be maintained as a
12 Class Action under California Code of Civil Procedure section
13 382 with the named PLAINTIFF appointed as the class
14 representative;
- 15 2. For the attorneys appearing on the above-caption to be
16 named class counsel;
- 17 3. For a declaratory judgment that DEFENDANTS have
18 violated the overtime provisions of California Labor Code section
19 510, 1194 and California Industrial Welfare Commission Wage
20 Orders as to the PLAINTIFF and the Hourly Class;
- 21 4. For a declaratory judgment that DEFENDANTS have
22 violated California Labor Code section 227.3 by failing to pay
23 PLAINTIFF and the Hourly Class for all vested vacation wages
24 at their final rate of pay upon termination;
- 25 5. For a declaratory judgment that DEFENDANTS have
26 violated California Labor Code section 2802 by failing to
27 reimburse PLAINTIFF and the Hourly Class for necessarily
28 incurred business expenses;

1 6. For a declaratory judgment that DEFENDANTS have
2 violated the recordkeeping provisions of California Labor Code
3 section 226 as to PLAINTIFF and the Hourly Class;

4 7. For a declaratory judgment that DEFENDANTS have
5 violated California Labor Code sections 201, 201.3, 202 and 203
6 for their willful failure to pay all compensation owed at the time
7 of separation of employment of PLAINTIFF and the Hourly
8 Class and the Waiting Time Class;

9 8. For a declaratory judgment that DEFENDANTS have
10 violated California Labor Code section 226 by failing to timely
11 furnish PLAINTIFF and the Hourly Class with itemized
12 statements accurately showing the applicable hourly rates in
13 effect, number of hours worked at each hourly rate, gross wages,
14 and net wages;

15 9. For a declaratory judgment that DEFENDANTS'
16 violations have been willful and that the Court award to
17 PLAINTIFF and the Hourly Class and the Waiting Time Class
18 damages for the amount of unpaid compensation, and damages
19 for failure to furnish accurate itemized wage statements and
20 penalties subject to proof at trial;

21 10. For a declaratory judgment that DEFENDANTS willfully
22 violated California Civil Code section 1786 *et seq.* of the
23 ICRAA;

24 11. For a declaratory judgment that DEFENDANTS have
25 violated California Business and Professions Code section 17200
26 by failing to pay PLAINTIFF and the Hourly Class members
27 overtime compensation including interest thereon, failing to pay
28 all compensation due at the time of separation of employment, by

1 failing to pay all vested vacation wages, and by failing to furnish
2 PLAINTIFF and the Class with accurate itemized wage
3 statements;

4 12. For a declaratory judgment that DEFENDANTS have
5 violated California Business and Professions Code section 17200
6 by failing to pay PLAINTIFF and the Waiting Time Class all
7 compensation due at the time of separation;

8 13. That DEFENDANTS be ordered to pay restitution to
9 PLAINTIFF and the Hourly Class and the Waiting Time Class
10 due to DEFENDANTS' unlawful, unfair and/or fraudulent
11 activities pursuant to California Business and Professions Code
12 sections 17200-17205;

13 14. That DEFENDANTS further be enjoined to cease and
14 desist from all unlawful, unfair or fraudulent activities in
15 violation of California Business and Professions Code section
16 17200, pursuant to section 17203;

17 15. That PLAINTIFF, the Hourly Class, and the Waiting
18 Time Class be awarded reasonable attorneys' fees and costs
19 pursuant to California Labor Code sections 218.5, 226, 1194,
20 2698, and 2802, California Code of Civil Procedure section
21 1021.5, and/or other applicable law;

22 16. That PLAINTIFF and the Consumer Report Class
23 members be awarded reasonable attorneys' fees and costs
24 pursuant to Civil Code sections 1786.50 and 1785.31,
25 and/or other applicable law;

26 17. For an award of actual and/or statutory damages to
27 PLAINTIFF and the Consumer Report Class members pursuant
28 to the ICRAA;

1 18. For an award of punitive damages to PLAINTIFF and the
2 Consumer Report Class members pursuant to the ICRAA;

3 19. For premium pay, wages, and/or penalties to PLAINTIFF,
4 the Hourly Class, and the Waiting Time Class;

5 20. That the Court award both prejudgment and post-
6 judgment interest;

7 21. For penalties, attorneys' fees and costs pursuant to
8 California Labor Code section 2698 et seq.;

9 22. For costs of suit herein incurred;

10 23. For all other relief provided by the California Labor Code
11 and California Business and Professions Code; and,

12 24. That the Court award such other and further relief as the
13 Court may deem appropriate.

14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF hereby demands trial of his, the Classes, and the Subclass's claims by jury
16 to the extent authorized by law.

17 DATE: October 18, 2021

BERENJI LAW FIRM, APC

18 By:

19 
20 SHADIE L. BERENJI
21 DAVID C. HOPPER
22 AMIEL A. AZIZOLLAHI
23 Attorneys for Plaintiff ERIC ELLIS,
24 individually and on behalf of all other persons
25 similarly situated
26
27
28

PROOF OF SERVICE

I, SHADIE L. BERENJI, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8383 Wilshire Blvd., Suite 708, Los Angeles, California, 90211.

On the date set forth below, I served the foregoing document entitled: FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES on the following interested parties:

Thomas S. Ingrassia, Esq.

Attorneys for Defendant

Zachary H. Rankin, Esq.

WARREN PROPERTIES, INC

Pettit Kohn Ingrassia Lutz & Dolin PC

11622 El Camino Real, Suite 300

San Diego, CA 92130

☐ **[by MAIL]** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SERVICE]** Based on a court order and an agreement of the parties to accept service by electronic transmission, I electronically served the above-listed document(s) by uploading the document(s) to the Case Anywhere website.

☐ **[by PERSONAL SERVICE]** I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s).

☒ **STATE** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 18, 2021, at Beverly Hills, California.

SHADIE L. BERENJI

Print Name

By:

Signature