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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

NAPOLEON WILSON, on behalf of others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

SULLIVAN PROPERTIES, INC., DBA FAIRGROVE PROPERTY MANAGEMENT and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CL013656C

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiff NAPOLEON WILSON, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants SULLIVAN PROPERTIES, INC., DBA FAIRGROVE PROPERTY MANAGEMENT and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action complaint brought under the California Private Attorneys General Act (Labor Code sections 2968 *et seq*.).

2. Defendants underpaid the aggrieved employees' wages by failing to compensate the aggrieved employees for all hours worked.

3. Defendants failed to pay all regular and overtime wages due to requiring off-the-clock work and timeshaving.

4. Defendants failed to provide, authorize, and/or permit the aggrieved employees to take all meal and rest periods to which they were entitled.

5. Defendants failed to reimburse employees for all work-related expenses including use of personal cell phones, devices, internet, and gas mileage for work-related purposes.

6. Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees without their consent.

7. As set forth in the PAGA notice, Defendants failed to maintain lawful meal and rest periods, regular, overtime, and paid sick leave policies. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

8. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interest, attorney's fees, and costs.

JURISDICTION & VENUE

9. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

10. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

11. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Napoleon Wilson

13. Plaintiff Wilson is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 1, 2023 to February 1, 2024. Plaintiff worked as a Manager.

14. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th _____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

15. Defendant Sullivan Properties, Inc., dba Fairgrove Property Management is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

16. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,

each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

17. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

18. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

19. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

20. Plaintiff and the aggrieved employees worked for Defendants as non-exempt employees and were compensated on an hourly basis.

21. First, Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants had a policy and practice of editing employees' time records to reflect less hours worked on the timecard and avoid the payment of meal and rest period premiums (i.e., *timeshaving*).

22. Due to this timeshaving practice, all hours worked were not directly compensated, resulting in minimum wage violations. For example, Plaintiff was scheduled to work four hours a day and if he worked more than those scheduled hours, Defendants would unlawfully edit his timecard to reflect the scheduled hours worked, rather than the actual hours worked. The revisions were made without employees' knowledge or consent. Plaintiff and the aggrieved employees were deprived of

regular wages each time Defendants altered their clock out time and overall time records, reducing the hours worked to make it appear as though they were not entitled to additional wages in their absence.

23. Second, Plaintiff, and on information and belief, other aggrieved employees were required to complete work-related tasks off the clock without pay. Plaintiff was required to work outside of his agreed scheduled time and off the clock in order to deal with work-related tasks such as tenant lock outs, maintenance requests, budget reports, and invoice coordination. Plaintiff was required to clock out and then continue to complete the above-mentioned work-related tasks without compensation. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were required to complete the same off-the-clock work without pay.

24. Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. To the extent Defendants' timeshaving practice (detailed above) resulted in unpaid overtime, Plaintiff bring this claim on behalf of the aggrieved employees. Additionally, as mentioned above, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and other aggrieved employees to work off-the-clock after the end of their shift. When Plaintiff and the aggrieved employees worked more than 8 hours, this practice also resulted in unpaid overtime wages.

25. Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. On information and belief, Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. Moreover, Defendants failed to maintain the records required by Labor Code § 246 *et seq*. with respect to the paid sick leave. Defendants also failed to pay Plaintiff his sick leave that he was entitled to use for reasons stated under the statute.

26. To the extent that the Defendants paid any sick leave, on information and belief, Defendants failed to pay sick leave at the correct rate because they failed to factor in all forms of aggrieved employees' remuneration, as required by section 246. Instead, Defendants paid sick leave to aggrieved employees at their base hourly rate, resulting in an underpayment of sick wages.

27. Defendants failed to provide complaint meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted meal periods in order to keep up with high demands of the job.

28. For example, Plaintiff was expected to respond to all resident-related issues immediately, regardless of his meal period. On information and belief, Defendants had the same practice with other aggrieved employees. Plaintiff and the aggrieved employees were required to work during their uncompensated meal periods. Meal periods were also regularly conducted "on duty" however, Defendants failed to provide a valid on duty meal period agreement. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7.

29. Defendants failed to pay any meal period premiums to Plaintiff and the aggrieved employees. On information and belief, to the extent Defendants did pay a meal period premium, the premiums were not paid at the "regular rate of compensation" because the premium did not factor in all forms of renumeration, including the required off-the-clock work.

30. Similarly, Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted rest periods for the same reasons the experienced non-compliant meal periods. To the extent that Plaintiff was able to take a break in between clients, these rest periods were not duty-free; therefore, non-compliant because Plaintiff was required to respond to resident-related issues immediately. Due to the high demands of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods.

31. Defendants also required Plaintiff and the aggrieved employees to incur necessary, work-related costs, without adequate reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

32. Specifically, Defendants had a policy and practice of requiring Plaintiff and the aggrieved employees to use their personal cell phone for business purposes. Plaintiff and aggrieved employees received calls, messages, and emails from vendors and residents. Plaintiff and aggrieved

employees were required to use their personal cell phone to communicate with their supervisors, vendors, and residents through Google Voice. Plaintiff and aggrieved employees were also required to use their personal cell phones to take pictures for maintenance issues, and to clock in and out, without full reimbursement.

33. Additionally, while working from home, Plaintiff and aggrieved employees were also required to use their home internet, personal laptops, and personal vehicles without any reimbursement from Defendants. For example, Plaintiff was required to use his personal laptop for the first 2-3 weeks of employment because his software was not set up and the internet was not working. Defendants failed to reimburse Plaintiff and, on information and belief, other aggrieved employees for the use of home internet and personal laptops.

34. As a Manager, Plaintiff provided in-home services to several residents assigned by Defendants. Plaintiff drove his personal car to, from, and in between properties during his scheduled shift. Defendants failed to issue reimbursements to Plaintiff for gas mileage. Plaintiff is informed and believes that Defendants undercompensated him and the other aggrieved employees for gas mileage.

35. Defendants had an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. Specifically, Defendants deducted wages and earnings from Plaintiff for the purpose of paying a License Fee and in violation of the employment agreement. The employee agreement entered into by Plaintiff clearly stated, "Employee will pay $1,400 per month as the license fee for the fuse of the unit" However, Defendants unlawfully deducted wages from Plaintiff in the amount of $1,781.60 for the month of October, rather than the agreed upon $1,400 per month. Therefore, Defendants overcharged Plaintiff $381.60 per month for the License Fee. Further, in direct violation of Labor Code section 222, Defendants unlawfully withheld part of Plaintiffs wages agreed upon by the Plaintiff without his consent.

36. Because of these violations, Defendants failed to provide accurate, itemized wage statements to employees that included accurate gross or net wages earned as employees earned overtime, sick leave, and premiums which were not paid at the lawful rate due to the regular rate violations as well as the off-the-clock violations.

37. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage statements to Plaintiff and aggrieved employees each pay period as a result of the policies set forth above. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection and recording of "gross wages earned" on those wage statements.

38. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

39. Further, Defendants violated Labor Code section 226(a)(2) by failing to list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked dur to Defendants policy and practice of timeshaving and requiring off the clock work.

40. Thus, Plaintiff and the aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. These wage statement violations are significant because they create confusion among Plaintiff and the aggrieved employees with respect to what amounts were owed and paid, at what rate, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and conceal the underpayments of employee wages.

41. These violations create derivative liability for failure to timely pay all wages owed each payday or upon separation of employment.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

42. All outside paragraphs of this Complaint are incorporated into this section.

43. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

44. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

45. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

46. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. "

47. Labor Code section 2699(f) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

48. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

49. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

50. On or about **July 23, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

51. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

52. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

53. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

54. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

55. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.

c. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

56. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: September 27, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorney for Plaintiff Napoleon Wilson

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
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July 23, 2024

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Sullivan Properties, Inc. dba Fairgrove Property Management
P.O. Box 15026
Irvine, California 92623

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **NAPOLEON WILSON** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

FAIRGROVE PROPERTY MANAGEMENT DBA SULLIVAN PROPERTIES, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Manager from about September 2023 to February 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

<u>Unpaid Hours Worked/Minimum Wage</u>
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

<u>Labor Code section 1194</u> renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. <u>Labor Code section 1197</u> further mandates

that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

First, Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants had a policy and practice of editing employees' time records to reflect less hours worked on the timecard and avoid the payment of meal and rest period premiums (i.e., *timeshaving*). Due to this timeshaving practice, all hours worked were not directly compensated, resulting in the minimum wage violations. For example, Plaintiff was scheduled to work four hours a day and if he worked more than those scheduled hours, Defendants would unlawfully edit his timecard to reflect the scheduled hours worked, rather than the actual hours worked. The revisions were made without employees' knowledge or consent. Plaintiff and the aggrieved employees were deprived of regular wages each time Defendants altered their clock out time and overall time records, reducing the hours worked to make it appear as though they were not entitled to additional wages in their absence.

Second, Plaintiff, and on information and belief, other aggrieved employees were required to complete work-related tasks off the clock without pay. Plaintiff was required to work outside of his agreed scheduled time and off the clock in order to deal with work-related tasks such as tenant lock outs, maintenance requests, budget reports, and invoice coordination. Plaintiff was required to clock out and then continue to complete the above-mentioned work-related tasks without compensation. Plaintiff was not compensated fore this time and is informed and believes other aggrieved employees were required to complete the same off-the-clock work without pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight 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 times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight 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." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. To the extent Defendants' timeshaving practice (detailed above) resulted in unpaid overtime, Plaintiff bring this claim on behalf of the aggrieved employees. Additionally, as mentioned above, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and other aggrieved employees to work off-the-clock after the end of their shift. When Plaintiff and the aggrieved employees worked more than 8 hours, this practice also resulted in unpaid overtime wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. On information and belief, Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. Moreover, Defendants failed to maintain the records required by Labor Code § 246 *et seq*. with respect to the paid sick leave. Defendants also failed to pay Plaintiff his sick leave that he was entitled to use for reasons stated under the statute.

To the extent that the Defendants paid any sick leave, on information and belief, Defendants failed to pay sick leave at the correct rate because they failed to factor in all forms of aggrieved employees' remuneration, as required by section 246. Instead, Defendants paid sick leave to aggrieved employees at their base hourly rate, resulting in an underpayment of sick wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide complaint meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted meal periods in order to keep up with high demands of the job. For example, Plaintiff was expected to respond to all resident-related issues immediately, regardless of his meal period. On information and belief, Defendants had the same practice with other aggrieved employees. Plaintiff and the aggrieved employees were required to work during their uncompensated meal periods. Meal periods were also regularly conducted "on duty" however, Defendants failed to provide a valid on duty meal period agreement. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7.

Defendants failed to pay any meal period premiums to Plaintiff and the aggrieved employees. On information and belief, to the extent Defendants did pay a meal period premium, the premiums were not paid at the "regular rate of compensation" because the premium did not factor in all forms of renumeration, including the required off-the-clock work.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. Plaintiff and the aggrieved employees often experienced missed, short, late, and interrupted rest periods for the same reasons stated in the "Unpaid Meal Period Premium Wages" section. To the extent that Plaintiff was able to take a break in between clients, these rest periods were not duty-free; therefore, non-compliant because Plaintiff was required to respond to resident-related issues immediately. Due to the high demands of the job, Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As explained above, Defendants underpaid Plaintiff and other aggrieved employees" minimum, regular, overtime wages, paid sick leave, and premium pay. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each payday, in violation of Labor Code sections 214 and/or 204b.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

Defendants additionally failed to pay paid sick leave owed to aggrieved employees during their employment as set forth in this notice and failed to pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants had a policy and practice of requiring Plaintiff and the aggrieved employees to use their personal cell phone for business purposes. Plaintiff and aggrieved employees received calls, messages, and emails from vendors and residents. Plaintiff and aggrieved employees were required to use their personal cell phone to communicate with their supervisors, vendors, and residents through Google Voice. Plaintiff and aggrieved employees were also required to use their personal cell phones to take pictures for maintenance issues, and to clock in and out, without full reimbursement. To the extent Defendants did pay cell phone reimbursement, the reimbursements were not all paid at the correct rate under California law because the reimbursement did not factor in all forms of renumeration, including the required off-the-clock work.

While working from home, Plaintiff and aggrieved employees were also required to use their home internet, personal laptops, and personal vehicles without any reimbursement from Defendants. For example, Plaintiff was required to use his personal laptop for the first 2-3 weeks of employment because his software was not set up and the internet was not working. Defendants failed to reimburse Plaintiff and, on information and belief, other aggrieved employees for the use of home internet and personal laptops.

As a Manager, Plaintiff provided in-home services to several residents assigned by Defendants. Plaintiff drove his personal car to, from, and in between properties during his scheduled shift. Defendants failed to issue reimbursements to Plaintiff for gas mileage. Plaintiff is informed and believes that Defendants undercompensated him and the other aggrieved employees for gas mileage.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unlawful Wage Deductions
Violation of Labor Code § § 221 through 225

Defendants violated Labor Code sections 221 through 225 with respect to a Plaintiff and other aggrieved employees.

Labor Code Section 221 renders it "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment. Labor Code section 223 states "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract."

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. Specifically, Defendants deducted wages and earnings from Plaintiff for the purpose of paying a License Fee and in violation of the employment agreement. Below is an illustrative example of Defendants unlawful policy and practice of deducting wages and earnings:

☑ *(If checked)* The Complex has 16 or more units, and Employee is considered the "designated responsible person" under California Code of Regulations Title 25, Section 42.

6. **License Fee.** It is hereby agreed that the fair market value of the Unit is $2,895.00 per month ("FMV"). Employee will pay $1,400.00 per month as the license fee for the use of the Unit ("License Fee"). Said License Fee is due on the first of each month. The amount of the License Fee for any partial month will be prorated based on a 30-day month. Where required by applicable law, Employer will withhold from wages paid to Employee any applicable state and federal payroll taxes, for the benefit to Employee of the difference between the FMV and the License Fee.

Extract of Plaintiffs employment agreement with Defendants, signed on 9/13/2023

Check Date	**October 20, 2023**	Voucher Number	**7720**
Period Beginning	**October 1, 2023**	Net Pay	**880.54**
Period Ending	**October 14, 2023**	Total Hours Worked	**41.68**

Deductions	**Amount**	**YTD**
Apartment Rent Value	890.80	2,226.96
Phone Reimbursement	-50.00	-100.00
Deductions	**840.80**	**2,126.96**

Direct Deposits	**Type Account**	**Amount**
Evolve Bank And Trust	C ***9361	880.54
Total Direct Deposits		**880.54**

Extract of Plaintiffs' Wage Statement for the period between 10/01/2023 to 10/14/2023

Check Date	**November 3, 2023**	Voucher Number	**7885**
Period Beginning	**October 15, 2023**	Net Pay	**809.63**
Period Ending	**October 28, 2023**	Total Hours Worked	**40.64**

Deductions	**Amount**	**YTD**
Apartment Rent Value	890.80	3,117.76
Phone Reimbursement		-100.00
Deductions	**890.80**	**3,017.76**

Direct Deposits	**Type Account**	**Amount**
Evolve Bank And Trust	C ***9361	809.63
Total Direct Deposits		**809.63**

Extract of Plaintiffs' Wage Statement for the period between 10/15/2023 to 10/28/2023

The above employee agreement clearly states that, "Employee will pay $1,400 per month as the license fee for the use of the unit ("License Fee')." However, Plaintiff was charged $890.80 each pay period in the month of October for "Apartment Rent Value." Therefore, Defendants unlawfully deducted wages from Plaintiff in the amount of $1,781.60 for the month of October, rather than the agreed upon $1,400 per month. Therefore, Defendants overcharged Plaintiff $381.60 per month for the License Fee. Further, in direct violation of Labor Code section 222, Defendants unlawfully withheld part of Plaintiffs wages agreed upon by the Plaintiff without his consent.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold <u>must be suspended immediately</u>.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

Cc Plaintiff Napoleon Wilson

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