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County of Santa Barbara

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANTINO LOPEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

REDSTONE RESIDENTIAL, INC.; a Utah
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24CV03557

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES;
- (2) FAILURE TO PAY ALL SICK TIME;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES;
- (8) UNFAIR COMPETITION; &
- (9) PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff Santino Lopez (“Plaintiff”), on behalf of himself and all other similarly situated non-
2 exempt employees, alleges and complains of Defendants Redstone Residential, Inc., and DOES 1 to
3 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a national multifamily and student housing investor and operator in
6 numerous California locations.

7 2. Plaintiff brings this class action against Defendants for alleged violations of the
8 California Labor Code and Business and Professions Code.

9 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all overtime wages
10 by failing to include all forms of compensation when calculating the “regular rate of pay” used in
11 payment of overtime wages. Similarly, Plaintiff also alleges that Defendants failed to pay all sick
12 days at the legal “regular rate of pay.” Plaintiff further alleges that Defendants’ meal and rest period
13 policies and practices did not allow and permit all compliant and timely meal and rest periods or pay
14 premium wages at the “regular rate of pay” in lieu thereof. Finally, Plaintiff alleges that Defendants
15 uniformly failed to reimburse for reasonable business expenses. As a result, Plaintiff alleges that
16 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
17 and failed to timely pay all final wages upon separation of employment in violation of Labor Code
18 §§ 201-203. Plaintiff also brings a claim for civil penalties based on the foregoing Labor Code
19 violations under the Private Attorney General Act (“PAGA”).

20 4. Based on these alleged Labor Code violations, Plaintiff now brings this class action
21 and representative action to recover unpaid wages, restitution, penalties, and other related relief for
22 himself and all other similarly situated non-exempt employees.

23 **JURISDICTION AND VENUE**

24 5. Plaintiff, on behalf of himself and all other similarly situated employees hereby brings
25 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
26 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199, and
27 2802-2804, applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
28 seeking declaratory relief and restitution pursuant to California Business and Professions Code §

1 17200, *et. seq.*

2 6. This class action is brought pursuant to California Code of Civil Procedure § 382.

3 7. This Court has jurisdiction over Defendants' violations of the California Labor Code
4 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
5 minimum.

6 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
7 §§ 395(a) and 395.5, Defendants operates in California within the County of Santa Barbara, and
8 Defendants are within the jurisdiction of this Court for purposes of service of process.

9 **PARTIES**

10 9. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California
11 resident residing in the State of California.

12 10. Plaintiff is informed and believes and thereon alleges that Defendant Redstone
13 Residential, Inc. is a California corporations authorized to and doing business in California and is
14 and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory
15 periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein
16 and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204,
17 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, 2802-
18 2804, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

19 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
20 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
21 do) business in the State of California, County of Santa Barbara.

22 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
23 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
24 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
25 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
26 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
27 corporate, were responsible in some manner for the acts and omissions alleged herein, and
28 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices

1 alleged herein.

2 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
3 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
4 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
5 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
6 were the agents, servants, and employees of each and every one of the other Defendants, as well as
7 the agents of all Defendants, and at all times herein mentioned were acting within the course and
8 scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
9 otherwise ratified each and every one of the acts or omissions complained of herein.

10 14. At all times mentioned herein, Defendants, and each of them, were members of and
11 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
12 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
13 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
14 Classes.

15 **COMMON FACTUAL ALLEGATIONS**

16 15. Defendants are a national multifamily and student housing investor and operator in
17 numerous California locations.

18 16. Plaintiff was employed by Defendants as a non-exempt employee with the title of
19 “Leasing Specialist” from approximately March 2022 and continues to be employed by Defendants.
20 Plaintiff and other non-exempt employees were responsible for all aspects of Defendants’ multifamily
21 and student housing facilities. However, in these roles, Plaintiff and other non-exempt employees
22 were often not afforded all protections and rights conferred under the California Labor Code and
23 applicable Wage Orders.

24 17. First, at all relevant times, Plaintiff and other non-exempt employees were not properly
25 paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or
26 forty (40) hours per workweek. Although Plaintiff and other non-exempt employees regularly worked
27 overtime hours, they were not compensated at one and one-half times their “regular rate of pay”
28 because Defendants failed to include all forms of compensation, including, but not limited to, shift

1 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when
2 calculating the “regular rate of pay” used for payment of overtime wages.

3 18. Under the California Labor Code (as well as the FLSA), courts have consistently held
4 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
5 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
6 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
7 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
8 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
9 California and federal law on the grounds, that Defendant improperly calculated overtime by
10 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

11 19. By their policy of requiring Plaintiff and the other non-exempt employees to work in
12 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
13 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated
14 the provisions of Labor Code § 510 and the applicable Wage Orders.

15 20. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
16 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
17 210, 510, and 1197.1.

18 21. Similarly, at all relevant times, Defendants failed in their obligation to provide Plaintiff
19 and other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
20 pursuant to Labor Code §§ 246(a),(b). Pursuant to Labor Code § § 246(a),(b), “[a]n employee who,
21 on or after July 1, 2015, works in California for the same employer for 30 or more days within a year
22 from the commencement of employment is entitled to paid sick days. . . at the rate of not less than
23 one hour per every 30 hours worked, beginning at the commencement of employment.” In addition,
24 Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated
25 in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick
26 time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor
27 Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
28 wages, not including overtime premium pay, by the employee’s total hours worked in the full pay

1 periods of the prior 90 days of employment.” Finally, Labor Code §246(i) requires employers to
2 “provide an employee with written notice that sets forth the amount of paid sick leave available, or
3 paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s
4 itemized wage statement described in Section 226 or in a separate writing provided on the designated
5 pay date with the employee’s payment of wages.”

6 22. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
7 other non-exempt employees the legally required paid sick days at the “regular rate of pay” pursuant
8 to Labor Code §§ 246(a), (b). Indeed, Defendants paid sick time at the base rate of pay, rather than
9 the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2). As a result, Defendants are liable
10 for all unpaid sick pay wages, and penalties.

11 23. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
12 compliant and timely uninterrupted 30-minute off-duty meal periods as mandated by California law.
13 Due to Defendants’ uniform meal period policies/practices and operational requirements, Plaintiff
14 and other non-exempt employees were often unable to take timely and uninterrupted 30-minute first
15 meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt
16 employees worked in excess of 10.0 hours in a shift, they were not always allowed and permitted to
17 take a mandated second meal period before the end of the tenth hour of work in violation of the Labor
18 Code and applicable Wage Orders.

19 24. Additionally, Plaintiff and other non-exempt employees were not properly paid meal
20 period premiums for missed or non-compliant meal periods at the “regular rate of pay” pursuant to
21 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code 226.7.

22 25. Accordingly, due to Defendants’ uniform meal period policies and/or practices,
23 Plaintiff and other non-exempt employees were regularly denied legally compliant meal periods in
24 violation of Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

25 26. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided
26 with all uninterrupted net 10-minute rest periods for every four hours worked, or major fraction
27 thereof due to Defendants’ uniform rest period policies/practices and operational requirements. As a
28 result, Plaintiff and other non-exempt employees were and are often unable to take an uninterrupted

1 net 10-minute duty free rest periods for every major fraction of four hours worked. This includes a
2 second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10
3 hours in a workday. Moreover, Defendants had a rest break policy which required that non-exempt
4 remain on premises during rest periods. Despite Defendants' claim that all employees are relieved of
5 all duties during their rest breaks, Defendants still exerts control on employees by requiring them to
6 remain onsite.

7 27. By not relieving all non-exempt employees of all duties during rest periods, Defendants
8 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
9 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all
10 duties and relinquish control over how employees spend their time."]. In *Augustus*, the California
11 Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period
12 to employees who worked as security guards and further explained "that employers [must] relinquish
13 any control over how employees spend their break time and relieve their employees of all duties." *Id.*

14 28. Each time Plaintiff and other non-exempt employees were unable to take a compliant
15 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
16 at the "regular rate of pay" as required by Labor Code § 226.7.

17 29. Accordingly, due to Defendants' uniform rest period policies/practices and work
18 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest
19 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

20 30. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
21 all minimum and overtime wages, sick pay, and for meal and rest period premiums at the "regular
22 rate of pay", Defendants issued wage statements which failed to accurately identify the gross wages
23 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours
24 worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

25 31. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
26 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
27 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

2 32. Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff
3 and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

4 33. Moreover, at all relevant times, Defendants required Plaintiff and other non-exempt
5 employees to incur necessary business expenses including, but not limited to, the costs associated
6 with cell phone usage, but did not reimburse non-exempt employees for these necessary expenditures.
7 See *Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144. Defendants’
8 uniform failure to sufficiently reimburse Plaintiff and other non-exempt employees for their on-going
9 business expenses incurred in their discharge of their duties continues through the present day.

10 34. Finally, because of, Defendants’ failure to pay all minimum and overtime wages, and
11 meal and rest period premiums and sick pay at the “regular rate of pay,” Defendants also failed and
12 continue to fail to pay other non-exempt employees all wages owed at their time of separation from
13 employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees
14 would be entitled to recover penalties under Labor Code §§ 201-203.

15 **CLASS ACTION ALLEGATIONS**

16 35. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
17 § 382 of the Code of Civil Procedure:

18 All current or former non-exempt hourly employees who work or worked
19 for Defendants in California during the four years immediately preceding
20 the filing of the Complaint through the date of trial. (the “Class”);

21 All current or former non-exempt employees who worked for Defendants
22 in California and worked overtime hours during at least one shift during the
23 four years immediately preceding the filing of the Complaint through the
date of trial. (“the Overtime Subclass”);

24 All current or former employees who work or worked for Defendants in
25 California during the one year immediately preceding the filing of the
26 Complaint through the date of trial. (“the Wage Statement Subclass”)

27 All employees who work or worked for Defendants in California and who
28 left their employment during the three years immediately preceding the
filing of the Complaint through the date of trial. (“Waiting Time Penalty

Subclass”)

(collectively “the Classes”)

36. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment and payroll records.

37. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants’ timekeeping policy/practice of unevenly rounding/shaving non-exempt employees’ time entries resulted in a failure to pay all minimum and overtime wages;

2. Whether Defendants’ pay policies/practices resulted in a failure to pay all overtime wages at the “regular rate of pay” because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

3. Whether Defendants’ payroll policies/practices resulted in a failure to pay all sick pay at the “regular rate of pay”;

4. Whether Defendants provided legally compliant meal and rest periods or proper compensation at the “regular rate of pay” in lieu thereof to members of the Class;

5. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

6. Whether Defendants adequately reimbursed Plaintiff and other members of the Class for all necessary business expenditures incurred; and

7. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful.

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1 38. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Classes. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member, such as Defendants' failure to pay all
5 minimum and overtime wages due to their timekeeping policy/practice of manually time shaving non-
6 exempt employees' time entries, Defendants' failure to pay for all overtime wages and sick pay at the
7 "regular rate" including all forms of compensation, Defendants' failure to provide all compliant meal
8 and rest periods or compensation at the "regular rate of pay" in lieu thereof, Defendants' failure to
9 reimburse for all necessary business expenditures incurred, and Defendants' resulting failure to
10 provide accurate itemized wage statements, and to pay for all wages due upon separation of
11 employment. As such, the common questions predominate over individual questions concerning each
12 individual class member's showing as to his or her eligibility for recovery or as to the amount of his
13 or her damages.

14 39. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
15 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
16 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
17 Plaintiff, like the members of the Classes was deprived of minimum wages, was deprived of overtime
18 wages and sick pay at the "regular rate," was deprived of meal and rest period premium wages, was
19 subject to Defendants' uniform meal and rest period policies/practices, was not reimbursed for all
20 necessary business expenditures incurred, was not provided accurate itemized wage statements, and
21 was not paid all wages owed upon separation of employment.

22 40. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
23 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
24 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
25 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
26 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
27 members of the Classes.

28 ///

41. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

42. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 35 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 44. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
2 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
3 hours worked and provide a private right of action for the failure to pay all overtime compensation
4 for overtime work performed.

5 45. At all times relevant herein, Defendants were required to properly pay Plaintiff and
6 members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194 and
7 the applicable Wage Orders.

8 46. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
9 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
10 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
11 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
12 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
13 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
14 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

15 47. Defendants failed to conform their pay practices to the requirements of the law. This
16 unlawful conduct includes Defendants’ failure to include all forms of compensation, including, but
17 not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of
18 remuneration when calculating the “regular rate of pay” used in payment of overtime wages, all of
19 which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

20 48. The foregoing policies and practices are unlawful and create entitlement to recovery
21 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
22 including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor
23 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
24 1021.5.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY ALL SICK TIME**

27 **(AGAINST ALL DEFENDANTS)**

28 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 50. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
2 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
3 the regular rate, including all forms of compensation/remuneration.

4 51. At all times relevant herein, Defendants were required to properly pay Plaintiff and
5 members of the Classes for all accrued sick leave taken, pursuant to California Labor Code § 246.

6 52. Defendants failed to conform their pay practices to the requirements of the law. This
7 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
8 failing to include all forms of compensation, including but not limited to shift differentials, non-
9 discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of
10 pay," which resulted in Plaintiff and the Classes not being paid all sick time wages owed.

11 53. The foregoing policies and practices are unlawful and create entitlement to recovery
12 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time wages,
13 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
14 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
15 § 1021.5.

16 **THIRD CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
21 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
22 and members of the Class, with all required meal periods in accordance with the mandates of the
23 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
24 Allegations section of this Complaint.

25 56. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
26 the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay
27 for each violation, in accordance with *Ferra* and Labor Code § 226.7.

28 ///

1 57. As a result, Defendants are responsible for paying premium compensation for meal
2 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
3 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

4 **FOURTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 58. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 59. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
9 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
10 each four (4) hour period worked, or major fraction thereof.

11 60. Due to their unlawful rest period policy and practices, Defendants did not authorize
12 and permit Plaintiff and members of the Class to take all rest periods to which they were legally
13 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
14 "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for
15 each violation, in accordance with California Labor Code § 226.7.

16 61. The foregoing violations create an entitlement to recovery by Plaintiff and members
17 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
18 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
19 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **(AGAINST ALL DEFENDANTS)**

23 62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 63. Labor Code 226(a) states in pertinent part the following:

25 “(a) An employer, semimonthly or at the time of each payment of wages,
26 shall furnish to his or her employee, either as a detachable part of the check,
27 draft, or voucher paying the employee's wages, or separately if wages are
28 paid by personal check or cash, an accurate itemized statement in writing
 showing (1) gross wages earned, (2) total hours worked by the employee,

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

11 64. As set forth above, during the Class Period, Defendants issued and continue to issue
12 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
13 which are inadequate under Labor Code Section 226(a).

14 65. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for
15 all regular and overtime wages, and missed meal and rest period premiums at the appropriate legal
16 rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’
17 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
18 violation of Labor Code section 226(a)(1,2,5, and 9).

19 66. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
20 and intentional.

21 67. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
22 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
23 Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial
24 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
25 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants
26 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

27 **SIXTH CAUSE OF ACTION**

28 **WAITING TIME PENALTIES**

(AGAINST ALL DEFENDANTS)

68. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 69. The actionable period for this cause of action is three years prior to the filing of this
2 Complaint through the present, and on-going until the violation is corrected, or the class is certified.

3 70. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
4 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
5 around the time that their employment is or was terminated or ended.

6 71. Labor Code § 203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
8 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

9 72. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
10 including all overtime wages, sick pay wages, and their meal and rest period premiums at the “regular
11 rate of pay,” prior to or upon termination or separation from employment with Defendants as required
12 by Labor Code §§ 201 and 202.

13 73. As a result, Defendants are liable to the Waiting Time Subclass for waiting time
14 penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant
15 to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon
16 termination entitles an employee to recover waiting time penalties).

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

19 **(AGAINST ALL DEFENDANTS)**

20 74. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 75. Labor Code § 2802(a) states in pertinent part the following:

22 “(a) An employer shall indemnify his or her employee for all necessary
23 expenditures or losses incurred by the employee in direct consequence of
24 the discharge of his or her duties, or of his or her obedience to the directions
25 of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.”

26 76. As set forth above, Plaintiff and members of the Class must be compensated for all
27 necessary business expenditures, including, but not limited to, costs associated with driving their
28 personal vehicles and personal cell phones for work related purposes, and other business expenses

1 necessarily incurred in their discharge of their duties. (See *Cochran v. Schwan's Home Service, Inc.*
2 (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones
3 for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether
4 the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
5 owed is a reasonable percentage of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014 WL 4245988
6 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on Plaintiff’s cell
7 phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.
8 Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

9 77. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
10 business expenditures, Defendants have failed to comply with Labor Code §2802 and the applicable
11 Wage Orders.

12 78. Plaintiff and the Class seek costs and reasonable attorneys’ fees in accordance with
13 Labor Code § 2802.

14 **EIGHT CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

17 79. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 80. Defendants have engaged and continue to engage in unfair and/or unlawful business
19 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
20 failing to pay overtime wages and sick time by failing to properly calculate the “regular rate of pay,”
21 by failing to provide legally required meal and rest periods or pay premium payments at the “regular
22 rate of pay” in lieu thereof, by failing to provide accurate wage statements, and by failing to pay all
23 earned wages at the time of separation from employment.

24 81. Defendants’ utilization of these unfair and/or unlawful business practices deprives
25 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
26 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
27 Defendants’ competitors who have been and/or are currently employing workers and attempting to
28 do so in honest compliance with applicable wage and hour laws.

82. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

83. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

84. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

85. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

86. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this PAGA representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a) Failing to pay Plaintiff and other similarly Aggrieved Employees all overtime and sick pay wages at the appropriate premium rates in violation of Labor Code §§ 246, 510, 1194, 1197;

b) Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their statutorily-mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

/ / /

1 c) Failing to authorize and permit Plaintiff and other similarly Aggrieved employees
2 with all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7 and 516;

3 d) Failing to furnish Plaintiff and other similarly situated employees with complete,
4 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

5 e) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-203
6 and applicable Wage Orders; and

7 f) Failing to reimburse Plaintiff and other aggrieved employees with all necessary
8 business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

9 87. On or about February 10, 2023, Plaintiff notified Defendants Redstone Residential,
10 Inc. (“Defendants”) and the California Labor and Workforce Development Agency (“LWDA”) via
11 email of Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to violations
12 of the California Labor Code identified in Paragraph 86 (a)-(f). Now that the sixty-five days have
13 passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his
14 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
15 to these violations.

16 88. Plaintiff was compelled to retain the services of counsel to file this court action to
17 protect his interests and the interests of similarly aggrieved employees, and to assess and collect the
18 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which he
19 is entitled to receive under California Labor Code § 2699

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
22 this suit is brought against Defendants, as follows:

- 23 1. For an order certifying the proposed Classes;
24 2. For an order appointing Plaintiff as representative of the Classes;
25 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
26 4. Upon the First Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

28 ///

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

5 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

7 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
8 reasonable costs and attorneys' fees;

9 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
10 Labor Code §§ 201-203;

11 10. Upon the Seventh Cause of Action, for all unreimbursed business expenses and
12 attorneys' fees and costs pursuant to Labor Code § 2802.

13 11. Upon the Eight Cause of Action, for restitution to Plaintiff and members of the
14 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
15 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

16 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
17 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
18 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for which
20 no civil penalty is specifically provided under the Labor Code, and for reasonable attorneys' fees and
21 costs.

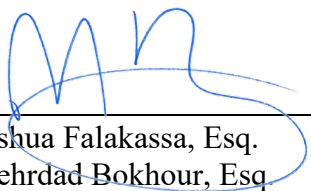
22 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
23 § 218.6 and Civil Code §§ 3287 and 3289;

24 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
25 218.5, 226, 1194, 2802, and Code of Civil Procedure § 1021.5; and

26 15. For such other relief that the Court may deem just and proper.
27
28

1 Dated: September 11, 2024

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

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3
4 By: 
5 Joshua Falakassa, Esq.
6 Mehrdad Bokhour, Esq.
7 Attorneys for Plaintiff and the Putative Classes
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On September 11, 2024, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action:

Sue M. Bendavid, Esq.
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Counsel for defendant Redstone Residential, Inc.

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments hereto.

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

Executed on September 11, 2024, at Los Angeles, California.

/s/ Carlos Garcia
Carlos Garcia