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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

OMAR FARAJ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAMDEN DEVELOPMENT, INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2022-00019233-CU-OE-CTL

(Assigned to the Hon. Gregory W. Polack, Dept. C-
71)

**FIRST AMENDED PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/13/2022 at 01:27:00 PM

Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

1 Plaintiff Omar Faraj (“Plaintiff”) hereby submits this First Amended PAGA
2 Representative Action Complaint (“Complaint”) against Defendant Camden Development, Inc.
3 (“Defendant”) and Does 1 through 50 (collectively, “Defendants”), on behalf of himself and
4 other aggrieved employees of Defendants, for penalties pursuant to the Private Attorneys
5 General Act (“PAGA”) for Defendants’ violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by failing to properly pay all overtime wages owed,
14 failing to properly pay meal and rest period premiums owed, failing to pay sick pay at the regular
15 rate of pay, failing to pay all wages owed upon separation of employment, and failing to provide
16 accurate itemized wage statements to Plaintiff and other aggrieved employees.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code
19 by creating and maintaining policies, practices, and customs that knowingly deny employees the
20 above stated rights and benefits.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of the California Labor Code §§
23 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*

24 6. Venue is proper in San Diego County because Plaintiff worked for Defendants in
25 this County, specifically in Chula Vista, California.

26 **PARTIES**

27 7. Plaintiff was employed by Defendant as an Assistant Community Manager from
28 on or about February 20, 2007, until on or about April 1, 2022. During his employment with

1 Defendant, Plaintiff worked as an hourly, non-exempt employee.

2 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
3 complained of in this action in ways that have deprived him of the rights guaranteed by
4 California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and
5 2698, *et seq.*

6 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
7 Camden Development, Inc. was and is a Delaware corporation that maintains operations in the
8 State of California, including in San Diego County, California. Plaintiff is informed and believes,
9 and based thereon alleges, that Defendant provides real estate services in the State of California,
10 including property management, development, acquisitions, and construction management
11 services.

12 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
13 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
14 and partnerships, licensed to do business and actually doing business in the State of California.
15 As such, and based upon all the facts and circumstances incident to Defendants' business,
16 Defendants are subject to the California Labor Code.

17 11. Plaintiff does not know the true names or capacities, whether individual, partner,
18 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
19 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges that each of said fictitious defendants was responsible in some way for the
22 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
23 the illegal employment practices, wrongs and injuries complained of herein.

24 12. At all times herein mentioned, each defendant participated in the doing of the acts
25 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
26 and each of them, were the agents, servants, and employees of each of the other defendants, as
27 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
28 course and scope of said agency and employment.

13. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

14. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership, and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

15. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

17. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from April 14, 2021, through the present, for Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, for: (a) failing to pay overtime wages at the regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay meal period premiums at the regular rate of pay that

1 included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 226.7, and
2 512; (c) failing to pay rest period premiums at the regular rate of pay that included all non-
3 discretionary remuneration in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay
4 sick pay at the regular rate of pay in violation of Labor Code §§ 201-204 and 246; and (d) failing
5 to provide accurate itemized wage statements in violation of Labor Code § 226.

6 18. Pursuant to Labor Code § 204, all earned wages must be paid by the time limits as
7 set forth in Labor Code § 204. At all times relevant herein, Defendants failed in their affirmative
8 obligation to timely pay wages to its employees in violation of Labor Code § 204.

9 19. Labor Code §§ 510, 558, 1194, 1197, and 1197.1, which require an employer to
10 pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any
11 work in excess of eight hours in a workday or 40 hours in a workweek. Furthermore, pursuant to
12 Labor Code § 227.6, for each workday that a meal and/or rest period is not provided, employees
13 are entitled to one additional hour of pay at the employee's regular rate of pay.

14 20. At all relevant times herein, Plaintiff and Aggrieved Employees earned non-
15 discretionary remuneration, including but not limited to bonuses and incentives. During periods
16 when Plaintiff and Aggrieved Employees earned overtime and said non-discretionary pay,
17 Defendants failed to include the non-discretionary pay into the calculation of the regular rate for
18 the purposes of paying overtime wages. Rather, whenever Defendants paid overtime wages to
19 Plaintiff and Aggrieved Employees during periods when said non-discretionary pay was earned,
20 the overtime wages were only paid at 1.5 times the base rate of pay. As such, Plaintiff and
21 Aggrieved Employees were underpaid overtime wages.

22 21. At all relevant times herein, Defendants also failed to pay meal and rest period
23 premiums to Plaintiff and Aggrieved Employees at the correct regular rate of pay. During
24 periods when Plaintiff and Aggrieved Employees earned non-discretionary pay and was paid
25 meal and rest period premiums, the non-discretionary remuneration should have been factored
26 into the regular rate of pay. However, Defendants paid the meal and rest period premiums at the
27 base rate of pay. Thus, Plaintiff and Aggrieved Employees were underpaid meal and rest period
28 premiums based on the correct regular rate of pay.

1 22. Additionally, Defendants failed to pay Plaintiff and Aggrieved Employees all sick
2 pay owed. In this regard, Labor Code § 246 provides that an employee is entitled to receive sick
3 time pay. The employer shall calculate paid sick leave by using one of two calculations: (1)
4 “Paid sick time for nonexempt employees shall be calculated in the same manner as the regular
5 rate of pay for the workweek in which the employee uses paid sick time, whether or not the
6 employee actually works overtime in that workweek;” or (2) “Paid sick time for nonexempt
7 employees shall be calculated by dividing the employee’s total wages, not including overtime
8 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
9 of employment.”

10 23. However, whenever Defendants paid Plaintiff and Aggrieved Employees sick pay
11 under Labor Code § 246, Defendants did so at the incorrect rate of pay. While Plaintiff and
12 Aggrieved Employees earned non-discretionary incentive remuneration, including without
13 limitation, bonuses and incentives, said non-discretionary incentives were not factored into the
14 regular rate of pay for purposes of paying sick pay. Instead, sick pay was paid to Plaintiff and
15 Aggrieved Employees only at the base rates of pay, rather than the higher regular rates of pay.

16 24. Plaintiff and Aggrieved Employees have yet to receive all of the wages owed to
17 them, including the underpaid overtime wages, meal and rest period premiums, and sick pay
18 wages, as alleged above. As such, Plaintiff and Aggrieved Employees did not receive all of their
19 wages upon separation of employment. Thus, this violates Labor Code §§ 201-203 as
20 Defendants have failed to pay all wages owed upon separation of employment.

21 25. Lastly, Defendants have failed in their affirmative obligation to provide accurate
22 itemized wage statements in violation of Labor Code § 226(a). Labor Code § 226(a) requires
23 employers to provide itemized wage statements to its employees that identify accurate
24 information, including without limitation, gross wages earned, net wages earned, and all
25 applicable hourly rates of pay and hours worked. Here, Plaintiff and Aggrieved Employees were
26 not provided with accurate itemized wage statements that listed the requirements under Labor
27 Code § 226(a). In particular, as a result of the underpayment of wages alleged above, the wage
28 statements issued to Plaintiff and Aggrieved Employees identified the incorrect rates of pay and

hours worked, net wages earned, and gross wages earned.

26. On or about April 14, 2022, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to the PAGA. Plaintiff also provided notice of said Labor Code violations to Defendant via certified mail pursuant to the PAGA.

27. As of the date of the filing of this Complaint, the LWDA has not responded nor informed Plaintiff that it intends to investigate the Labor Code violations provided for in the written notice.

28. As such, pursuant to Labor Code § 2699(a), Plaintiff and the Aggrieved Employees may seek recovery of any and all applicable civil penalties on behalf of the State of California and Aggrieved Employees for Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all aggrieved employees against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for the full amount of civil penalties pursuant to California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees; and

2. For such other and further relief the Court may deem just and proper.

DATED: June 13, 2022

DIVERSITY LAW GROUP, P.C.

By: 

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