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January 18, 2022

For Online Filing:

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *LaShonta Knight v. Woodside Home of Northern California, Inc. et al.*

Dear Labor Commissioner,

As counsel for, and on behalf of, Lisa Lefanty (hereinafter referred to as “Claimant”), I am writing to provide you and the following employer(s) (hereafter “Defendant(s)”) notice pursuant to California Labor Code section 2699.3:

Woodside Homes of Northern California, Inc.
Attn: Legal Department
460 West 50 North suite 205
Salt Lake City, UT 84101

Woodside Homes of California, Inc.
Attn: Legal Department
460 West 50 North suite 205
Salt Lake City, UT 84101

Woodside Homes of Fresno, Inc.
Attn: Legal Department
460 West 50 North suite 205
Salt Lake City, UT 84101

I am setting forth the facts and theories to support each of the counts found within this letter. Please notify us of your intent to investigate any or all of the claims alleged herein against any of the above identified Defendant(s). Should you decide not to investigate, we request that you allow us to seek civil penalties on behalf of the Labor Commissioner, Claimant, and all similarly situated current and former aggrieved employees, pursuant to California Labor Code section 2699(a). A \$75.00 filing

fee was submitted to Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102.

A. FACTS

Claimant worked for Defendants as a Sales Representative in several home communities in California. During her employment, Claimant, and other similarly aggrieved employees, have been made to suffer numerous violations of the California Labor Code.

Throughout the relevant period, Defendants withheld pay from Claimant and similarly situated employees. Upon beginning an assignment at a new home community, Claimant and similarly situated employees were promised in their written compensation agreements that they would receive a “nonrecoverable draw on commission” for the first few months working in the new community. The specific amount of time that the non-recoverable draw was offered varied based on the employee and the specific community. However, Claimant and similarly situated employees did not receive the guaranteed nonrecoverable draw as per the written compensation agreement. Instead, Defendants simply withheld the promised pay and it was never provided.

In addition, when Claimant and similarly situated employees moved from one new home community to another, Defendants had a policy and practice of refusing to pay the guaranteed nonrecoverable draw if the sales representative had commission pay still owed and payable due to closing sales in the prior home community. Ms. Knight asked the human resources department for Defendants, located in Salt Lake City Utah, why the nonrecoverable draw had not been provided when this occurred to her as she moved from one community to another. The HR department responded that it would make a partial exception in that instance. However, this refusal to provide a nonrecoverable draw when the sales representative had commissions from closings in the prior community was in direct contradiction of the written compensation agreements drafted by Defendants and signed by both Defendants and their sales employees.

Additionally, Defendants failed to timely pay Claimant and similarly situated employees when commission pay was owed during employment. Per the signed written compensation agreements, commission pay was deemed earned and payable when a home sale closed escrow. As such, the commission pay owed to Claimant and similarly situated employees should have been paid on the next scheduled pay period, which were twice monthly. However, Defendants routinely failed to timely pay Claimant and similarly situated employees the commissions earned and payable until Claimant and similarly situated employees completed a “timesheet,” despite the fact that Defendants were aware that commission pay was earned and payable because Defendants manages the entire closing process.

Defendants did not allow Claimant and similarly situated employees to take their statutorily required meal and rest periods. While working as a sales representative in new home communities, Claimant and similarly situated employees spent much of their working time in model homes in the community that served as showcases and offices for Defendants’ employees. Usually Claimant and similarly situated employees spent three days working alongside another sales representative, and two days working on their own. However, Defendants required Claimant and similarly situated employees

to remain in the office at all times to be available for customers, even if another sales representative was present. Claimant complained about this to Defendants, but the policy was not changed. Claimant's supervisor simply said she and other employees could leave to get their lunch, but they then had to return and eat their meal in the office, ready to deal with phone calls or in person customer visits even if they interrupted meal and rest periods. No separate break area was provided, and Claimant and similarly situated employees were not allowed to leave the premises during rest breaks.

Defendants failed to provide Claimant and other similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour of work as required under the law. Claimant and similarly situated employees regularly missed their meal and rest periods and/ or they were provided late. Defendants also failed to provide rest periods to Claimant and similarly situated employees for every 4 hours worked or major fraction thereof. Defendants' management staff were aware this was occurring and did not ensure meal and/ or rest periods were provided to Claimant and similarly situated employees in compliance with California law. On information and belief, Defendants have never paid a missed meal or rest break premium.

Defendants also underpaid Claimant and similarly situated employees when they were paid on a commission-only basis because Claimant and similarly situated employees were not paid separately for rest breaks and other non-productive time. See *Vaquero v. Stoneledge Furniture LLC*, Calif. Ct. App., No. B269657 (Feb. 28, 2017).

During their employment, Claimant and similarly situated employees were required to use their personal vehicles for business purposes. For instance, Claimant had to drive between Defendant's communities during the workday, drive to sites within home communities, and had to drive Defendants' customers in her personal vehicle. Claimant also drove to Defendant's offices in Folsom, California from the new home communities where she worked in order to pick up and drop off supplies. Claimant and similarly situated employees also were required to use their personal cell phones for business purposes. Defendants never reimbursed its employees for the use of their personal vehicles and cell phones for business purposes.

As a result, Defendants did not provide Claimant and similarly situated employees legally compliant wage statements noting, among other things, total hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Defendants also did not provide Claimant and similarly situated aggrieved employees all wages owed upon their termination or within seventy-two (72) hours of their separation from employment.

Claimant is informed and believe that Defendants committed numerous other violations of the California Labor Code, including but not limited to those identified in this letter. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Claimant intend to seek civil penalties for all violations of the California Labor Code, whether he experienced them personally or not.

B. VIOLATIONS OF THE LABOR CODE EXPERIENCED BY CLAIMANT AND SIMILARLY SITUATED EMPLOYEES

1. Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order No. 5-2001, § 4 (Failure to Pay Minimum Wages)

During the period Claimant and similarly situated employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. See, e.g., IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001, section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Claimant and similarly situated employees at least minimum wage for all hours worked. Thus, Claimant and similarly situated employees were not paid at least the applicable state minimum wage for all hours worked in violation of the Labor Code.

2. Violation of Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees overtime for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay overtime for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Claimant and similarly situated employees worked over eight (8) hours per day and forty (40) hours per week and were not paid overtime wages. Claimant and all similarly situated employees are entitled to recover all unpaid overtime wages.

3. Violation of Labor Code § 1174 (Failure to Keep Accurate Time Records)

Labor Code section 1174(d) requires employers to keep "payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years." Defendant did not keep accurate information regarding all hours worked by Claimants and similarly situated employees, largely by failing to accurately record all time worked on their time records. This was in violation of the Labor Code.

4. Violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 11(A) (Failure to Provide Meal Periods)

Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For the reasons stated above, Claimant and similarly situated employees were not authorized and permitted to take legally

compliant meal periods pursuant to California law. Defendants also failed to pay meal period premiums for its failure to provide meal periods.

5. Violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12(A) (Failure to Provide Rest Periods)

Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Claimant and similarly situated employees were not authorized and permitted to take legally compliant rest periods pursuant to California law in violation of the Labor Code. Defendants also failed to pay rest period premiums for their failure to provide rest periods.

6. Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than 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 the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Claimant and similarly situated employees in violation of the Labor Code.

7. Violation of Labor Code §§ 201–203, 256 (Failure to Pay Final Wages)

Labor Code sections 201–203 require that all wages, including minimum wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Claimant and similarly situated employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation of the Labor Code.

8. Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall 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.” For the reasons stated above, Defendants failed to pay required reimbursements to Claimant and similarly situated employees for required business expenses in violation of the Labor Code.

9. Other Violations of the Labor Code

Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513 (Ct. App. 2018), reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), Claimant intends to seek civil penalties for all violations of the California Labor Code, whether she experienced them personally or not.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact my office. Pursuant to Labor Code section 2699.3, please notify Defendant(s) and this law office within 60 calendar days of the postmark date of this notice whether the Agency intends to investigate the alleged violations.

Very truly yours,

Castle Law: California Employment Counsel, PC

By: _____

Kent L. Bradbury

cc: (Via Certified US Mail)

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