

12/03/2020

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

S-CV-0045899

CHRISTINA HALL, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

USA MULTIFAMILY MANAGEMENT,
INC., a California Corporation; USA
PROPERTIES FUNDS, INC., a California
Corporation; USA MULTIFAMILY
HOUSING, INC., a California Corporation;
USA CONSTRUCTION MANAGEMENT,
INC., a California Corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ §§ 201, 202, 203, 204 *et seq.*,
210, 226(a), 226.7, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B).

Plaintiff Christina Hall (“PLAINTIFF”), on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings this action against Defendants USA MULTIFAMILY MANAGEMENT, INC., USA PROPERTIES FUNDS, INC., USA MULTIFAMILY HOUSING, INC., USA CONSTRUCTION MANAGEMENT, INC. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as permitted by California Labor Code § 2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. California has enacted the PAGA to permit individuals to bring an action on behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

THE PARTIES

4. Defendant USA Multifamily Management, Inc. is a California corporation that

1 at all relevant times mentioned herein conducted and continues to conduct substantial and
2 regular business throughout the State of California.

3 5. Defendant USA Properties Fund, Inc. is a California corporation that at all
4 relevant times mentioned herein conducted and continues to conduct substantial and regular
5 business throughout the State of California.

6 6. Defendant USA Multifamily Housing, Inc. is a California corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout the State of California.

9 7. Defendant USA Construction Management, Inc. is a California corporation that
10 at all relevant times mentioned herein conducted and continues to conduct substantial and
11 regular business throughout the State of California.

12 8. PLAINTIFF alleges there has existed a unity of interest and ownership between
13 all these Defendants such that any individuality and separateness between the entities has
14 ceased. Defendants USA Multifamily Management, Inc., USA Properties Fund, Inc., USA
15 Multifamily Housing, Inc., USA Construction Management, Inc. are therefore alter egos of each
16 other. Adherence to the fiction of the separate existence of would permit an abuse of the
17 corporate privilege, and would promote injustice by protecting USA Multifamily Management,
18 Inc., USA Properties Fund, Inc., USA Multifamily Housing, Inc., USA Construction
19 Management, Inc. from liability for the wrongful acts committed by them. As evidenced by
20 PLAINTIFF's paychecks and company documents, Defendants USA Multifamily Management,
21 Inc., USA Properties Fund, Inc., USA Multifamily Housing, Inc., USA Construction
22 Management, Inc. were joint employers of PLAINTIFF and are referred to herein as
23 ("DEFENDANT").

24 9. PLAINTIFF further alleges that Defendants USA Multifamily Management, Inc.,
25 USA Properties Fund, Inc., USA Multifamily Housing, Inc., USA Construction Management,
26 Inc. are the alter egos of each other for the following reasons:

27 (A) On the California Secretary of State's website
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(<https://businesssearch.sos.ca.gov/>) Defendants USA Multifamily Management, Inc., USA Properties Fund, Inc., USA Multifamily Housing, Inc., USA Construction Management, Inc. have the same entity address and/or mailing address;

(B) On information and belief Defendants USA Multifamily Management, Inc., USA Properties Fund, Inc., USA Multifamily Housing, Inc., USA Construction Management, Inc. utilize the same standardized employment forms and issue the same employment policies; and,

(C) USA Multifamily Management, Inc., USA Properties Fund, Inc., USA Multifamily Housing, Inc., USA Construction Management, Inc. all have the same agent for service of process and all have the same Chief Executive Officer.

10. DEFENDANT offers property and asset management, marketing, maintenance, preventative maintenance, monitoring and appealing real estate taxes, leasing, project rehabilitation, and accounting services.

11. PLAINTIFF was employed by DEFENDANT in California and was classified as a non-exempt employee entitled to overtime pay and meal and rest periods from December of 2019 to July of 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid on an hourly basis.

12. PLAINTIFF and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by USA Multifamily Management, Inc. and/or USA Properties Fund, Inc. and/or USA Multifamily Housing, Inc. and/or USA Construction Management, Inc. in California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time period of September 4, 2019 until a date as determined by the Court (the "PAGA PERIOD").

1 13. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
2 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
3 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
4 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
5 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
6 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
7 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
8 the meaning of Labor Code § 2699, *et seq.*

9 14. The true names and capacities, whether individual, corporate, subsidiary,
10 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
11 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
12 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
13 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
14 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
15 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
16 responsible in some manner for one or more of the events and happenings that proximately
17 caused the injuries and damages hereinafter alleged.

18 15. The agents, servants and/or employees of the Defendants and each of them acting
19 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
20 agent, servant and/or employee of the Defendants, and personally participated in the conduct
21 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
22 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
23 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
25 agents, servants and/or employees.

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1 THE CONDUCT

2 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
3 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer, including
5 all the time the employee is suffered or permitted to work. DEFENDANT from time to time
6 required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all
7 the time they were under DEFENDANT's control. PLAINTIFF was from time to time
8 interrupted by work assignments while clocked out of DEFENDANT's timekeeping system,
9 during what should have been PLAINTIFF's off duty meal period. Indeed there were days
10 where PLAINTIFF did not even receive a partial lunch. Additionally, DEFENDANT required
11 PLAINTIFF to work after she already had clocked out of DEFENDANT's timekeeping system
12 for the workday, this work included but was not limited to, tagging cars for improper parking
13 violations, responding to maintenance and emergency issues late at night and early in the
14 morning, such as security alarms and flooding issues in apartments managed by DEFENDANT.
15 As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage
16 and overtime compensation by regularly working without their time being accurately recorded
17 and without compensation at the applicable minimum wage and overtime rates.
18 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
19 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

20 17. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
21 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
22 overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate
23 minimum and overtime wages for time worked by PLAINTIFF and other AGGRIEVED
24 EMPLOYEES in order to avoid paying these employees the correct compensation. As a result,
25 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
26 without compensation at the correct rates. DEFENDANT's policy and practice to not pay the
27 AGGRIEVED EMPLOYEES the correct minimum and overtime wages for all time worked in
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1 accordance with applicable law is evidenced by DEFENDANT's business records.

2 18. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES were also from time to time unable to take thirty (30) minute off duty meal
4 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
5 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANT for
6 more than five (5) hours during some shifts without receiving a meal break from time to time.
7 Further, DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with
8 a second off-duty meal period for some workdays in which these employees were required by
9 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and other
10 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
11 and in accordance with DEFENDANT's corporate policy and practice.

12 19. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were also from time to time unable to take rest breaks. During the PAGA
14 PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required to work in
15 excess of four (4) hours without being provided ten (10) minute rest periods. Further, these
16 employees were denied their first rest periods of at least ten (10) minutes for every shift worked
17 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
18 every shift worked of between six (6) and eight (8) hours, and a first, second and third rest
19 period of at least ten (10) minutes for every shift worked of ten (10) hours or more from time
20 to time. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one
21 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
23 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
24 Order requires employers to provide employees with off-duty rest periods, which the California
25 Supreme Court defined as time during which an employee is relieved from all work related
26 duties and free from employer control. In so doing, the Court held that the requirement under
27 California law that employers authorize and permit all employees to take rest period means that
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1 employers must relieve employees of all duties and relinquish control over how employees
2 spend their time which includes control over the locations where employees may take their rest
3 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
4 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
5 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
6 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
7 leave the work premises during their rest period.

8 20. In addition, when DEFENDANT required PLAINTIFF and other AGGRIEVED
9 EMPLOYEES to respond to calls and engage in additional work performing various
10 maintenance tasks and/or providing assistance to tenants who have been locked out of their
11 apartments, among other things, this results in a second reporting for work in a single workday.
12 In such a circumstance of a second reporting for work in a single workday, DEFENDANT
13 failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040.
14 Subdivision 5(B) states: "If an employee is required to report for work a second time in any one
15 workday and is furnished less than two (2) hours of work on the second reporting, said
16 employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not
17 be less than the minimum wage." Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

18 21. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
20 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
21 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
22 2802, employers are required to indemnify employees for all expenses incurred in the course
23 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
25 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
26 directions of the employer, even though unlawful, unless the employee, at the time of obeying
27 the directions, believed them to be unlawful."
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22. In the course of their employment PLAINTIFF and other AGGRIEVED EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal cellular phones for DEFENDANT’s benefit. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to travel all on behalf of and for the benefit of DEFENDANT.

23. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct net and gross wages earned. Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

24. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

1 **JURISDICTION AND VENUE**

2 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
3 Procedure, Section 410.10.

4 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
5 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
6 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
7 in this County and/or conducts substantial business in this County, and (ii) committed the
8 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
9 EMPLOYEES.

10 **FIRST CAUSE OF ACTION**

11 **For Violation of the Private Attorneys General Act**

12 **[Cal. Lab. Code §§ 2698, *et seq.*]**

13 **(By PLAINTIFF and Against All Defendants)**

14 27. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

16 28. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
18 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
21 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
22 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
23 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
24 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
25 subject to arbitration.

26 29. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney General
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1 Act, brings this Representative Action on behalf of the State of California with respect to
2 herself and all individuals who are or previously were employed by Defendants USA
3 Multifamily Management, Inc. and/or USA Properties Fund, Inc. and/or USA Multifamily
4 Housing, Inc. and/or USA Construction Management, Inc. in California and who were
5 classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time period
6 of September 4, 2019 until a date as determined by the Court (the "PAGA PERIOD").

7 30. On September 4, 2020, PLAINTIFF gave written notice by electronic mail to the
8 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
9 employer of the specific provisions of this code alleged to have been violated as required by
10 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
11 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
12 now commence a representative civil action under PAGA pursuant to Section 2699 as the
13 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
14 defined.

15 31. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
18 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
19 to pay overtime wages, (e) failed to reimburse for required expenses, and (f) failed to provide
20 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
21 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
22 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and
23 the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
24 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
25 Code Private Attorney General Act of 2004 as the representative of the State of California for
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the State of California and with respect to all AGGRIEVED
7 EMPLOYEES:

8 A) Recovery of civil penalties as prescribed by the Labor Code Private
9 Attorneys General Act of 2004; and,

10 B) An award of attorneys' fees and cost of suit, as allowable under the
11 law, including, but not limited to, pursuant to Labor Code §2699.

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13 Dated: December 3, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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16 By: 

17 Norman B. Blumenthal
18 Attorneys for Plaintiff
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