

1 DOUGLAS HAN (SBN 232858)
2 SHUNT TATAVOS-GHARAJEH (SBN 272164)
3 ARSINÉ GRIGORYAN (SBN 319517)
4 **JUSTICE LAW CORPORATION**
5 751 N. Fair Oaks Avenue, Suite 101
6 Pasadena, California 91103
7 Telephone: (818) 230-7502
8 Facsimile: (818) 230-7259

9 *Attorneys for Plaintiffs*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**

12 LANZELL SMITH, individually, and on
13 behalf of other members of the general public
14 similarly situated;

15 Plaintiff,

16 v.

17 AMERICAN CAMPUS COMMUNITIES
18 SERVICES, INC., a Delaware corporation;
19 and DOES 1 through 100, inclusive;

20 Defendants.

Case No.: 34-2020-00280934-CU-OE-GDS

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

FILED
Superior Court Of California,
Sacramento
08/04/2021
rsannmiguel
By _____, Deputy
Case Number:
34-2020-00280934



1 COMES NOW, Plaintiffs LANZELL SMITH and RANDE McCORMICK
2 (collectively, “Plaintiffs”), individually, and on behalf of other members of the general public
3 similarly situated, and allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to the California Code of Civil Procedure
6 section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal
7 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
8 “amount in controversy” for the named Plaintiffs, including claims for compensatory damages,
9 restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than
10 seventy-five thousand dollars (\$75,000).

11 2. This Court has jurisdiction over this action pursuant to the California
12 Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all
13 other causes” except those given by statute to other courts. The statutes under which this
14 action is brought do not specify any other basis for jurisdiction.

15 3. This Court has jurisdiction over Defendants because, upon information and
16 belief, Defendants are citizens of California, have sufficient minimum contacts in California,
17 or otherwise intentionally avail themselves of the California market so as to render the exercise
18 of jurisdiction over them by the California courts consistent with traditional notions of fair play
19 and substantial justice.

20 4. Venue is proper in this Court because, upon information and belief, Defendants
21 maintain offices, have agents, and/or transact business in the State of California, including the
22 County of Sacramento. The majority of the acts and omissions alleged herein relating to
23 Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State
24 of California.

25 ///

26 ///

27 ///

1 **PARTIES**

2 5. Plaintiff LANZELL SMITH is an individual residing in the State of California.

3 6. Plaintiff RANDE McCORMICK is an individual residing in the State of
4 California.

5 7. Defendants AMERICAN CAMPUS COMMUNITIES SERVICES, INC., at all
6 times herein mentioned, was and is, upon information and belief, a Delaware corporation, and
7 at all times herein mentioned, was and is, an employer whose employees are engaged
8 throughout the State of California.

9 8. At all relevant times, Defendants AMERICAN CAMPUS COMMUNITIES
10 SERVICES, INC. was the “employer” of Plaintiffs within the meaning of all applicable
11 California laws and statutes.

12 9. At all times herein relevant, Defendants AMERICAN CAMPUS
13 COMMUNITIES SERVICES, INC. and DOES 1 through 100, and each of them, were the
14 agents, partners, joint venturers, joint employers, representatives, servants, employees,
15 successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant
16 hereto were acting within the course and scope of their authority as such agents, partners, joint
17 venturers, joint employers, representatives, servants, employees, successors, co-conspirators
18 and assigns, and all acts or omissions alleged herein were duly committed with the ratification,
19 knowledge, permission, encouragement, authorization, and consent of each defendant
20 designated herein.

21 10. The true names and capacities, whether corporate, associate, individual or
22 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
23 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
24 that information and belief allege, that each of the Defendants designated as a DOE is legally
25 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
26 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
27 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
28

1 capacities when the same have been ascertained.

2 11. Defendants AMERICAN CAMPUS COMMUNITIES SERVICES, INC. and
3 DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

4 12. Plaintiffs further allege that Defendants directly or indirectly controlled or
5 affected the working conditions, wages, working hours, and conditions of employment of
6 Plaintiffs and the other class members so as to make each of said Defendants employers and
7 employers liable under the statutory provisions set forth herein.

8 **CLASS ACTION ALLEGATIONS**

9 13. Plaintiffs bring this action on their own behalf and on behalf of all other
10 members of the general public similarly situated, and, thus, seeks class certification under
11 Code of Civil Procedure section 382.

12 14. The proposed class is defined as follows:

13 All current and former California-based (*i.e.*, currently “residing” in California
14 with the intent to remain in California indefinitely) non-exempt employees of
15 Defendants within the State of California at any time during the period from
16 four years preceding the filing of this Complaint to final judgment.

17 15. Plaintiffs reserve the right to establish subclasses as appropriate.

18 16. The class is ascertainable and there is a well-defined community of interest in
19 the litigation:

20 a. Numerosity: The class members are so numerous that joinder of all class
21 members is impracticable. The membership of the entire class is
22 unknown to Plaintiffs at this time; however, the class is estimated to be
23 greater than fifty (50) individuals and the identity of such membership is
24 readily ascertainable by inspection of Defendants’ employment records.

25 b. Typicality: Plaintiffs’ claims are typical of all other class members’
26 claims as demonstrated herein. Plaintiffs will fairly and adequately
27 protect the interests of the other class members with whom he has a well-
28

1 defined community of interest.

2 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
3 each class member, with whom they have a well-defined community of
4 interest and typicality of claims, as demonstrated herein. Plaintiffs have
5 no interest that is antagonistic to the other class members. Plaintiffs'
6 attorneys, the proposed class counsel, are versed in the rules governing
7 class action discovery, certification, and settlement. Plaintiffs have
8 incurred, and during the pendency of this action will continue to incur,
9 costs and attorneys' fees, that have been, are, and will be necessarily
10 expended for the prosecution of this action for the substantial benefit of
11 each class member.

12 d. Superiority: A class action is superior to other available methods for the
13 fair and efficient adjudication of this litigation because individual joinder
14 of all class members is impractical.

15 e. Public Policy Considerations: Certification of this lawsuit as a class
16 action will advance public policy objectives. Employers of this great
17 state violate employment and labor laws every day. Current employees
18 are often afraid to assert their rights out of fear of direct or indirect
19 retaliation. However, class actions provide the class members who are
20 not named in the complaint anonymity that allows for the vindication of
21 their rights.

22 17. There are common questions of law and fact as to the class members that
23 predominate over questions affecting only individual members. The following common
24 questions of law or fact, among others, exist as to the members of the class:

25 a. Whether Defendants' failure to pay wages, without abatement or
26 reduction, in accordance with the California Labor Code, was willful;

27 b. Whether Defendants failed to pay their hourly-paid or non-exempt
28

1 employees within the State of California for all hours worked, missed
2 meal periods and rest breaks in violation of California law;

3 c. Whether Defendants required Plaintiffs and the other class members to
4 work over eight (8) hours per day and/or over forty (40) hours per week
5 and failed to pay the legally required overtime compensation to Plaintiffs
6 and the other class members;

7 d. Whether Defendants properly calculated the regular rate for Plaintiffs
8 and the other class members who worked overtime and earned incentive
9 pay;

10 e. Whether Defendants deprived Plaintiffs and the other class members of
11 meal and/or rest periods or required Plaintiffs and the other class
12 members to work during meal and/or rest periods without compensation;

13 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
14 other class members for all hours worked;

15 g. Whether Defendants failed to pay all wages due to Plaintiffs and the
16 other class members within the required time upon their discharge or
17 resignation;

18 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
19 the other class members during their employment;

20 i. Whether Defendants complied with wage reporting as required by the
21 California Labor Code, including, inter alia, section 226;

22 j. Whether Defendants failed to reimburse Plaintiffs and the other class
23 members for necessary business-related expenses and costs;

24 k. Whether Defendants' conduct was willful or reckless;

25 l. Whether Defendants engaged in unfair business practices in violation of
26 California Business & Professions Code section 17200, *et seq.*;

27 ///

1 m. The appropriate amount of damages, restitution, and/or monetary
2 penalties resulting from Defendants' violation of California law; and

3 n. Whether Plaintiffs and the other class members are entitled to
4 compensatory damages pursuant to the California Labor Code.

5 **GENERAL ALLEGATIONS**

6 18. During the relevant time period set forth herein, Defendants employed Plaintiffs
7 and other persons as hourly-paid or non-exempt employees within the State of California.

8 19. Defendants, jointly and severally, employed Plaintiff Smith as an hourly-paid
9 employee from approximately December of 2017 to September of 2018 in the State of
10 California.

11 20. Defendants, jointly and severally, employed Plaintiff McCormick as an hourly-
12 paid, non-exempt employee from approximately December of 2018 to January of 2020 in the
13 State of California.

14 21. Defendants had the authority to hire and terminate Plaintiffs and other class
15 members; to set work rules and conditions governing Plaintiffs' and other class members'
16 employment; and to supervise their daily employment activities.

17 22. Defendants exercised sufficient authority over the terms and conditions of
18 Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs
19 and the other class members.

20 23. Defendants directly hired and paid wages and benefits to Plaintiffs and other
21 class members.

22 24. Defendants continue to employ hourly-paid or non-exempt employees within the
23 State of California.

24 25. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
25 forty (40) hours in a week during their employment with Defendants.

26 ///

27 ///

1 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
3 employees within the State of California. This scheme involved, inter alia, failing to pay them
4 for all hours worked, missed meal periods, and missed rest breaks in violation of California
5 law.

6 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 knew or should have known that Plaintiffs and other class members were entitled to receive
8 certain wages for overtime compensation and that Plaintiffs and other class members were not
9 receiving wages for overtime compensation.

10 28. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
11 failed to provide Plaintiffs and other class members the required rest and meal periods during
12 the relevant time period as required under the Industrial Welfare Commission Wage Orders
13 and thus they are entitled to any and all applicable penalties.

14 29. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiffs and other class members were entitled to receive all
16 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
17 the other class members' regular rate of pay when a meal period was missed, late or
18 interrupted, and that Plaintiffs and other class members did not receive all timely and proper
19 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
20 period was missed.

21 30. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiffs and other class members were entitled to receive all
23 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
24 and the other class members' regular rate of pay when a rest period was missed, late or
25 interrupted, and that Plaintiffs and other class members did not receive all rest periods or
26 payment of one additional hour of pay at their regular rate of pay when a rest period was
27 missed.

1 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and other class members were entitled to receive at
3 least minimum wages for compensation and that Plaintiffs and other class members were not
4 receiving at least minimum wages for all hours worked.

5 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs and other class members were entitled to receive the
7 wages owed to them upon discharge or resignation, including overtime and minimum wages
8 and meal and rest period premiums, and that Plaintiffs and other class members did not, in fact,
9 receive such wages owed to them at the time of their discharge or resignation.

10 33. Plaintiffs are informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiffs and other class members were entitled to receive
12 complete and accurate wage statements in accordance with California law, but, in fact,
13 Plaintiffs and other class members did not receive complete and accurate wage statements from
14 Defendants. The deficiencies included, inter alia, the failure to include the total number of
15 hours worked by Plaintiffs and other class members.

16 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll records
21 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
22 keep complete and accurate payroll records for Plaintiffs and other class members.

23 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that they had a duty to compensate Plaintiffs and other class
25 members pursuant to California law, and that Defendants had the financial ability to pay such
26 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
27 represented to Plaintiffs and other class members that they were properly denied wages, all in
28

1 order to increase Defendants' profits.

2 37. As a pattern and practice, during the relevant time period set forth herein,
3 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
4 worked. Plaintiffs and other class members were required to work more than eight (8) hours
5 per day and/or forty (40) hours per week without overtime compensation.

6 38. As a pattern and practice, during the relevant time period set forth herein,
7 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
8 Plaintiffs and other class members.

9 39. As a pattern and practice, during the relevant time period set forth herein,
10 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
11 hours worked.

12 40. As a pattern and practice, during the relevant time period set forth herein,
13 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
14 discharge or resignation.

15 41. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
17 members.

18 42. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
20 members.

21 43. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to properly compensate Plaintiffs and other class members pursuant to
23 California law in order to increase Defendants' profits.

24 44. California Labor Code section 218 states that nothing in Article 1 of the Labor
25 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
26 due to him [or her] under this article."

27 ///

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against AMERICAN CAMPUS COMMUNITIES SERVICES, INC. and DOES 1**
4 **through 100)**

5 45. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
6 through 44, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 46. California Labor Code section 1198 and the applicable Industrial Welfare
9 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
10 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
11 rate of pay, depending on the number of hours worked by the person on a daily or weekly
12 basis.

13 47. Specifically, the applicable IWC Wage Order provides that Defendants are and
14 were required to pay Plaintiffs and other class members employed by Defendants, who
15 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
16 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
17 than forty (40) hours in a workweek.

18 48. The applicable IWC Wage Order further provides that Defendants are and were
19 required to pay Plaintiffs and other class members overtime compensation at a rate of two
20 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

21 49. California Labor Code section 510 codifies the right to overtime compensation
22 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
23 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
24 of work, and overtime compensation at twice the regular hourly rate for hours worked in
25 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
26 of work.

27 ///

1 57. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) provide that an employer may not require,
3 cause or permit an employee to work for a work period of more than five (5) hours per day
4 without providing the employee with a meal period of not less than thirty (30) minutes, except
5 that if the total work period per day of the employee is no more than six (6) hours, the meal
6 period may be waived by mutual consent of both the employer and employee.

7 58. During the relevant time period set forth herein, the applicable IWC Wage
8 Order and California Labor Code section 512(a) further provide that an employer may not
9 require, cause, or permit an employee to work for a work period of more than ten (10) hours
10 per day without providing the employee with a second uninterrupted meal period of not less
11 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
12 hours, the second meal period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14 59. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
16 time no longer than six (6) hours, and who did not waive their legally-mandated meal periods
17 by mutual consent, were required to work for periods longer than five (5) hours without an
18 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

19 60. As a pattern and practice, during the relevant time period set forth herein,
20 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
21 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
22 periods by mutual consent, were required to work for periods longer than ten (10) hours
23 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
24 period.

25 ///

26 ///

27 ///

1 61. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
3 time in excess of six (6) hours were required to work for periods longer than five (5) hours
4 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
5 period.

6 62. As a pattern and practice, during the relevant time period set forth herein,
7 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
8 time in excess of twelve (12) hours were required to work for periods longer than ten (10)
9 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without
10 a rest period.

11 63. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants intentionally and willfully required Plaintiffs and other class members (but not all)
13 to work during meal periods and failed to compensate Plaintiffs and the other class members
14 (but not all) the full meal period premium for work performed during meal periods.

15 64. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to pay Plaintiffs and other class members (but not all) the full meal period
17 premium due pursuant to California Labor Code section 226.7.

18 65. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 66. Pursuant to the applicable IWC Wage Order and California Labor Code section
21 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
22 additional hour of pay at the employee's regular rate of compensation for each workday that
23 the meal or rest period is not provided.

24 ///

25 ///

26 ///

1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against AMERICAN CAMPUS COMMUNITIES SERVICES, INC. and DOES 1**
4 **through 100)**

5 67. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 66, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 68. During the relevant time period set forth herein, the applicable IWC Wage
9 Order and California Labor Code section 226.7 were applicable to Plaintiffs' and other class
10 members' employment by Defendants.

11 69. During the relevant time period set forth herein, California Labor Code section
12 226.7 provides that no employer shall require an employee to work during any rest period
13 mandated by an applicable order of the California IWC.

14 70. During the relevant time period set forth herein, the applicable IWC Wage
15 Order provides that "[e]very employer shall authorize and permit all employees to take rest
16 periods, which insofar as practicable shall be in the middle of each work period" and that the
17 "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time per four (4) hours or major fraction thereof" unless the total daily work time is
19 less than three and one-half (3 ½) hours.

20 71. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants required Plaintiffs and other class members (but not all) to work four (4) or more
22 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
23 period worked.

24 72. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants willfully required Plaintiffs and other class members (but not all) to work during
26 rest periods and failed to pay Plaintiffs and the other class members the full rest period
27 premium for work performed during rest periods.

1 80. Pursuant to California Labor Code section 1194.2, Plaintiffs and other class
2 members are entitled to recover liquidated damages in an amount equal to the wages
3 unlawfully unpaid and interest thereon.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 201 and 202)**

6 **(Against AMERICAN CAMPUS COMMUNITIES SERVICES, INC. and DOES 1**
7 **through 100)**

8 81. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
9 through 80, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 82. During the relevant time period set forth herein, California Labor Code sections
12 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
13 at the time of discharge are due and payable immediately, and if an employee quits his or her
14 employment, his or her wages shall become due and payable not later than seventy-two (72)
15 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
16 intention to quit, in which case the employee is entitled to his or her wages at the time of
17 quitting.

18 83. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants intentionally and willfully failed to pay Plaintiffs and other class members (but not
20 all) who are no longer employed by Defendants their wages, earned and unpaid, within
21 seventy-two (72) hours of their leaving Defendants' employ.

22 84. Defendants' pattern and practice of failing to pay Plaintiffs and other class
23 members who are no longer employed by Defendants their wages, earned and unpaid, within
24 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
25 Code sections 201 and 202.

26 ///

27 ///

1 central location within the State of California.

2 89. As a pattern and practice, Defendants have intentionally and willfully failed to
3 provide Plaintiffs and other class members (but not all) with complete and accurate wage
4 statements. The deficiencies include but are not limited to: the failure to include the total
5 number of hours worked by Plaintiffs and other class members.

6 90. As a result of Defendants' violation of California Labor Code section 226(a),
7 Plaintiffs and other class members have suffered injury and damage to their statutorily
8 protected rights.

9 91. More specifically, Plaintiffs and other class members have been injured by
10 Defendants' intentional and willful violation of California Labor Code section 226(a) because
11 they were denied both their legal right to receive, and their protected interest in receiving,
12 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

13 92. Plaintiffs and other class members are entitled to recover from Defendants the
14 greater of their actual damages caused by Defendants' failure to comply with California Labor
15 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
16 employee.

17 93. Plaintiffs and other class members are also entitled to injunctive relief to ensure
18 compliance with this section, pursuant to California Labor Code section 226(g).

19 **SEVENTH CAUSE OF ACTION**

20 **(Violation of California Labor Code §§ 2800 and 2802)**

21 **(Against AMERICAN CAMPUS COMMUNITIES SERVICES, INC. and DOES 1**
22 **through 100)**

23 94. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
24 through 93, and each and every part thereof with the same force and effect as though fully set
25 forth herein.

26 ///

27 ///

1 the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff
2 McCormick has exhausted the statutory time period to bring this action.

3 96. Plaintiff McCormick and the other hourly-paid or non-exempt employees are
4 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all
5 current or former employees of Defendants who worked for Defendants at any time during
6 the period from May 28, 2019 to the present, and one or more of the alleged violations was
7 committed against them.

8 **Failure to Pay Minimum and Overtime Wages**

9 97. At all times relevant herein, Defendants were required to compensate their non-
10 exempt employees minimum wages for all hours worked and overtime wages for all hours
11 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
12 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

13 98. As a pattern and practice, Defendants failed to compensate Plaintiff McCormick
14 and other aggrieved current and former employees for all hours worked, resulting in a failure to
15 pay all minimum wages and overtime wages, where applicable.

16 **Failure to Provide Meal Periods and Rest Breaks**

17 99. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
18 were required to authorize and permit their non-exempt employees to take a 10-minute rest
19 break for every four (4) hours worked or major fraction thereof, and were further required to
20 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
21 worked.

22 100. As a pattern and practice, Defendants failed to provide Plaintiff McCormick and
23 other aggrieved current and former employees with legally-mandated meal periods and rest
24 breaks and failed to pay proper compensation for this failure.

25 **Failure to Timely Pay Wages During Employment**

26 101. At all times relevant herein, Defendants were required to pay their employees
27 within a specified time period pursuant to the mandate of Labor Code § 204.

1 30. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 31. For statutory wage penalties pursuant to California Labor Code section 203 for
4 the other class members who have left Defendants' employ;

5 32. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due; and

7 33. For such other and further relief as the court may deem just and proper.

8 **As to the Sixth Cause of Action**

9 34. That the Court declare, adjudge and decree that Defendants violated the record
10 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
11 as to Plaintiffs and other class members (but not all), and willfully failed to provide accurate
12 itemized wage statements thereto;

13 35. For actual, consequential and incidental losses and damages, according to proof;

14 36. For statutory penalties pursuant to California Labor Code section 226(e);

15 37. For injunctive relief to ensure compliance with this section, pursuant to
16 California Labor Code section 226(g); and

17 38. For such other and further relief as the court may deem just and proper.

18 **As to the Seventh Cause of Action**

19 39. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class
21 members (but not all) for all necessary business-related expenses as required by California
22 Labor Code sections 2800 and 2802;

23 40. For actual, consequential and incidental losses and damages, according to proof;

24 41. For the imposition of civil penalties and/or statutory penalties;

25 42. For punitive damages and/or exemplary damages according to proof at trial;

26 43. For reasonable attorneys' fees and costs of suit incurred herein; and

27 44. For such other and further relief as the court may deem just and proper.

1 **As to the Eighth Cause of Action**

2 45. Pursuant to California Labor Code § 2699, Plaintiff McCormick, individually,
3 and on behalf of other current and former aggrieved employees, requests and is entitled to
4 recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs
5 pursuant, as well as all statutory penalties against Defendants, and each of them, including but
6 not limited to:

- 7 a. Penalties under California Labor Code § 2699 in the amount of a hundred
8 dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation, and two hundred dollars (\$200) for each aggrieved employee per pay
10 period for each subsequent violation;
- 11 b. Penalties under California Code of Regulations Title 8 § 11040 in the amount of
12 fifty dollars (\$50) for each aggrieved employee per pay period for the initial
13 violation, and one hundred dollars (\$100) for each aggrieved employee per pay
14 period for each subsequent violation;
- 15 c. Penalties under California Labor Code § 210 in addition to, and entirely
16 independent and apart from, any other penalty provided in the California Labor
17 Code in the amount of a hundred dollars (\$100) for each aggrieved employee
18 per pay period for the initial violation, and two hundred dollars (\$200) for each
19 aggrieved employee per pay period for each subsequent violation;
- 20 d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100)
21 for each aggrieved employee per pay period for the initial violation, and two
22 hundred fifty dollars (\$250) for each aggrieved employee per pay period for
23 each subsequent violation;
- 24 e. Any and all additional penalties as provided by the Labor Code and/or other
25 statutes; and
- 26 f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and
27 any other applicable statute.
- 28

As to the Ninth Cause of Action

46. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members, failing to pay Plaintiffs' and other class members' wages timely as required by California Labor Code section 201, 202.

47. For restitution of unpaid wages to Plaintiffs and other class members and all pre-judgment interest from the day such amounts were due and payable;

48. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

49. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

50. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

51. For such other and further relief as the court may deem just and proper.

Dated: August 3, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Attorneys for Plaintiff

EXHIBIT 1

May 28, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: AMERICAN CAMPUS COMMUNITIES SERVICES, INC.

Dear Representative:

We have been retained to represent Rande McCormick against American Campus Communities Services, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "ACCS").

Mr. McCormick is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. McCormick may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

American Campus Communities Services, Inc. is a Delaware corporation located at 12700 Hill Country Boulevard Suite T-200, Austin, Texas 78738.

ACCS employed Mr. McCormick as an hourly-paid non-exempt Maintenance Technician within one year of the date of this letter (until in or about January of 2020) in the State of California. ACCS directly controlled the wages, hours and working conditions of Mr. McCormick's employment.

///

¹ Mr. McCormick does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. McCormick will amend this notice when the true names and capacities are known. Mr. McCormick is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. McCormick and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Mr. McCormick may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of ACCS within the State of California.

ACCS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. McCormick has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at ACCS, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

ACCS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. McCormick and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. ACCS failed to compensate Mr. McCormick and the other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, while on-call and during meal breaks. ACCS also failed to include non-discretionary bonuses and incentives in aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. McCormick and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

///

///

///

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, ACCS routinely required Mr. McCormick and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with ACCS policies and expectations. Further, ACCS failed to authorize and permit Mr. McCormick and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, ACCS failed to compensate Mr. McCormick and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, ACCS failed to pay Mr. McCormick and other aggrieved employees all wages, including for uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, ACCS failed to pay Mr. McCormick and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, ACCS did not provide Mr. McCormick and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from ACCS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. McCormick and other aggrieved employees, (2) total hours worked by Mr. McCormick and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. McCormick and other aggrieved employees (4) all deductions for Mr. McCormick and other aggrieved employees, (5) net wages earned by Mr. McCormick and other aggrieved employees, (6) the inclusive dates of the period for which Mr. McCormick and other aggrieved employees are paid, (7) the name of the aggrieved 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. McCormick and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. McCormick and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, 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. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, ACCS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. McCormick and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, ACCS did not provide Mr. McCormick and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, while on-call and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. McCormick and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ACCS, including for the use of their personal cellular phones and vehicles for work purposes, such as communicating with managers and travelling between job sites.

We believe that Mr. McCormick and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. McCormick will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of ACCS within one year of the date of this letter, as allowed by law.

///

LWDA
May 28, 2020
Page 6 of 6

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written in a cursive style.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only)

Capitol Corporate Services, Inc.
c/o American Campus Communities Services, Inc.
455 Capitol Mall Complex, Suite 217
Sacramento, California 95814
Agent for Service of Process for American Campus Communities Services, Inc.