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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

STATE OF CALIFORNIA ex rel.
RENE TAPIA, as Private Attorney
General,

Plaintiff,

v.

WESTSIDE AG INC.; and DOES 1-25,
inclusive,

Defendants.

Case No. [22CECG03418](#)

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. RENE TAPIA as Private Attorney General ("Plaintiff"), who asserts claims against WESTSIDE AG INC. and DOES 1-25, inclusive (collectively "Defendant," "Defendants," or "Employer") as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately more than 2,500 similarly situated current and former aggrieved employees employed by Defendant throughout California between August 22, 2021, and the resolution of the forthcoming action

1 (“Statutory Period”), and the People of the State of California (hereinafter collectively
2 “Employees”) against Defendant.

3 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
4 permits an aggrieved employee to recover civil penalties set forth within the California Labor
5 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
6 penalties for violations of California Labor Code provisions that do not contain their own civil
7 penalties. Employees bring this civil action to recover civil penalties for the violations identified
8 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
9 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
10 are sought for violations committed against Employees of Employers.

11 3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce
12 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys
13 general action for recovery of penalties under the PAGA. The LWDA has not investigated within
14 the time set forth by statute and Plaintiff is now authorized to bring the present action.

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction over this action pursuant to the California Constitution,
17 Article VI, §10.

18 5. Venue is proper in this Court because Defendant WESTSIDE AG INC. resides in
19 Fresno County, California.

20 **PARTIES**

21 6. For all times relevant herein, RENE TAPIA was an adult individual residing in the
22 State of California. Mr. Tapia is not suing in his individual capacity; he is proceeding herein
23 solely under the PAGA, on behalf of the State of California for all aggrieved employees, including
24 himself and other aggrieved employees.

25 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
26 alleges, that Defendant WESTSIDE AG INC. was and is a corporation with its principal place of
27 business in the County of Fresno, State of California.

1 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
2 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
3 through one or more of its agents, employees, or representatives, who was actively engaged in the
4 management, direction, control, or transaction of the business and affairs of Defendants.

5 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
6 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
7 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
8 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
9 as the identities of the Doe Defendants are ascertained.

10 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
11 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
12 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
13 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
14 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
15 to the extent of the liability of Defendants as alleged herein.

16 11. Plaintiff is further informed and believe, and thereon allege, that at all times herein
17 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
18 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
19 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
20 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
21 Whenever and wherever reference is made to individuals who are not named as defendants in this
22 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
23 acted on behalf of Defendants named in this Complaint within the scope of their respective
24 employment or agency with Defendants.

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1 **FIRST COUNT**

2 **Failure to Pay Minimum Wages Owed**

3 **(By Plaintiff against All Defendants)**

4 12. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 13. Section 1197 provides that “[t]he minimum wage for employees fixed by the
7 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
8 and the payment of a lower wage than the minimum so fixed is unlawful.” “(1) For any employer
9 who employs 26 or more employees, the minimum wage shall be as follows: ... From January 1,
10 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour. (F) From January 1,
11 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.” Cal. Lab. Code, §
12 1182.12, subd. (b).

13 14. Pursuant to Section 1197.1, “(a) Any employer or other person acting either
14 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
15 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
16 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
17 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203
18 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
19 for each underpaid employee for each pay period for which the employee is underpaid. This
20 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
21 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
22 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
23 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
24 regardless of whether the initial violation is intentionally committed. This amount shall be in
25 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
26 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

27 15. Throughout the Statutory Period, Defendant failed to pay Employees at least
28 minimum wage for all time worked, including time during which Employees were required to

1 report to work prior to their scheduled start times and time during which Employees were required
2 to remain on-site during their meal periods, which must be paid at a rate of not less than minimum
3 wage pursuant to California law. Employees are informed and believe that Defendant paid
4 Employees, or at least some of them, based on a set number of scheduled hours, as opposed to the
5 additional hours actually worked. Consequently, Defendant violated the minimum wage laws.

6 16. As a result of the foregoing, Employer is subject to civil penalties.

7 **SECOND COUNT**

8 **Failure to Provide Compliant Meal Periods or Pay Meal Premiums**

9 **(By Plaintiff against All Defendants)**

10 17. Plaintiff incorporates by reference and realleges each and every allegation
11 contained above, as though fully set forth herein.

12 18. “An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and employee. An employer may
16 not employ an employee for a work period of more than 10 hours per day without providing the
17 employee with a second meal period of not less than 30 minutes, except that if the total hours
18 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
19 employer and the employee only if the first meal period was not waived.” Cal. Lab. Code, § 512,
20 subd. (a).

21 19. Pursuant to Labor Code sections 226.7 and 512, and Wage Order 14, duty-free
22 meal periods of no less than thirty (30) minutes are required for all non-exempt employees who
23 work at least five (5) hours in a work period per day. The employee must be free to leave the
24 employer’s premises. An employer may not employ an employee for a work period of more than
25 10 hours per day without providing the employee with a second meal period of not less than 30
26 minutes. Time records of meal periods must be kept. Meal periods must be paid when the
27 employee is not relieved of all duties or free to leave the premises. An employer who fails to
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1 provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for
2 each day in which a duty-free meal period is not provided.

3 20. "If an employer fails to provide an employee a meal or rest or recovery period in
4 accordance with a state law, including, but not limited to, an applicable statute or applicable
5 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
6 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
7 pay the employee one additional hour of pay at the employee's regular rate of compensation for
8 each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code, § 226.7,
9 subd. (c).

10 21. "Any employer or other person acting on behalf of an employer who violates, or
11 causes to be violated, a section of this chapter or any provision regulating hours and days of work
12 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
13 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
14 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
15 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
16 employee for each pay period for which the employee was underpaid in addition to an amount
17 sufficient to recover underpaid wages." Cal. Lab. Code, § 558, subd. (a).

18 22. The meal periods provided to Employees were noncompliant because Defendant's
19 supervisors informed Employees they were not free to leave the worksite during their meal
20 periods. Rather, Employees were required to stay onsite to improve efficiency. For these reasons,
21 Defendant violated Section 226.7.

22 23. Defendants are subject to all civil penalties and other remedies under the PAGA.

23 **THIRD COUNT**

24 **Inaccurate Wage Statements**

25 **(By Plaintiff against All Defendants)**

26 24. Plaintiff incorporates by reference and realleges each and every allegation
27 contained above, as though fully set forth herein.

1 25. “An employer, semimonthly or at the time of each payment of wages, shall furnish
2 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
3 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
4 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
5 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
6 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
8 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and only the last four digits of his or her social security number or an
10 employee identification number other than a social security number, (8) the name and address of
11 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
12 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
13 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
15 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
16 and the total hours worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd.
17 (a).

18 26. “Any employer who violates subdivision (a) of Section 226 shall be subject to a
19 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
20 initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
21 citation, for which the employer fails to provide the employee a wage deduction statement or fails
22 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in
23 this section are in addition to any other penalty provided by law.” Cal. Lab. Code, § 226.3.

24 27. Throughout the Statutory Period, Defendant failed to furnish Employees with
25 accurate itemized statements at the time of each payment of wages showing the correct gross
26 wages earned, correct total hours worked, correct net wages earned, and the corresponding correct
27 number of hours worked at each applicable hourly rate. Rather than providing statements of actual
28 time worked and a correct payment of wages based thereon, Defendant failed to capture and pay

1 Employees for nonproductive pre-shift waiting time, meal-period time, and also failed to capture
2 and pay premium pay for noncompliant meal-and-rest periods. Consequently, Defendant failed to
3 provide Employees accurate itemized wages statements, and failed to keep records available to
4 Employees for copying and inspection, as required by Section 226.

5 28. Defendants are subject to all civil penalties and other remedies under the PAGA.

6 **FOURTH COUNT**

7 **Untimely Payment of Wages**

8 **(By Plaintiff against All Defendants)**

9 29. Plaintiff incorporates by reference and realleges each and every allegation
10 contained above, as though fully set forth herein.

11 30. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
12 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
13 calendar month, on days designated in advance by the employer as the regular paydays. Labor
14 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
15 between the 16th and the 26th day of the month during which the labor was performed, and labor
16 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
17 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

18 31. Generally, “[l]abor performed by a weekly-paid employee during any calendar
19 week and prior to or on the regular payday shall be paid for not later than the regular payday of the
20 employer for such weekly-paid employee falling during the following calendar week. Labor
21 performed by a weekly-paid employee during any calendar week and subsequent to the regular
22 payday shall be paid for not later than seven days after the regular payday of the employer for such
23 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

24 32. Special rules govern agricultural employees, however: “All wages, other than those
25 mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section
26 1140.4, are due and payable twice during each calendar month, on days designated in advance by
27 the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th
28 days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the

1 month during which the labor was performed. Labor performed between the 16th and the last day,
2 inclusive, of any calendar month shall be paid between the first and the seventh day of the
3 following month.” Cal. Lab. Code, § 205.5.

4 33. “In addition to, and entirely independent and apart from, any other penalty
5 provided in this article, every person who fails to pay the wages of each employee as provided in
6 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty
7 as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
8 employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred
9 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
10 withheld.” Cal. Lab. Code, § 210, subd. (a).

11 34. Rather than timely paying Employees all wages due within the periods set forth
12 above, throughout the Statutory Period, Defendant failed to timely pay Employees for all hours
13 worked and all premium wages.

14 35. Defendants are subject to all civil penalties and other remedies under the PAGA.

15 **FIFTH COUNT**

16 **Failure to Pay Wages at Termination**

17 **(By Plaintiff against All Defendants)**

18 36. Plaintiff incorporates by reference and realleges each and every allegation
19 contained above, as though fully set forth herein.

20 37. “If an employer discharges an employee, the wages earned and unpaid at the time
21 of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). Section 202
22 also generally requires payment to Employees within 72 hours of resignation. “If an employer
23 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
24 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
25 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
26 paid or until an action therefor is commenced; but the wages shall not continue for more than 30
27 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or
28 who refuses to receive the payment when fully tendered to him or her, including any penalty then

1 accrued under this section, is not entitled to any benefit under this section for the time during
2 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

3 38. Throughout the Statutory Period, Defendant failed to pay Employees all wages
4 owed at the time of their termination or resignation. These wages were owed and due to
5 Employees at the time of their separation. Defendant did not provide these payments to
6 Employees at the time of termination or within a sufficient time of resignation as required by law.
7 Defendant’s failure to timely pay these wages at the time of separation, and failure to pay
8 Employees’ continued wages for the 30-day period thereafter, constitutes a violation of Sections
9 201, 202, and 203.

10 39. Employer is subject to civil penalties as provided by law.

11 **SIXTH COUNT**

12 **Failure to Comply with Recordkeeping Requirements**

13 **(By Plaintiff against All Defendants)**

14 40. Plaintiff incorporates by reference and realleges each and every allegation
15 contained above, as though fully set forth herein.

16 41. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a
17 central location in the state or at the plants or establishments at which employees are employed,
18 payroll records showing the hours worked daily by and the wages paid to, and the number of
19 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
20 respective plants or establishments. These records shall be kept in accordance with rules
21 established for this purpose by the commission, but in any case shall be kept on file for not less
22 than three years.”

23 42. Pursuant to Sections 1198 and the applicable IWC Wage Order, Defendant was
24 also required to keep accurate records of Employees’ hours worked, and to make those records
25 available for inspection upon Employees’ request. The applicable IWC Wage Order provides that
26 “An employee's records shall be available for inspection by the employee upon reasonable
27 request.”
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1 43. Included in the Commission's standard conditions of labor is the requirement that
2 "Every employer shall keep accurate information with respect to each employee including the
3 following: ... Time records showing when the employee begins and ends each work period. Meal
4 periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods
5 during which operations cease and authorized rest periods need not be recorded. ... Total wages
6 paid each payroll period, including value of board, lodging, or other compensation actually
7 furnished to the employee. ... Total hours worked in the payroll period and applicable rates of pay.
8 This information shall be made readily available to the employee upon reasonable request."
9 "Every employer shall semimonthly or at the time of each payment of wages furnish each
10 employee, either as a detachable part of the check, draft, or voucher paying the employee's wages,
11 or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates
12 of the period for which the employee is paid; (3) the name of the employee or the employee's
13 social security number; and (4) the name of the employer, provided all deductions made on written
14 orders of the employee may be aggregated and shown as one item."

15 44. "All required records shall be in the English language and in ink or other indelible
16 form, properly dated, showing month, day and year, and shall be kept on file by the employer for
17 at least three years at the place of employment or at a central location within the State of
18 California. An employee's records shall be available for inspection by the employee upon
19 reasonable request."

20 45. Throughout the Statutory Period, Defendant failed to keep accurate records
21 showing the hours worked daily by Employees. Moreover, Defendant failed to ensure that all
22 Employees' time records were available for inspection upon reasonable request, as evidenced by
23 Mr. Tapia's request for all of his time records, which were not provided in Mr. Tapia's personnel
24 file. Defendant is subject to additional civil penalties for its failure to keep and provide accurate
25 records of Employees' hours worked.

26 46. Employer is subject to additional civil penalties as provided by law.

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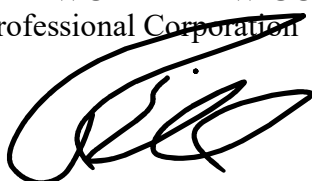
PRAYER

WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to be ascertained at trial exceeding \$25,000.
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: October 27, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for RENE TAPIA
as Private Attorney General