

David Mara, Esq. (230498)  
Jill Vecchi, Esq. (299333)  
**MARA LAW FIRM, PC**  
2650 Camino Del Rio North, Suite 302  
San Diego, California 92108  
Telephone: (619) 234-2833  
Facsimile: (619) 234-4048

Per local Rule, This case is assigned to  
Judge Treat, Charles S, for all purposes.

Attorneys for KEVIN NIKAIDO, on behalf of himself,  
all others similarly situated, and on behalf of the general public

**SUMMONS ISSUED**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

KEVIN NIKAIDO on behalf of himself,  
all others similarly situated, and on  
behalf of the general public,

Plaintiffs,

v.

APARTMENT MANAGEMENT  
CONSULTANTS, LLC; DAVIDON  
HOMES; DAVIDON CORPORATION;  
and DOES 1-100,

Defendants.

Case No. C24-01530

**PLAINTIFF KEVIN NIKAIDO'S PRIVATE  
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")  
COMPLAINT FILED PURSUANT TO  
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

- 1. Violation of the PAGA for Failure to Pay All Straight Time Wages;**
- 2. Violation of the PAGA for Failure to Pay All Overtime Wages;**
- 3. Violation of PAGA for Failure to Provide Meal Periods;**
- 4. Violation of PAGA for Failure to Provide Rest Periods;**
- 5. Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;**
- 6. Violation of the PAGA for Failure to Pay All Wages Due at the Time of Termination of Employment; and**
- 7. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth Amount of Sick Leave Available.**

**DEMAND FOR JURY TRIAL**

Plaintiff KEVIN NIKAIDO (hereinafter referred to as “Plaintiff” or “Mr. Nikaido”), on behalf himself and all other non-exempt, hourly employees who worked in California (hereinafter referred to as the “Aggrieved Employees”), files this Complaint against Defendants APARTMENT MANAGEMENT CONSULTANTS, LLC and DAVIDON HOMES; DAVIDON CORPORATION (hereinafter referred to as “AMC and DAVIDON” or “Defendants”) and/or DOES 1-100.

**I. INTRODUCTION**

1. This is a representative action seeking recovery of penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et. seq., against Defendants and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of himself and other current and former employees to address an employer’s violations of the *California Labor Code*.
2. AMC and DAVIDON provide professional property management services. AMC and DAVIDON manage over 100 properties throughout California
3. AMC and DAVIDON employ hourly, non-exempt employees, such as Mr. Nikaido, to provide on-site property management services.
4. AMC and DAVIDON have maintained uniform policies that violate the wage and hour rights of Plaintiff and similarly situated non-exempt employees in the manner complained of herein.
5. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of AMC, DAVIDON, and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period; worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest break; were not provided accurate itemized wage statements; were not paid compensation for all time worked at the straight or overtime rate; were not paid waiting time penalties; were not provided with sick pay in compliance with California law; were not provided with written notices setting forth the amount of sick leave available; and were not timely paid all wages owed. Plaintiff seeks penalties on behalf of himself and all other Aggrieved Employees of Defendants and/or DOES as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, *California Labor Code* section 2699(g)(1).
6. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified

as “Exempt” or primarily employed in an executive, professional, or administrative capacity. Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid compensation for all time worked at the regular or overtime rate; provided meal periods; authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid penalties for not being provided itemized wage statements; paid penalties for not being paid timely at the time of termination; and provided with sick pay in compliance with California law.

7. At all times mentioned herein, Defendants and/or DOES control the working conditions of Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or where to work. In addition, Defendants and/or DOES develop, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved Employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding straight-time, overtime, meal periods, rest periods, wage statements, timing of payment, paying compensation at the time of termination, and sick pay/paid time off. Further, Defendants and/or DOES have the ability to prevent Plaintiff and the Aggrieved Employees from working.

## **II. JURISDICTION AND VENUE**

8. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was employed by Defendants and/or DOES in California. Plaintiff, and each of the Aggrieved Employees, were employees of Defendants and/or DOES, and/or their operating divisions and subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
9. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operate facilities, employ hourly employees, conduct business, and commit

- 1 *California Labor Code* violations within Contra Costa County and California. Each Defendant  
2 and/or DOE is within the jurisdiction of this Court for service of process purposes. The  
3 unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees  
4 situated within the State of California and within Contra Costa County. Defendants and/or  
5 DOES employ numerous aggrieved employees in California and/or Contra Costa County.
- 6 10. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendants  
7 and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general  
8 public, will and does seek to recover any and all penalties for each and every violation shown  
9 to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the  
10 LWDA of his intent to bring this action, in an amount according to proof, as to those penalties  
11 that are otherwise only available to public agency enforcement actions. Funds recovered will  
12 be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the  
13 penalties recovered being reimbursed to the State of California and the LWDA.
- 14 11. There is no federal question at issue as the issues herein are based solely upon California  
15 statutes and law, including the *California Labor Code*, IWC Wage Orders, Code of Civil  
16 Procedure, and Civil Code.
- 17 12. The California Superior Court also has jurisdiction in this matter because the penalties sought  
18 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,  
19 according to proof. Defendants and/or DOES either own, maintain offices, transact business,  
20 have an agent or agents, have their principal place of business in, and/or otherwise are found  
21 within the County of Contra Costa, California.

### 22 **III. THE PARTIES**

#### 23 **A. Plaintiffs**

- 24 13. Throughout the Statutory Period, Plaintiff KEVIN NIKAIDO is and was a resident of  
25 California. During the Statutory Period, Plaintiff KEVIN NIKAIDO is and was employed in a  
26 non-exempt capacity by Defendants and/or DOES in California. Plaintiff KEVIN NIKAIDO's  
27 employment with Defendants and/or DOES ended on or about December 20, 2023.
- 28 14. Plaintiff and the Aggrieved Employees were and are employed in the State of California by

Defendants and/or DOES. Plaintiff and the Aggrieved Employees are or were employed in a non-exempt, hourly capacity.

15. A notice correspondence showing compliance with *California Labor Code* Section 2699.3 was sent to the LWDA and THE EBERLY COMPANY on or about March 6, 2024. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. The violations alleged in this notice also form the basis for the allegations herein. No notice of cure by Defendants and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *California Labor Code* section 2699.3(a)(2)(C).

**B. Defendants**

16. AMC and DAVIDON provide professional property management services. AMC and DAVIDON manage over 100 properties throughout California.

17. AMC and DAVIDON employ hourly, non-exempt employees, such as Mr. Nikaido, to provide on-site property management services.

18. AMC and DAVIDON employed Plaintiff and similarly situated hourly non-exempt employees to work at its locations in California.

19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

20. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally

1       attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized  
2       the acts of each of the remaining Defendants.

- 3   21.   Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,  
4       agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of  
5       Defendants and/or DOES at all times.

6   **IV.   GENERAL ALLEGATIONS**

- 7   22.   During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims  
8       with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendants  
9       and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed  
10      of all current and former non-exempt, hourly employees of Defendants and/or DOES within  
11      the State of California.

- 12   23.   At all times mentioned herein, Defendants and/or DOES have had a continuous policy of not  
13      paying Mr. Nikaido and the aggrieved employees for all hours worked.

- 14   24.   At all times mentioned herein, Defendants and/or DOES fail to pay Plaintiff and the Aggrieved  
15      Employees all straight time and overtime wages owed. Specifically, Defendants and/or DOES  
16      have a continuous and consistent policy of requiring employees to work before clocking in,  
17      after clocking out, and during meal periods.

- 18   25.   At all times mentioned herein, Defendants and/or DOES fail to relieve Mr. Nikaido and the  
19      Aggrieved Employees of all work duties and employer control during meal periods. When Mr.  
20      Nikaido and the aggrieved employees are able to take meal periods, Mr. Nikaido and the  
21      aggrieved employees are not relieved of all duties and employer control during their unpaid  
22      meal periods. Residents and other workers routinely interrupt Mr. Nikaido's and the aggrieved  
23      employees' unpaid meal periods. The breakroom provided by Defendants and/or DOES is the  
24      same area where residents can watch television, heat up food, or hangout. As such, when Mr.  
25      Nikaido and the aggrieved employees are on their meal periods, residents routinely ask them  
26      questions. In addition, Mr. Nikaido and the aggrieved employees are interrupted during their  
27      meal periods by other workers who ask them work related questions or for help. In addition,  
28      other employees would call Mr. Nikaido and the aggrieved employees during meal periods if

a vendor came or if something came up with a resident. Thus, Mr. Nikaido and the aggrieved employees are owed wages for meal period time during which they are subject to Defendants' and/or DOES' control and during which they are not free from all work duties.

26. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be paid for all hours worked at the minimum, regular, overtime, and/or doubletime rate of pay.

27. At all times mentioned herein, Defendants and/or DOES fail to provide Plaintiff and the Aggrieved Employees with meal periods that comply with California law and fail to authorize and permit rest periods that comply with California law.

28. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

29. At all times mentioned herein, Defendants and/or DOES breach the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Defendants and/or DOES fail to provide Mr. Nikaido and the Aggrieved Employees with meal periods within the first five (5) continuous hours of work.

30. At all times mentioned herein, Defendants and/or DOES breach the legal duty to provide meal periods to hourly, non-exempt employees by imposing a continuous and consistent policy of failing to provide sufficient staffing so that Mr. Nikaido and the Aggrieved Employees could freely take their meal periods.

31. At all times mentioned here, when Mr. Nikaido and the Aggrieved Employees are able to take a meal period, Mr. Nikaido and the Aggrieved Employees are not relieved of all duties and/or employer control during their meal periods. Residents and other workers routinely interrupt Mr. Nikaido's and the aggrieved employees' unpaid meal periods. The breakroom provided by Defendants and/or DOES is the same area where residents can watch television, heat up food,

1 or hangout. As such, when Mr. Nikaido and the aggrieved employees are on their meal periods,  
2 residents routinely ask them questions. In addition, Mr. Nikaido and the aggrieved employees  
3 are interrupted during their meal periods by other workers who ask them work related questions  
4 or for help. In addition, other employees would call Mr. Nikaido and the aggrieved employees  
5 during meal periods if a vendor came or if something came up with a resident. Thus, Mr.  
6 Nikaido and the aggrieved employees are owed wages for meal period time during which they  
7 are subject to Defendants' and/or DOES' control and during which they are not free from all  
8 work duties. As such, Mr. Nikaido and the Aggrieved Employees are not relieved of all work  
9 duties and employer control during meal periods.

10 32. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift  
11 of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by  
12 failing to provide compensation for these unprovided meal periods, Defendants and/or DOES  
13 willfully violate the provisions of Labor Code section 226.7, IWC Wage Order No. 5-2001,  
14 and California Code of Regulations, Section 11050(11). In addition, Defendants and/or DOES  
15 fail to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of  
16 not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

17 33. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that  
18 Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take  
19 legally compliant rest periods in a timely manner or payment of one hour of pay as additional  
20 compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were  
21 not authorized and/or permitted to take a legally compliant rest period.

22 34. At all times mentioned herein, Defendants and/or DOES breach the legal duty to provide lawful  
23 rest periods to employees.

24 35. At all times mentioned herein, Defendants and/or DOES breach the legal duty to provide rest  
25 periods to employees by imposing a continuous and consistent policy of failing to provide  
26 sufficient staffing so that Mr. Nikaido and the Aggrieved Employees could freely take their  
27 net ten (10) minute rest periods.

28 36. At all times mentioned herein, when Mr. Nikaido and the aggrieved employees are able to take

1 a rest period, Mr. Nikaido and the Aggrieved Employees are not relieved of all duties and/or  
2 employer control during their rest periods. Residents and other workers routinely interrupt Mr.  
3 Nikaido's and the aggrieved employees' unpaid rest periods. In addition, Mr. Nikaido and the  
4 aggrieved employees are interrupted during their rest periods by other workers who ask them  
5 work related questions or for help. Other employees would also call Mr. Nikaido and the  
6 aggrieved employees during rest periods if a vendor came or if something came up with a  
7 resident. As such, Mr. Nikaido and the Aggrieved Employees are not relieved of all work duties  
8 and employer control during rest periods.

9 37. At all times mentioned herein, Plaintiff and the Aggrieved Employees are not free of all work  
10 duties and/or employer control during rest periods.

11 38. By failing to provide paid net ten (10) minute rest periods for every four (4) hours or major  
12 fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to  
13 provide compensation for these periods, Defendants and/or DOES willfully violate the  
14 provisions of Labor Code section 226.7, IWC Wage Order No. 5-2001, and California Code  
15 of Regulations, Section 11050(12).

16 39. At all times mentioned herein, Defendants and/or DOES knowingly and intentionally provide  
17 wage statements to employees that fail to specifically itemize everything required under  
18 *California Labor Code* section 226(a).

19 40. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that  
20 Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay  
21 statements in accordance with California law.

22 41. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that  
23 they were not providing complete and accurate pay statements in accordance with California  
24 law to Plaintiff and the Aggrieved Employees.

25 42. At all times mentioned herein, Defendants and/or DOES fail to pay all wages owed to Plaintiff  
26 and to other terminated or resigned Aggrieved Employees and failed to timely pay wages  
27 during employment.

28 43. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that

1 they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with  
2 California law, and that Defendants and/or DOES have the ability to pay such compensation,  
3 but willfully and intentionally failed to do so, and Defendants and/or DOES falsely represent  
4 to Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and  
5 the Aggrieved Employees.

6 44. At all times mentioned herein, Defendants and/or DOES knowingly and intentionally fail to  
7 pay all wages owed to non-exempt, hourly employees in a timely manner at the time non-  
8 exempt, hourly employees terminated their employment – either voluntarily or involuntarily –  
9 with Defendants and/or DOES.

10 45. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that  
11 Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination.  
12 Defendants and/or DOES did not timely pay all wages owed, straight-time wages owed,  
13 overtime wages owed, meal period premiums, and rest period premiums owed at the time of  
14 termination.

15 46. At all times mentioned herein, Defendants and/or DOES fail to pay Plaintiff and the Aggrieved  
16 Employees a sum certain at the time of termination or within seventy-two (72) hours of their  
17 resignation, and have failed to pay those sums for thirty (30) days thereafter.

18 47. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that  
19 they had a duty to compensate Plaintiff and the other Aggrieved Employees in accordance with  
20 California law, and that Defendants and/or DOES had the ability to pay such compensation,  
21 but willfully and intentionally failed to do so, and Defendants and/or DOES falsely represented  
22 to Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff  
23 and the other Aggrieved Employees.

24 48. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all  
25 Defendants' and/or DOES' non-exempt employees employed in California beginning one year  
26 prior to the date Plaintiff sent notice to the LWDA.

27 49. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with  
28 respect to the issues or in any other way.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the  
PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).**

50. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

51. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked.

52. It is fundamental that an employer must pay its employees for the time worked. *California Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* sections 1194 – 1197.1 prohibit the payment of less than the minimum wage. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

53. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

54. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked. Defendants and/or DOES have not paid for all the time Plaintiff and the Aggrieved Employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day during which employees were subject to the control of Defendants and/or DOES and/or performing work tasks or otherwise had work duties during periods of time for which Defendant and/or DOES are not paying them. Defendants’ and/or DOES’ failure to pay for all hours worked while under Defendants’ and/or DOES’ control and/or while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees being deprived of

- 1 straight time wages throughout the relevant time period.
- 2 55. Defendant and/or DOES have a continuous and consistent policy of failing to pay full wages  
3 to Plaintiff and the Aggrieved Employees by deducting a portion of the wages earned by  
4 Plaintiff and the Aggrieved Employees when they worked through their meal periods, are not  
5 relieved of all work duties during their meal periods and/or when THE EBERLY COMPANY  
6 recorded a meal period for Plaintiff and the Aggrieved Employees when no meal period was  
7 taken.
- 8 56. Defendant and/or DOES have a continuous and consistent policy of clocking-out Plaintiff and  
9 those similarly situated for a thirty (30) minute meal period and/or otherwise recording a meal  
10 period, even though Plaintiff and all Aggrieved Employees work through their meal periods  
11 and/or were subject to THE EBERLY COMPANY's control during meal periods. Thus, THE  
12 EBERLY COMPANY and/or DOES do not pay Plaintiff and each and every Aggrieved  
13 Employee for all time worked each and every day they work without a meal period and have  
14 time deducted.
- 15 57. When Plaintiff and the Aggrieved Employees are able to take meal periods, Plaintiff and the  
16 Aggrieved Employees are not relieved of all duties and employer control during their unpaid  
17 meal periods. Residents and other workers routinely interrupt Plaintiff's and the Aggrieved  
18 Employees' unpaid meal periods. The breakroom provided by Defendants and/or DOES is the  
19 same area where residents can watch television, heat up food, or hangout. As such, when  
20 Plaintiff and the Aggrieved Employees are on their meal periods, residents routinely ask them  
21 questions. In addition, Plaintiff and the Aggrieved Employees are interrupted during their meal  
22 periods by other workers who ask them work related questions or for help. In addition, other  
23 employees would call Plaintiff and the Aggrieved Employees during meal periods if a vendor  
24 came or if something came up with a resident. Thus, Plaintiff and the Aggrieved Employees  
25 are owed wages for meal period time during which they are subject to Defendants' and/or DOES'  
26 control and during which they are not free from all work duties.
- 27 58. Failing to pay for all hours worked while under Defendants' and/or DOES' control and/or  
28 while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees

1 being deprived of straight time wages.

2 59. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial  
3 unpaid wages, and lost interest on such wages, and expenses.

4 60. Plaintiff and the Aggrieved Employees were employed by Defendants and/or DOES at all  
5 relevant times. Defendants and/or DOES were required to compensate Plaintiff and the  
6 Aggrieved Employees for all hours worked and were prohibited from making deductions that  
7 had the effect of reducing the agreed upon wage.

8 61. Defendants and/or DOES commit the acts alleged herein knowingly and willfully, with the  
9 wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.

10 62. These claims are on behalf of Plaintiff and all non-exempt hourly employees employed by  
11 Defendants and/or DOES in California.

12 63. Plaintiff, as former “non-exempt” hourly employee of Defendants and/or DOES who  
13 Defendants and/or DOES fail to pay all wages. Therefore, Plaintiff is an aggrieved employee  
14 with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve  
15 as representatives of the general public to enforce California’s labor laws, and the penalty  
16 provisions identified in *California Labor Code* section 2699.5.

17 64. Plaintiff, as a representative of the people of the State of California, will seek any and all  
18 penalties otherwise capable of being collected by the Labor Commission and/or the  
19 Department of Labor Standards Enforcement (“DLSE”). This includes each of the following,  
20 as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a)  
21 applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and  
22 1199.

23 65. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on  
24 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil  
25 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the  
26 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars  
27 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per  
28 *California Labor Code* section 2699(f)(2).

66. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay All Overtime Wages Owed**

67. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

68. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's work. Any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay for an employee.

69. *California Labor Code* section 510 dictates that any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

70. Defendants and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week.

71. Defendants and/or DOES fails to pay for all time during which Plaintiff and Aggrieved Employees work throughout their shift. As most shifts worked are at least eight hours in length, this time during which employees are uncompensated before clocking in and/or during meal periods but under Defendants' control, should be, but was not, paid at the applicable overtime rate.

72. Defendants' and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked. When shifts lasted over eight hours in length, this time during which employees are uncompensated before clocking in and during meal periods,

should be, but was not, paid at the applicable overtime rate.

73. Plaintiff and the Aggrieved Employees are informed and believe and thereon allege that Defendants' and/or DOES breach the legal duty to pay full wages to Plaintiff and the Aggrieved Employees by failing to pay employees for meal period time when employees were not relieved of all duties and employer control. Defendants and/or DOES require Mr. Nikaido and the Aggrieved Employees to clock out for meal period but continue working. In shifts where Mr. Nikaido and the Aggrieved Employees worked overtime, these unpaid wages should be paid at an overtime rate.

74. When Plaintiff and the Aggrieved Employees are able to take meal periods, Plaintiff and the Aggrieved Employees are not relieved of all duties and employer control during their unpaid meal periods. Residents and other workers routinely interrupt Plaintiff's and the Aggrieved Employees' unpaid meal periods. The breakroom provided by Defendants and/or DOES is the same area where residents can watch television, heat up food, or hangout. As such, when Plaintiff and the Aggrieved Employees are on their meal periods, residents routinely ask them questions. In addition, Plaintiff and the Aggrieved Employees are interrupted during their meal periods by other workers who ask them work related questions or for help. Other employees would also call Plaintiff and the Aggrieved Employees during meal periods if a vendor came or if something came up with a resident. Thus, Plaintiff and the Aggrieved Employees are owed wages for meal period time during which they are subject to Defendants' and/or DOES' control and during which they are not free from all work duties. When Plaintiff and the Aggrieved Employees work over eight hours in a shift, these unpaid hours must be compensated at an overtime rate.

75. Further, Defendants and/or DOES would tell Plaintiff and the Aggrieved Employees not to report overtime hours on their wage statements because they would get reprimanded if they did not get prior approval for the overtime hours. This would lead to Plaintiff and the Aggrieved Employees working overtime hours for which they were not paid.

76. In addition, Defendants and/or DOES failed to pay Plaintiff and the Aggrieved Employees at the appropriate regular rate of pay for all overtime hours worked. Specifically, Defendants

1 and/or DOES failed to incorporate non-discretionary commissions, bonuses, and/or other non-  
2 hourly payments employees were paid when calculating employees' regular rate of pay for  
3 purposes of paying overtime compensation. For example, when Plaintiff and the Aggrieved  
4 Employees would rent an apartment, when the tenants moved in, Defendants and/or DOES  
5 would pay Plaintiff and the Aggrieved Employees a non-discretionary bonus of approximately  
6 \$125. These bonuses are not incorporated into Plaintiff's and the Aggrieved Employees'  
7 regular rate of pay for purposes of paying overtime compensation.

8 77. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial  
9 unpaid wages, and lost interest on such wages, and expenses.

10 78. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendants  
11 and/or DOES in California.

12 79. Plaintiff, as a representative of the people of the State of California, will seek any and all  
13 penalties otherwise capable of being collected by the Labor Commission and/or the  
14 Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code*  
15 section 510.

16 80. Plaintiff, as a representative of the people of the State of California, will seek all penalties  
17 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes  
18 each of the following, as set forth in *California Labor Code* section 2699.5, which provides  
19 that section 2699.3(a) applies to any alleged violation of the following provisions: sections  
20 222, 223, and 510.

21 81. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on  
22 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil  
23 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the  
24 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars  
25 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per  
26 *California Labor Code* section 2699(f)(2).

27 82. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other  
28 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for

violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

**THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Provide Meal Periods (*California Labor Code* §2698 et. seq.).**

83. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

84. Under *California Labor Code* section 512, and IWC Wage Order 5-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

85. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

86. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

87. Defendants and/or DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu thereof.

88. Defendants and/or DOES have a consistent policy and/or practice of requiring Plaintiff and the Aggrieved Employees to work at least five (5) hours without a meal period and failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each

workday that the meal period is not provided, or other compensation in lieu thereof, as required by California's state wage and hour laws.

89. Defendants and/or DOES breach the legal duty to provide meal periods to on-site property managers by imposing a continuous and consistent policy of failing to provide sufficient staffing so that Mr. Nikaido and the Aggrieved Employees could freely take their meal periods.

90. When Mr. Nikaido and the Aggrieved Employees are able to take meal periods, Mr. Nikaido and the Aggrieved Employees are not relieved of all duties and employer control during their unpaid meal periods. Residents and other workers routinely interrupt Mr. Nikaido's and the Aggrieved Employees' unpaid meal periods. The breakroom provided by Defendant and/or DOES is the same area where residents can watch television, heat up food, or hangout. As such, when Mr. Nikaido and the Aggrieved Employees are on their meal periods, residents routinely ask them questions. In addition, Mr. Nikaido and the Aggrieved Employees are interrupted during their meal periods by other workers who ask them work related questions or for help. Other employees would also call Mr. Nikaido and the Aggrieved Employees during meal periods if a vendor came or if something came up with a resident.

91. Defendants and/or DOES have a consistent policy and/or practice of not providing second meal periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the Aggrieved Employees were not provided with second meal periods when they worked ten (10) to twelve (12) hours.

92. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendants and/or DOES willfully violate the provisions of the *California Labor Code* section 226.7 and 512.

93. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant and/or DOES in California.

94. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendants and/or DOES willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and IWC Wage Order No. 5-2001.

- 1 95. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Aggrieved  
2 Employees have been deprived of premium wages and/or other compensation in amounts to  
3 be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys'  
4 fees, and costs.
- 5 96. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled  
6 to work for a period of time in excess of six (6) hours were required to work for periods longer  
7 than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.
- 8 97. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled  
9 to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not  
10 waive their legally-mandated meal periods by mutual consent were required to work in excess  
11 of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted meal  
12 period of not less than thirty (30) minutes.
- 13 98. During the relevant time period, Defendants and/or DOES fail to pay Plaintiff and the  
14 Aggrieved Employees the full meal period premium due pursuant to *California Labor Code*  
15 section 226.7.
- 16 99. In addition, if and when Defendants and/or DOES pay meal period premiums, they do not pay  
17 them at the proper regular rate of pay.
- 18 100. Defendants' and/or DOES' conduct violates applicable IWC Wage Order 5-2001 and  
19 *California Labor Code* sections 226.7 and 512(a).
- 20 101. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal  
21 periods, is an Aggrieved Employee with standing to bring an action under the PAGA. Plaintiff  
22 has satisfied all prerequisites to serve as a representative of the general public to enforce  
23 California's labor laws, and the penalty provisions identified in *California Labor Code* section  
24 2699.5 for violations of *California Labor Code* sections 226.7 and 512.
- 25 102. Plaintiff, as a representative of the people of the State of California, will seek all penalties  
26 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes  
27 each of the following, as set forth in *California Labor Code* section 2699.5, which provides  
28 that section 2699.3(a) applies to any alleged violation of the following provisions: sections

226.7, and 512.

103. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an Aggrieved Employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

104. In the alternative, Plaintiff, as an Aggrieved Employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

**FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Provide Rest Periods (California Labor Code §2698 et. seq.).**

105. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

106. Industrial Welfare Commission Order No. 5-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

107. At all times mentioned herein, THE EBERLY COMPANY and/or DOES fail to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

108. THE EBERLY COMPANY and/or DOES breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of failing to provide sufficient staffing so that Mr. Nikaido and the Aggrieved Employees could freely take their net ten (10) minute rest periods.

1 109. Further, when Mr. Nikaido and the Aggrieved Employees are able to take meal periods, Mr.  
2 Nikaido and the Aggrieved Employees are not relieved of all duties and employer control  
3 during their unpaid meal periods. Residents and other workers routinely interrupt Mr.  
4 Nikaido's and the Aggrieved Employees' unpaid meal periods. In addition, Mr. Nikaido and  
5 the Aggrieved Employees are interrupted during their rest periods by other workers who ask  
6 them work related questions or for help. Other employees would also call Mr. Nikaido and the  
7 Aggrieved Employees during meal periods if a vendor came or if something came up with a  
8 resident.

9 110. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per  
10 day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for  
11 these unprovided rest periods, as alleged above, Defendants and/or DOES willfully violate the  
12 provisions of *California Labor Code* section 226.7.

13 111. In addition, if and when Defendants and/or DOES pay rest period premiums, they do not pay  
14 them at the proper regular rate of pay.

15 112. These claims are on behalf of Plaintiff and all hourly non-exempt employees employed by  
16 Defendant and/or DOES in California.

17 113. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest  
18 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff  
19 has satisfied all prerequisites to serve as a representative of the general public to enforce  
20 California's labor laws, and the penalty provisions identified in *California Labor Code* section  
21 2699.5 for violations of *California Labor Code* section 226.7.

22 114. Plaintiff, as a representative of the people of the State of California, will seek all penalties  
23 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes  
24 each of the following, as set forth in *California Labor Code* section 2699.5, which provides  
25 that section 2699.3(a) applies to any alleged violation of the following provisions: section  
26 226.7.

27 115. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an Aggrieved Employee, on  
28 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil

penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

116. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

**FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).**

117. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

118. *California Labor Code* section 226(a) requires Defendants and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires Defendants and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period

- 1 and the corresponding number of hours worked at each hourly rate and the corresponding  
2 number of hours worked at each hourly rate by the employee....”
- 3 119. *California Labor Code* section 226(a) also requires that “deductions made from payment of  
4 wages shall be recorded in ink or other indelible form, properly dates, showing the month, day  
5 and year, and a copy of the statement and the record of the deductions shall be kept on file by  
6 the employer for at least three years at the place of employment or at a central location within  
7 the State of California.”
- 8 120. Defendants and/or DOES have knowingly and intentionally failed to comply with *California*  
9 *Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the  
10 Aggrieved Employees.
- 11 121. *California Labor Code* section 1174 requires Defendants and/or DOES to maintain and  
12 preserve, in a centralized location, records showing the daily hours worked by and the wages  
13 paid to its employees. Defendants and/or DOES have knowingly and intentionally failed to  
14 comply with *California Labor Code* section 1174. The failure of Defendants and/or DOES,  
15 and each of them, to comply with *California Labor Code* section 1174 is unlawful pursuant to  
16 *California Labor Code* section 1175.
- 17 122. Defendants and/or DOES fail to maintain accurate time records - as required by IWC Wage  
18 Order No. 5-2001(7), and *California Code of Regulations*, Title 8, section 11050 - showing,  
19 among other things, when the employee begins and ends each work period, the total daily hours  
20 worked in itemized wage statements, total wages, bonuses and/or incentives earned, and all  
21 deductions made.
- 22 123. Defendants and/or DOES have knowingly and intentionally failed to provide Plaintiff and the  
23 Aggrieved Employees with accurate itemized wage statements which show: “(1) gross wages  
24 earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned  
25 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
26 provided that all deductions made on written orders of the employee may be aggregated and  
27 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the  
28 employee is paid, (7) the name of the employee and only the last four digits of his or her social

security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]” *California Labor Code* section 226(a).

124. Defendants and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the total hours worked on wage statements. Defendants and/or DOES therefore knowingly and intentionally fail to itemize the total hours worked on Mr. Nikaido’s and the Aggrieved Employees’ wage statements.

125. In every pay period during the period of the relevant statute of limitations, THE EBERLY COMPANY and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226(a) requires. As outlined herein, THE EBERLY COMPANY and/or DOES have a continuous policy of not paying Mr. Nikaido and the Aggrieved Employees for all hours worked. As outlined above, Defendants and/or DOES have a continuous policy of not paying Mr. Nikaido and the Aggrieved Employees for all hours worked by requiring employees to work before clocking in, after clocking out, and during meal periods. Defendants and/or DOES therefore knowingly and intentionally fail to itemize the total hours worked on Plaintiff’s and the Aggrieved Employees’ wage statements.

126. Further, Defendants and/or DOES knowingly and intentionally did not include the net wages earned on wage statements.

127. Defendants and/or DOES knowingly and intentionally did not itemize all applicable hourly rates in effect during the pay period on wage statements as *California Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include all applicable hourly rates in effect during the pay period on wage statements. Defendants and/or

DOES therefore knowingly and intentionally failed to itemize all applicable hourly rates in effect during the pay period on Mr. Nikaido's and the Aggrieved Employees' wage statements.

128. In addition, Defendants and/or DOES knowingly and intentionally did not itemize meal and rest period premiums owed to Plaintiff and the Aggrieved Employees on wage statements.

129. Section 246(i) of the *California Labor Code* states, "[a]n employer shall provide an employee with written notice that sets forth the amount of sick leave available, or paid time off an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

130. Defendants and/or DOES fail to itemize sick leave available, or paid time off an employer provides in lieu of sick leave, for use on Plaintiff's and the Aggrieved Employees' itemized wage statements or in a separate writing provided on the designated pay date with the employee's payment of wages.

131. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the net wages earned on wage statements.

132. As a result of the knowing and intentional failure by Defendants and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

133. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant and/or DOES in California.

134. Plaintiff, as a non-exempt hourly employee who Defendants and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

135. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes

each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

136. Pursuant to Labor Code section 2699(f), Plaintiff, as an Aggrieved Employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

137. In the alternative, Plaintiff, as an Aggrieved Employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

**SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (*California Labor Code* §2698 et. seq.).**

138. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

139. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the Aggrieved Employees who left Defendants' and/or DOES' employ or who were terminated.

140. Plaintiff and the Aggrieved Employees who ended their employment with Defendants and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

141. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall

1 become due and payable no later than seventy-two (72) hours thereafter, unless the employee  
2 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the  
3 employee is entitled to his or her wages at the time of quitting.

4 142. During the relevant time period, Defendants and/or DOES intentionally and willfully fail to  
5 pay Plaintiff and the Aggrieved Employees who are no longer employed by Defendants and/or  
6 DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving  
7 Defendants' and/or DOES' employ.

8 143. Defendants' and/or DOES' failure to pay Plaintiff and the Aggrieved Employees who are no  
9 longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within  
10 seventy-two (72) hours of their leaving Defendants' and/or DOES' employ, is in violation of  
11 *California Labor Code* sections 201 and 202.

12 144. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages  
13 owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the  
14 employee shall continue as a penalty from the due date thereof at the same rate until paid or  
15 until and action is commenced; but the wages shall not continue for more than thirty (30) days.

16 145. Plaintiff, as a non-exempt employee who Defendants and/or DOES fail to pay all wages, failed  
17 to provide a minimum statutory first and/or second meal periods, and failed to provide paid net  
18 ten (10) minute rest periods, is an Aggrieved Employee with standing to bring an action under  
19 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public  
20 to enforce California's labor laws, and the penalty provisions identified in *California Labor*  
21 *Code* section 2699.5.

22 146. Plaintiff, as a representative of the people of the State of California, seeks all penalties  
23 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes  
24 each of the following, as set forth in *California Labor Code* section 2699.5, which provides  
25 that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201  
26 through 203.

27 147. These claims are on behalf of Plaintiff and all non-exempt hourly employees employed by  
28 Defendant and/or DOES in California.

1 148. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on  
2 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil  
3 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the  
4 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars  
5 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per  
6 *California Labor Code* section 2699(f)(2).

7 149. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other  
8 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for  
9 violations pursuant to this chapter or any provisions regulating hours and days of the week of  
10 the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and  
11 558(a)(2).

12 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**  
13 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Paid Sick Days and**  
14 **Failure to Provide Written Notice Setting Forth the Amount of Sick Leave Available (*California***  
15 ***Labor Code* §2698 et. seq.).**

16 150. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein  
17 as if fully plead.

18 151. Section 246(a)(1) of the *California Labor Code* states: “An employee who, on or after July 1,  
19 2015, works in California for the same employer for 30 or more days within a year from the  
20 commencement of employment is entitled to paid sick days as specified in this section.”

21 152. Section 246(c) of the *California Labor Code* states: “An employee shall be entitled to use  
22 accrued paid sick days beginning on the 90th day of employment, after which day the employee  
23 may use paid sick days as they are accrued.”

24 153. Section 233(c) of the *California Labor Code* states: “An employer shall not deny an employee  
25 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any  
26 manner discriminate against an employee for using, or attempting to exercise the right to use,  
27 sick leave to attend to an illness or the preventive care of a family member, or for any other  
28 reason specified in subdivision (a) of Section 246.5.”

- 1 154. Section 233(d) of the *California Labor Code* provides relief for violations of this section,  
2 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to  
3 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate  
4 equitable relief.”
- 5 155. Section 234 of the *California Labor Code* further forbids employers from adopting an “absence  
6 control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead  
7 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section  
8 233. An employee working under this policy is entitled to appropriate legal and equitable relief  
9 pursuant to Section 233.”
- 10 156. Section 246.5 of the *California Labor Code* requires employers provide paid sick days for  
11 “[d]iagnosis, care, or treatment of an existing health condition of, or preventative care for, an  
12 employee or an employee’s family member.”
- 13 157. Section 246(k) of the *California Labor Code* provides that, “[a]n employee may determine  
14 how much paid sick leave they need to use, provided that an employer may set a renewable  
15 minimum increment, not to exceed two hours, for the use of paid sick leave.”
- 16 158. Defendants and/or DOES fail to provide paid sick days in accordance with these provisions.
- 17 159. Defendants and/or DOES operate under an absence control policy that counts sick leave taken  
18 pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge,  
19 demotion, or termination. Thus, Defendants’ and/or DOES’ sick pay policy punishes Plaintiff  
20 and Aggrieved Employees by way of suspension and/or termination for use of protected and  
21 appropriate sick leave.
- 22 160. Section 246(i) of the *California Labor Code* states, “[a]n employer shall provide an employee  
23 with written notice that sets forth the amount of sick leave available, or paid time off an  
24 employer provides in lieu of sick leave, for use on either the employee’s itemized wage  
25 statement described in Section 226 or in a separate writing provided on the designated pay date  
26 with the employee’s payment of wages.”
- 27 161. Defendants and/or DOES fail to itemize sick leave available, or paid time off an employer  
28 provides in lieu of sick leave, for use on Plaintiff’s and the Aggrieved Employees’ itemized

wage statements or in a separate writing provided on the designated pay date with the employee's payment of wages.

162. Defendants' and/or DOES' sick pay policy fails to pay sick pay for all appropriate and protected purposes enumerated in *California Labor Code* sections 233, 234, 246, and 246.5, and Defendants and/or DOES fail to itemize the amount of accrued/available sick leave Plaintiff and Aggrieved Employees have on wage statements each pay period.

163. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Aggrieved Employees she seeks to represent have been incurred damages, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to *California Labor Code* section 233(e).

164. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant and/or DOES in California.

165. Plaintiff, as a non-exempt employee who was subject to Defendants' and/or DOES' unlawful sick pay/paid time off policy, is an Aggrieved Employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5

166. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: for violations of the *California Labor Code* sections 233, 234, 246, and 246.5.

167. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an Aggrieved Employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

1 168. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other  
2 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for  
3 violations pursuant to this chapter or any provisions regulating hours and days of the week of  
4 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and  
5 558(a)(2).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays  
8 for relief and judgment against Defendant THE EBERLY COMPANY and/or DOES, jointly and  
9 severally, as follows:

- 10 A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
- 11 B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section  
12 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time  
13 worked;
- 14 C. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section  
15 2699, et. seq. for failure to provide compliant meal periods;
- 16 D. For all statutory penalties for each pay period during which an employee was underpaid due to  
17 failure to provide compliant meal periods;
- 18 E. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section  
19 2699, et. seq. for failure to provide all rest periods;
- 20 F. For all statutory penalties provided under *California Labor Code* for each pay period during  
21 which an employee was underpaid due to failure to provide paid rest periods;
- 22 G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section  
23 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 24 H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section  
25 2699, et. seq. for failure to timely pay wages at separation;
- 26 I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section  
27 2699, et. seq. for failure to adopt a lawful sick pay policy; and
- 28 J. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section

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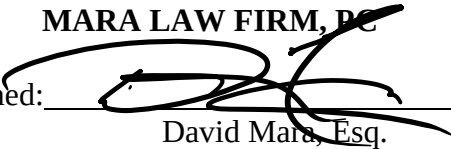
2699(g)(1).

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial as to liability.

**MARA LAW FIRM, PC**

Date: June 12, 2024

Signed: 

David Mara, Esq.  
Jill Vecchi, Esq.  
Attorneys for Plaintiff KEVIN NIKAIDO, on  
behalf of himself and all others similarly  
situated, and on behalf of the general public