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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SINDE TORRES and CRISTINA
GUERRERO, as individuals and on behalf
of all others similarly situated,

Plaintiffs,

vs.

FIDELITY NATIONAL MANAGEMENT
SERVICES, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV416377

(Assigned to the Hon. Charles F. Adams, Dept. 7)

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

- (1) FAILURE TO PAY WAGES;**
- (2) FAILURE TO PAY OVERTIME
WAGES;**
- (3) VIOLATION OF LABOR CODE §
226(a);**
- (4) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200, *ET*
SEQ.; AND**
- (5) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

Plaintiffs Sinde Torres and Cristina Guerrero (together, “Plaintiffs”) hereby submit this
First Amended Class and Representative Action Complaint (“Complaint”) against Defendant

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County of Santa Clara,
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Case #23CV416377
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1 Fidelity National Management Services, LLC and Does 1 through 50 (hereinafter collectively
2 referred to as “Defendants”) on behalf of themselves and a class of all other similarly situated
3 current and former employees of Defendants for penalties and/or damages for violation of the
4 California Labor Code, including California Labor Code § 2698, *et seq.*, the Private Attorneys
5 General Act (“PAGA”), and restitution for unfair business practices in violation of Business and
6 Professions Code § 17200 *et seq.*, as follows:

7 **INTRODUCTION**

8 1. This action is within the Court’s jurisdiction under California Labor Code §§ 201-
9 204, 222, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, California Business and
10 Professions Code § 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California
11 Industrial Welfare Commission (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code and the UCL against individuals who worked for
14 Defendants.

15 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by failing to pay minimum, regular, and overtime wages
18 for all hours worked, failing to timely pay wages upon separation of employment, and failing to
19 provide accurate itemized wage statements to its employees in the State of California.

20 4. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 have engaged in, among other things a system of willful violations of the California Labor Code
22 and the UCL by creating and maintaining policies, practices, and customs that knowingly deny
23 employees the above stated rights and benefits.

24 5. The policies, practices, and customs of defendants described above and below
25 have resulted in unjust enrichment of Defendants and an unfair business advantage over
26 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

27 **JURISDICTION AND VENUE**

28 6. The Court has jurisdiction over the violations of the California Labor Code §§

201-204, 222, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, the UCL, and the applicable IWC Wage Orders.

7. Venue is proper in Santa Clara County, because Defendants do business in Santa Clara County and Plaintiffs worked for Defendants in Santa Clara County.

PARTIES

8. Plaintiff Sinda Torres (“Torres”) began working for Defendants in or about September 2022, as a non-exempt hourly employee. Plaintiff is employed as a Senior Escrow Officer at Defendants’ office located in Saratoga, California and oversees the processing and finalizing of real estate transactions.

9. Plaintiff Cristina Guerrero (“Guerrero”) began working for Defendants in or about September 2022, as a non-exempt hourly employee. Plaintiff is employed as a Junior Escrow Officer at Defendants’ office located in Saratoga, California and assists in the processing of real estate transactions.

10. Plaintiffs were and are the victims of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived them of the rights guaranteed by California Labor Code §§ 201-204, 222, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the UCL.

11. Plaintiffs are informed and believe and based thereon allege that Defendant Fidelity National Management Services, LLC was and is a Delaware limited liability company that provides title insurance and escrow services for real estate transactions in the State of California, including in Santa Clara County.

12. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

13. As such, and based upon all the facts and circumstances incident to Defendants’ business, Defendants are subject to California Labor Code §§ 201-204, 222, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the UCL.

1 14. Plaintiffs do not know the true names or capacities, whether individual, partner, or
2 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
3 defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
4 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
5 based thereon allege that each of said fictitious defendants were responsible in some way for the
6 matters alleged herein and proximately caused Plaintiffs and members of the general public and
7 class to be subject to the illegal employment practices, wrongs, and injuries complained of
8 herein.

9 15. At all times herein mentioned, each of said defendants participated in the doing of
10 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
11 Defendants, and each of them, were the agents, servants, and employees of each of the other
12 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
13 acting within the course and scope of said agency and employment.

14 16. Plaintiffs are informed and believe, and based thereon allege, that at all times
15 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
16 joint venturer of, or working in concert with each of the other co-Defendants and was acting
17 within the course and scope of such agency, employment, joint venture, or concerted activity.
18 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
19 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
20 Defendants.

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

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

1 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
2 damages as herein alleged.

3 **CLASS ACTION ALLEGATIONS**

4 19. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
5 California Code of Civil Procedure § 382, of the following classes (jointly, the “Class”):

- 6 a. All current and former non-exempt employees of Defendants in the State
7 of California who received overtime wages and non-discretionary
8 remuneration, including, but not limited to a signing bonus, during the
9 same pay period at any time from May 23, 2019, through the present (the
10 “Overtime Class”); and
11 b. All current and former non-exempt employees of Defendants in the State
12 of California who received a wage statement including overtime wages at
13 any time from May 23, 2022, through the present (the “Wage Statement
14 Class”).

15 Plaintiffs reserve the right to amend such class definitions based upon further discovery.

16 20. **Numerosity and Ascertainability:** The members of the Class are so numerous
17 that joinder of all members would be impractical, if not impossible. The identities of the
18 members of the Class are readily ascertainable by review of Defendants’ records, including
19 payroll records. Plaintiffs are informed and believe, and based thereon allege, that Defendants:
20 (a) failed to pay all overtime wages owed, in violation of Labor Code §§ 201-204, 222, 510, 558,
21 and 1194; (b) failed to provide accurate, itemized wage statements, in violation of Labor Code §
22 226; and (c) engaged in Unfair Business Practices in violation of the UCL, the California Labor
23 Code, and the applicable IWC Wage Orders.

24 21. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
25 necessary steps to represent fairly and adequately the interests of the Class defined above.
26 Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent the Class and
27 the individual Plaintiffs. Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class
28

actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning Defendants' policy and practice of: (a) failing to pay all overtime wages owed, in violation of Labor Code §§ 201-204, 222, 510, 558, and 1194; (b) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226; and (c) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

23. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class in that Plaintiffs suffered the harm alleged in this Complaint in a similar and typical manner as Class Members. On information and belief, Defendants also failed to properly calculate the regular rate of pay when paying overtime by not including the value of all non-discretionary remuneration, including, but not limited to, signing bonuses, in the calculation. To date, Plaintiffs have yet to receive the underpaid overtime wages owed to them. As such, Defendants will be liable for waiting time penalties under Labor Code § 203. As a result of the underpayment of overtime wages, the wage statements issued to Plaintiffs failed to identify the correct gross wages earned and net wages earned and total hours worked, in violation of Labor Code § 226. In addition, the wage statements provided to Plaintiffs displayed inaccurate total hours worked whenever overtime wages were paid. Therefore, Plaintiffs are members of the Class and have suffered the alleged violations of Labor Code §§ 201-204, 222, 226, 510, 558, and 1194, and the UCL.

24. The California Labor Code upon which Plaintiffs base these claims is broadly remedial in nature. These laws and labor standards serve 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 may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

1 25. The nature of this action and the format of laws available to Plaintiffs and
2 members of the Class identified herein make the class action format a particularly efficient and
3 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
4 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
5 advantage since it would be able to exploit and overwhelm the limited resources of each
6 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
7 member to pursue an individual remedy would also discourage the assertion of lawful claims by
8 employees who would be disinclined to file an action against their former and/or current
9 employer for real and justifiable fear of retaliation and permanent damage to their careers at
10 subsequent employment.

11 26. The prosecution of separate actions by the individual class members, even if
12 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
13 to individual class members against the Defendants and which would establish potentially
14 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
15 individual class members which would, as a practical matter, be dispositive of the interest of the
16 other class members not parties to the adjudications or which would substantially impair or
17 impede the ability of the class members to protect their interests. Further, the claims of the
18 individual members of the class are not sufficiently large to warrant vigorous individual
19 prosecution considering all of the concomitant costs and expenses.

20 27. Such a pattern, practice, and uniform administration of corporate policy regarding
21 illegal employee compensation described herein is unlawful and creates an entitlement to
22 recovery by Plaintiffs and the Class identified herein, in a civil action, for the unpaid balance of
23 the full amount of unpaid wages, including interest thereon, applicable penalties, reasonable
24 attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5,
25 226, and 1194, and Code of Civil Procedure § 1021.5.

26 28. Proof of a common business practice or factual pattern, which the named
27 Plaintiffs experienced and are representatives of, will establish the right of each of the members
28 of the Class to recovery on the causes of action alleged herein.

29. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire Class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

FAILURE TO PAY AGREED UPON WAGES

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

30. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

31. The Labor Code and applicable Wage Order requires employers to pay minimum wages for all hours worked, up to 8 hours in a workday and/or 40 hours in a workweek. Labor Code sections 510 and 1194 also require an employer to pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any work in excess of 8 hours in a workday or 40 hours in a workweek. Labor Code § 222 provides that it is unlawful to withhold any part of an agreed upon wage. Labor Code § 204 requires that all wages are due and payable to employees on designated days during each calendar month.

32. As a pattern and practice, Defendants suffered and permitted employees to work without payment of minimum wages and/or overtime wages for all hours worked in a workday and workweek for the reasons described above. Defendants also suffered and permitted employees to work at rates lower than those contractually agreed upon.

33. Plaintiffs were guaranteed an agreed upon wage upon commencing employment pursuant to employment contracts. Prior to the expiration of the employment contracts, however, Defendants unilaterally decreased the amount of wages paid to Plaintiffs to an amount below the agreed upon amount for each respective employee by reducing employees' rate of pay and/or unilaterally reducing the number of hours worked by each employee. Defendants had a uniform corporate pattern and practice and procedure regarding the above practices in violation of the California Labor Code.

34. To date, Plaintiffs have yet to receive the underpaid wages owed to them.

1 35. Plaintiffs are informed and believe and based thereon allege that Defendants'
2 willful failure to provide Plaintiffs the wages due and owing them upon separation of
3 employment results in a continued payment of wages up to thirty (30) days from the time the
4 wages were due. Therefore, Plaintiffs are entitled to compensation pursuant to Labor Code §
5 203.

6 36. Such a pattern, practice, and uniform administration of corporate policy regarding
7 illegal employee compensation as described herein is unlawful and creates an entitlement to
8 recovery by Plaintiffs in a civil action, for the unpaid balance of the full amount of damages
9 owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the
10 mandate of California Labor Code §§ 201, 202, 203, 204, 218.5, 222, 1194, 1197, and 1197.1.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 **(BY PLAINTIFFS AND THE OVERTIME CLASS AGAINST ALL DEFENDANTS)**

14 37. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
15 though fully set forth herein.

16 38. Labor Code §§ 510 and 1194 require an employer to pay employees overtime at a
17 rate of one and one-half the employee's regular rate of pay for any work in excess of 8 hours in a
18 workday or 40 hours in a workweek.

19 39. As a pattern and practice, Defendants suffered and permitted employees to work
20 in excess of 8 hours in a workday and/or over 40 hours in a workweek without paying legally
21 required overtime pay.

22 40. Defendants violated the Labor Code by failing to properly calculate the regular
23 rate of pay when paying overtime by not including the value of all non-discretionary
24 remuneration, including, but not limited to, signing bonuses, in the calculation To date, Plaintiffs
25 and Class Members have yet to receive the underpaid overtime wages owed to them.

26 41. Plaintiffs are informed and believe and based thereon allege that Defendants'
27 willful failure to provide Class Members the wages due and owing them upon separation of
28 employment results in a continued payment of wages up to thirty (30) days from the time the

1 wages were due. Therefore, Class Members who have separated from employment are entitled to
2 compensation pursuant to Labor Code § 203.

3 42. Such a pattern, practice, and uniform administration of corporate policy regarding
4 illegal employee compensation as described herein is unlawful and creates an entitlement to
5 recovery by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of
6 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
7 to the mandate of California Labor Code §§ 201, 202, 203, 204, 218.5, 222, 510, 558, and 1194.

8 **THIRD CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 226**

10 **(BY PLAINTIFFS, THE CLASS, AND THE WAGE STATEMENT CLASS AGAINST**
11 **ALL DEFENDANTS)**

12 43. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
13 though fully set forth herein.

14 44. Labor Code § 226 requires employers to provide itemized wage statements to
15 their employees that identify accurate information regarding their compensation. Defendants, as
16 a matter of policy and practice, failed in its affirmative obligation to provide accurate itemized
17 wage statements to employees, in violation of Labor Code § 226.

18 45. As a result of the underpayment of overtime wages, the wage statements issued to
19 Plaintiffs and the Class failed to identify the correct gross wages earned and net wages earned, in
20 violation of Labor Code § 226.

21 46. In addition, the wage statements provided to Plaintiffs and the Class displayed
22 inaccurate total hours worked whenever overtime wages were paid because the wage statements
23 identified the same time spent working overtime in multiple line items.

24 47. The issuance of inaccurate wage statements caused injury to Plaintiffs and the
25 Class under Labor Code § 226(e), as they cannot accurately verify and/or calculate their wages
26 without relying on information outside the four corners of the wage statements. Without
27 identifying the correct hours worked, net wages earned, or gross wages earned, Plaintiffs and
28 similarly situated employees will have no way of verifying the amount of hours they worked

1 each particular pay period or whether they were correctly paid wages for each particular pay
2 period.

3 48. Such a pattern, practice, and uniform administration of corporate policy as
4 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class
5 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
6 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
7 California Labor Code § 226.

8 **FOURTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

10 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

11 49. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
12 though fully set forth herein.

13 50. Defendants have engaged and continue to engage in unfair and unlawful business
14 practices in California by practicing, employing, and utilizing the employment practices outlined
15 above, including by failing to pay all overtime wages owed, in violation of Labor Code §§ 201-
16 204, 222, 510, 558, and 1194.

17 51. Defendants' utilization of such unfair and unlawful business practices constitutes
18 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

19 52. Plaintiffs seek, individually and on behalf of other members of the Class similarly
20 situated, full restitution of monies, as necessary and according to proof, to restore any and all
21 monies withheld, acquired and/or converted by Defendants by means of the unfair practices
22 complained of herein.

23 53. Plaintiffs are informed and believe, and based thereon allege, that at all times
24 herein mentioned Defendants have engaged in unlawful, deceptive, and unfair business practices,
25 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
26 forth herein above thereby depriving Plaintiffs and other Class Members the minimum working
27 standards and conditions due to them under the California laws as specifically described therein.

28 **FIFTH CAUSE OF ACTION**

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

2 **(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

3 54. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
4 though fully set forth herein.

5 55. Plaintiffs bring this cause of action as a proxy for the State of California and in
6 this capacity, seeks penalties on behalf of all Aggrieved Employees in the State of California
7 from May 2, 2022, through the present, for Defendants' violations of Labor Code §§ 201-204,
8 222, 226, 510, 558, and 1194, arising from Defendants' policy and practice of: (a) failing to pay
9 all overtime wages; and (b) failing to provide accurate itemized wage statements.

10 56. On or about May 2, 2023, Plaintiff Torres sent written notice to the California
11 Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
12 §§ 204, 226, and 222, pursuant to the PAGA. On or about May 24, 2023, Plaintiff Torres sent a
13 supplemental notice to the LWDA informing it of Defendants' violations of Labor Code §§ 201-
14 203, 510, 558, and 1194, pursuant to the PAGA. In addition to the LWDA, Plaintiff also sent her
15 notice to Defendants via certified mail pursuant to Labor Code § 2699.3.

16 57. On or about May 10, 2023, Plaintiff Guerrero sent written notice to the LWDA of
17 Defendants' violations of Labor Code §§ 201-204, 222, 226, 510, 558, and 1194, pursuant to the
18 PAGA. On or about May 24, 2023, Plaintiff Guerrero sent a supplemental notice to the LWDA
19 informing it of additional bases for Defendants' violation of Labor Code §§ 201-204, 510, 558,
20 and 1194. In addition to the LWDA, Plaintiff also sent her notice to Defendants via certified
21 mail pursuant to Labor Code § 2699.3.

22 58. As of the date of the filing of this Complaint, the LWDA has not responded to
23 Plaintiffs' written notice nor indicated that it intends to investigate the Labor Code violations
24 provided for in the written notices.

25 59. As such, pursuant to Labor Code § 2699(a), Plaintiffs seeks recovery of any and
26 all applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 222, 226,
27 226.3, 510, 558, and 1194, for the time period described above, on behalf of themselves and
28 other Aggrieved Employees.

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1. For an order appointing Plaintiffs as representatives of the Class as described herein;

3. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201, 202, 203, 204, 222, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

5. Upon the Third Cause of Action, for damages or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

7. Upon the Fifth Cause of Action, for the full amount of penalties, as provided for under the PAGA and relevant Labor Code sections including, but not limited to, 201, 202, 203, 204, 210, 222, 226, 226.3, and 1194, and 2698, *et seq.*, and for costs and attorneys' fees;

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

1 DATED: February 10, 2025

DIVERSITY LAW GROUP, P.C.

2
3 By: _____



Larry W. Lee

Max W. Gavron

Kwanporn "Mai" Tulyathan

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5 Attorneys for Plaintiffs, the Class, and Aggrieved
6 Employees

(Code of Civil Procedure Sections 1013a, 2015.5)