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Attorneys for Plaintiff, on behalf of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ROMAN MITCHELL, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

AVANATH REALTY, INC. a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: **24CV010666**

**REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Roman Mitchell (“Plaintiff”), on behalf of the State of California, hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Avanath Realty, Inc.
3 (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a private real estate investment manager generating attractive risk-
6 adjusted returns through current income and capital appreciation from its investments.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
8 California against Defendant for alleged violations of the California Labor Code.

9 3. **Plaintiff does not seek to recover anything other than penalties as permitted by**
10 **California Labor Code § 2699.**

11 4. As set forth below, Plaintiff alleges that Defendant failed to pay all overtime
12 compensation and sick pay wages at the proper legal rates by failing to calculate the “regular rate of
13 pay properly.” Moreover, Plaintiff alleges that Defendant’s meal and rest period policies and practices
14 failed to allow and permit aggrieved employees to take all compliant and timely meal and rest periods
15 or pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges that
16 Defendant failed to provide aggrieved employees with accurate written itemized wage statements in
17 violation of Labor Code § 226(a), failed to reimburse business expenses, failed to pay all wages in a
18 timely manner, and failed to timely pay all final wages upon separation of employment in violation
19 of Labor Code §§ 201-203.

20 **JURISDICTION**

21 5. Plaintiff, on behalf the State of California brings this representative action pursuant to
22 Labor Code § 2699, *et seq.* seeking penalties for Defendant’s violation of California Labor Code §§
23 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199,
24 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

25 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
26 employees within the meaning of Labor Code §2699, *et seq.*

27 7. This Court has jurisdiction over Defendant because, upon information and belief,
28 Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves

1 to the State of California so as to render the exercise of jurisdiction over them by California courts
2 consistent with the traditional notions of fair play and substantial justice.

3 **VENUE**

4 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
5 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
6 of Sacramento. Defendant owns, maintain offices, transact business, have an agent or agents within
7 the County of Sacramento, and/or otherwise are found within the County of Sacramento, and
8 Defendant is 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 alleges that Defendants are authorized to do
13 business within the County of Sacramento and is and/or was the legal employer of Plaintiff and the
14 Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants'
15 policies and/or practices complained of herein and has been deprived of the rights guaranteed to him
16 by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510,
17 512, 516, 1174, 1174.4, 1199, 2802-2804, and applicable Wage Orders.

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

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

28 ///

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

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

14 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

15 15. Defendant is a private real estate investment manager generating attractive risk-
16 adjusted returns through current income and capital appreciation from its investments.

17 16. Plaintiff was employed by Defendant as a non-exempt employee with the title of
18 “Maintenance Technician” out of its Elk Grove, California, location beginning on November 4, 2022,
19 until his separation from employment on November 20, 2023. Plaintiff and other aggrieved
20 employees (including, but not limited to, Leasing Specialist, Groundskeeper, Apartment Manager,
21 Occupancy Specialist, Intern Manager, Supervisor, and all other aggrieved positions) were
22 responsible for all aspects of Defendant’s business in California. However, in these roles, Plaintiff
23 and other aggrieved employees were often not afforded all protections and rights conferred under the
24 California Labor Code and applicable wage orders.

25 17. At all relevant times, Plaintiff and other aggrieved employees regularly worked
26 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.
27 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,
28 practices, working conditions, and corresponding wage and hour violations to which he was subjected

1 during his employment.

2 18. First, at all relevant times, Plaintiff and other aggrieved employees worked regular
3 shifts that lasted longer than 8.0 hours in a workday and resulted in aggrieved employees regularly
4 working more than 40 hours in a workweek. However, Plaintiff and other aggrieved employees were
5 not properly paid at the correct overtime rate for all overtime hours worked due to Defendant's
6 uniform failure to include all forms of compensation/renumeration, including, but not limited to,
7 commissions, incentives, non-discretionary bonuses, and all other forms of renumeration in
8 calculating the "regular rate of pay" for purposes of overtime compensation.

9 19. Under the California Labor Code (as well as the FLSA), courts have consistently held
10 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
11 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
12 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
13 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
14 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
15 California and federal law on the grounds, that Defendant improperly calculated overtime by
16 excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling*
17 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very
18 nature must reflect all payments which the parties have agreed shall be received regularly during the
19 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
20 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
21 determination of the regular rate becomes a matter of mathematical computation, the result of which
22 is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§
23 778.110 ("production bonus") and 778.111 ("piece-rate").

24 20. Labor Code § 510 requires an employer to compensate an employee who works more
25 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
26 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
27 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
28 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or

1 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
2 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8) hours in
3 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
4 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

5 21. By their policy of requiring Plaintiff and the other aggrieved employees to work in
6 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
7 them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
8 provisions of Labor Code § 510 and the applicable Wage Orders.

9 22. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
10 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
11 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
12 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

13 23. Furthermore, at all relevant times, Defendant also failed in its obligation to provide
14 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant
15 to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works
16 in California for the same employer for 30 or more days within a year from the commencement of
17 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
18 worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid
19 sick time for aggrieved employees must be "calculated in the same manner as the regular rate of pay
20 for the workweek in which the employee uses paid sick time, whether or not the employee actually
21 works overtime in that workweek."

22 24. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated
23 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
24 hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i)
25 requires employers to "provide an employee with written notice that sets forth the amount of paid
26 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
27 the employee's itemized wage statement described in Section 226 or in a separate writing provided
28 on the designated pay date with the employee's payment of wages."

1 25. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and
2 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of
3 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below the
4 “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
5 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code
6 § 2699(f)(2) and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

7 26. Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied
8 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
9 Defendant’s uniform meal period policies/practices, staffing shortages, and work demands, Plaintiff
10 and other aggrieved employees often could not take timely and uninterrupted net 30-minute first meal
11 periods before the end of the fifth hour of work. Further, when Plaintiff and other aggrieved
12 employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a
13 mandated second meal period before the end of the tenth hour of work in violation of the Labor Code
14 and applicable Wage Orders. Indeed, Plaintiff’s and other aggrieved employees’ meal periods were
15 often interrupted and lasted fewer than 30 minutes due to Defendant’s meal period
16 policies/procedures, staffing shortages, and work demands.

17 27. In addition, for each missed or non-compliant meal period, Defendant failed and
18 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period
19 premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
20 5th 858 and Labor Code § 226.7.

21 28. Accordingly, due to Defendant's uniform meal period practices, aggrieved employees
22 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,
23 516, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2698 *et seq.*

24 29. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided
25 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to
26 Defendant’s uniform rest period policies/practices, staffing, and work demands. As a result, Plaintiff
27 and other aggrieved employees were and are often unable to take a net 10-minute duty-free rest period
28 for every major fraction of four hours worked. This includes a second rest period for shifts over six

1 hours, and a third rest period for shifts over 10.0 hours in a workday.

2 30. By not relieving all aggrieved employees of all duties during rest periods, Defendant
3 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
4 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
5 duties and relinquish control over how employees spend their time.”] (Emphasis added). In *Augustus*,
6 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
7 duty rest period to employees who worked as security guards and further explained: “that employers
8 [must] relinquish any control over how employees spend their break time and relieve their employees
9 of all duties.” *Id.* at 273. Each time aggrieved employees could not take a compliant rest period,
10 Defendant failed and continues to fail to adequately pay rest period premium payments at the “regular
11 rate of pay” as required by Labor Code § 226.7.

12 31. Accordingly, due to Defendant’s uniform rest period policies/practices, aggrieved
13 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
14 512, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2698 *et seq.*

15 32. As a result of Defendant’s failure to pay Plaintiff and other aggrieved employees for
16 all hours they were subject to the control of Defendant, including all overtime wages, sick pay wages,
17 and Defendant’s failure to adequately pay for all overtime, and meal and rest period premiums at the
18 “regular rate of pay,” Defendant issued wage statements which failed to accurately identify the gross
19 wages earned, the total hours worked, the net wages earned, and the correct corresponding number
20 of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

21 33. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
22 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
23 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
24 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
25 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

26 34. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
27 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant violations of
28 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),

1 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §
2 226(e) and/or 2698 *et seq.*

3 35. Moreover, because of Defendant's failure to pay all overtime, sick pay wages, and
4 meal and rest period premiums at the "regular rate of pay," Defendant also failed and continues to
5 fail to pay Plaintiff and other aggrieved employees all wages owed at their time of separation from
6 employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to
7 recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

8 36. Finally, at all relevant times, Defendant required Plaintiff and other aggrieved
9 employees to incur necessary business expenses for work-related purposes but did not reimburse
10 aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§
11 2802-2804. Here, Defendant uniformly failed to reimburse aggrieved employees for all necessary
12 costs incurred in discharging their duties for those aggrieved employees. Accordingly, due to
13 Defendant's uniform failure to adequately reimburse for necessary business expenditures in violation
14 of Labor Code §§ 2800-2802 and applicable Wage Orders. Plaintiff and other aggrieved employees
15 would be entitled to civil penalties under Labor Code § 2698 *et seq.*

16 **FIRST CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants)**

19 37. Plaintiff re-alleges and incorporates by reference each and every allegation outlined
20 in the preceding paragraphs.

21 38. Defendant has committed several Labor Code violations against Plaintiff and other
22 similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
23 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against
24 Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the
25 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not
26 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per
27 pay period for those violations of the Labor Code for which no civil penalty is specifically provided
28 based on the following Labor Code violations:

- 1 a) Defendant's failure to pay all overtime wages at the "regular rate of pay" because
2 Defendant failed to include all forms of compensation, including, but not limited to, shift differentials,
3 non-discretionary bonuses, incentive pay, and other forms of remuneration;
- 4 b) Defendant's failure to pay all sick pay at the "regular rate of pay";
- 5 c) Defendant's failure to allow and permit legally compliant meal periods or compensation
6 at the "regular rate of pay" in lieu thereof;
- 7 d) Defendant's failure to allow and permit legally compliant rest periods or compensation
8 at the "regular rate of pay" in lieu thereof;
- 9 e) Defendant's failure to furnish legally compliant wage statements pursuant to Labor
10 Code § 226(a);
- 11 f) Defendant's failure to pay all wages in a timely fashion in violation of Labor Code §
12 204;
- 13 g) Defendant's failure to timely pay final wages to aggrieved employees at the time of
14 separation from employment was unlawful; and
- 15 h) Defendant's failure to reimburse aggrieved employees for all necessary business
16 expenses in violation of Labor Code §§ 2802-2804.

17 39. On or about March 25, 2024, Plaintiff notified Defendant Avanath Realty, Inc.
18 ("Defendant") via certified mail and the California Labor and Workforce Development Agency
19 ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et. seq.*
20 with respect to violations of the California Labor Code identified in Paragraph 40 (a)-(i). Now that
21 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
22 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
23 Act with respect to these violations.

24 40. Plaintiff was compelled to retain the services of counsel to file this court action to
25 protect her interests and the interests of other similarly aggrieved employees and to assess and collect
26 the civil penalties owed by Defendant. Plaintiff has, therefore, incurred attorneys' fees and costs,
27 which he is entitled to receive under California Labor Code § 2699.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
3 Defendant, as follows:

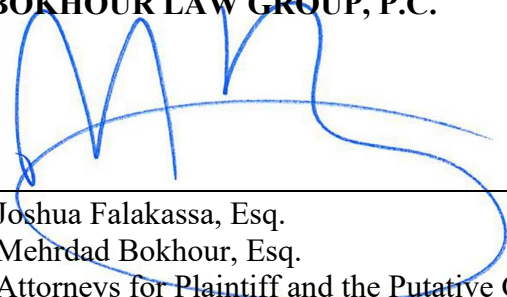
4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
5 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
6 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
7 subsequent violation per employee per pay period for those violations of the Labor Code for which
8 no civil penalty is specifically provided under the Labor Code;

9 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
10 of Civil Procedure §1021.5; and

11 3. For such other relief that the Court may deem just and proper.

12
13 Dated: May 30, 2024

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15
16 By: 

17 Joshua Falakassa, Esq.
18 Mehrdad Bokhour, Esq.
19 Attorneys for Plaintiff and the Putative Classes
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