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Attorneys for Plaintiff
ALISHA BAKKUM in a representative
capacity on behalf of other members of
the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ALISHA BAKKUM, in a representative capacity)
on behalf of other members of the general public)
similarly situated,

Plaintiff,

v.

WESTSIDE HABITATS, LLC; and DOES 1
through 10, inclusive,

Defendants.

Case No: 23STCV17154
FIRST AMENDED COMPLAINT FOR:
1. MINIMUM WAGE VIOLATIONS
[Lab. Code § 2698 *et seq.*];
2. OVERTIME VIOLATIONS [Lab.
Code § 2698 *et seq.*];
3. WAGE STATEMENT
VIOLATIONS [Lab. Code § 2698 *et seq.*];
4. MEAL AND REST PERIOD
VIOLATIONS [Lab. Code § 2698 *et seq.*];
5. FAILURE TO REIMBURSE [Lab.
Code § 2698 *et seq.*];
6. FAILURE TO TIMELY PAY
WAGES [Lab. Code § 2698 *et seq.*];
7. FAILURE TO PAY WAGES UPON
SEPARATION [Lab. Code § 2698 *et seq.*];
FAILURE TO PROVIDE SICK PAY [Lab.
Code § 2698 *et seq.*];
8. FAILURE TO PROVIDE
PERSONNEL RECORDS [Lab. Code §
2698 *et seq.*].
[JURY TRIAL DEMANDED]

FILED
Superior Court of California
County of Los Angeles
09/12/2023

David W. Slayton, Executive Officer / Clerk of Court
By: M. Arellanes Deputy

COMES NOW Plaintiff ALISHA BAKKUM (“Plaintiff”), on behalf of all aggrieved employees alleges for her complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of Los Angeles, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant WESTSIDE HABITATS, LLC (“WESTSIDE” or “Defendant” herein) was and is a California Limited Liability Company doing business throughout the state, including the County of Los Angeles, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendant named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendant is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendant, and in doing the actions mentioned below, was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the

1 permission and consent of the co-Defendant. Plaintiff injuries as herein alleged were
2 proximately caused by said Defendant. Wherever it is alleged herein that any act or
3 omission was done or committed by any specially named Defendant or Defendant,
4 Plaintiff intends thereby to allege and does allege that the same act or omission was also
5 done and committed by each and every defendant named as a DOE, both separately and
6 in concert with the named Defendant or Defendant.

- 7 6. Plaintiff is informed and believes and thereon alleges that Defendant, and each of them,
8 including DOES 1 through 10, are and at all times herein mentioned were either
9 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
10 egos or other legal entities which were licensed to do and/or were doing business in the
11 County of Los Angeles, State of California at all times relevant to the subject matter of
12 this action.

13 **FACTUAL BACKGROUND**

- 14 7. In March 2015, Plaintiff ALISHA BAKKUM (“BAKKUM” or “Plaintiff” herein)
15 commenced working for Defendant as a Resident Property Manager. Plaintiff’s
16 employment with Defendant lasted through April 2023. Throughout her employment
17 with Defendant, Plaintiff performed her job in a capable and competent manner and was
18 commended for doing so.

- 19 8. Throughout the term of her employment, Plaintiff and all other aggrieved employees
20 were, and currently are, denied the benefits and protections of the Labor Code due to
21 Defendant’s institutionalized pay practices, standard as to all of Defendant’s California-
22 based employees.

23 **Defendant’s Labor Code Violations**

- 24 9. Plaintiff and other aggrieved employees frequently worked shifts in excess of 8 hours a
25 day, or 6 days a week. Plaintiff and other aggrieved employees were told that they needed
26 approval from management before they could work overtime. However, Defendant
27 demanded that Plaintiff complete an untenable number of daily tasks that could not be
28 completed in under 8 hours. Plaintiff and other employees were told if they did not sign
monthly certificates of hours, they would not get paid. Plaintiff and other aggrieved

1 employees were pressured not to report any of their overtime hours, despite
2 management's knowledge that overtime hours were being worked. When Plaintiff and
3 other aggrieved employees attempted to report overtime hours, they were called and
4 asked not to report overtime and to amend their time records to inaccurately state that no
5 overtime work was performed. For example, Plaintiff told her managers Jim Cann and
6 Alex Raines on multiple occasions that she was working overtime. Moreover, Cann and
7 Raines would frequently receive emails from Plaintiff showing that she was working
8 overtime. However, Plaintiff's overtime hours were often not recorded due to threat of
9 disciplinary action.

10 10. Plaintiff and other employees typically worked in excess of 8 hours per day and 40 hours
11 per week. For example, during her employment, Plaintiff managed six to nine buildings.
12 Plaintiff was the initial point of contact for maintenance, vendors, and tenants for all of
13 the buildings she managed. Plaintiff and other employees were expected to coordinate
14 tenants and maintenance teams; schedule building maintenance; refresh advertisements
15 for vacant units; communicate and meet with vendors; communicate with prospective
16 tenants via phone, email, and texts (Plaintiff and other employees were told by Jeff
17 Larson that all prospective tenants must be responded to within an hour); schedule and
18 conduct showings and open houses; walk the buildings; post and email 3 day notices, rent
19 increases, and building notes; update regular cleaners on problem areas; email and follow
20 up on all tenant delinquencies and update supervisors of those delinquencies multiple
21 times a week; create proposed turn lists; propose and obtain bids for building projects;
22 and handle all emergencies (including, *inter alia*, elevator issues, leaks, lockouts, and
23 water heater issues) at all times, in a prompt manner. Additional hours that exceeded the
24 forty (40) hour work week, or eight (8) hour workday were never properly accounted for
25 or compensated by Defendant. Plaintiff believes and thereon alleges that Defendant's
26 practice and/or policy of non-payment of overtime is standard as to all Resident Property
27 Management employees.
28

11. Throughout her employment, Plaintiff was not permitted to take any sick time or paid time off, of any kind. Plaintiff believes and thereon alleges that Defendant's practice and/or policy of non-payment of Sick Leave is standard as to all Resident Property Management employees.

REPRESENTATIVE ALLEGATIONS

12. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former nonexempt employees of Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendant's standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, inter alia, Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, inter alia, IWC Wage Order 5 (or any other applicable Wage Order) and Labor Code §§ 226.7 and 512. Defendant failed to furnish accurate itemized wage statements in violation of, inter alia, Labor Code § 226. Defendant failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, inter alia, Labor Code § 2802. Defendant failed to provide all compensation due at termination of employment in violation of, inter alia, Labor Code §§ 201 through 203.

13. Plaintiff brings this action on the grounds that she and other similarly situated current and former employees of Defendant were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed fifty (50) aggrieved employees.

14. The approximately fifty (50) aggrieved employees are comprised of all of Defendant's current and former California-based employees, designated as "nonexempt" by

1 Defendant. Defendant's standard policies and practices which lead to Labor Code
2 violations, as alleged herein, applied to all California nonexempt employees.

3 15. There are questions of fact and law common to all aggrieved employees arising from
4 Defendant's actions including, among others, the following:

- 5 a. Whether Defendant failed to pay its employees the proper straight-time, overtime,
6 and double time wages due and owing to them;
- 7 b. Whether Defendant failed to properly deduct for rent pursuant to Wage Order 5;
- 8 b. Whether Defendant failed to provide its employees with statutorily-compliant
9 Meal and/or Rest Periods, in violation of, inter alia, California Labor Code §§ 512
10 and 226.7, in that Defendant written policies are not compliant with California
11 law, Defendant does not allow its employees duty-free Meal and/or Rest Periods,
12 and Defendant improperly "rounds" employees recorded Meal Periods;
- 13 c. Whether Defendant failed to properly provide Meal and Rest Period premiums in
14 accordance with law;
- 15 d. Whether Defendant failed to properly calculate and pay its employees Overtime
16 compensation or Meal and Rest Period premiums in accordance with law by
17 failing to properly calculate, into the Regular Rate of Pay, the value of employee
18 benefits;
- 19 e. Whether Defendant failed to properly reimburse its employees for necessary
20 business expenditures for, inter alia, cell phone costs and mileage, in violation of
21 Labor Code § 2802;
- 22 f. Whether Defendant failed to provide personnel records, including time records, in
23 violation of Labor Code § 226(b);
- 24 g. Whether Defendant failed to provide all compensation upon termination of
25 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
26 Defendant failed to provide proper compensation for all hours worked, as
27 discussed above; and
28

1 h. Whether Defendant failed to provide Plaintiff and all other aggrieved employees
2 with accurate itemized wage statements in violation of, among other statutes,
3 Labor Code § 266.

4 16. At all times mentioned herein, Defendant was subject to the Labor Code and Industrial
5 Welfare Commission Wage Orders of the State of California, including, but not limited
6 to, California Labor Code § 2698 et seq.

7 17. At all times mentioned herein, Defendant is and was an “employer” as that term is used
8 within the relevant sections of the California Labor Code and the applicable wage order.
9 An employer-employee relationship existed between Plaintiff and Defendant.

10 18. Plaintiff has exhausted her administrative remedies and pre-filing requirements California
11 Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On
12 April 21, 2023, counsel for Plaintiff prepared and electronically submitted a letter to the
13 LWDA via the California Department of Industrial Relations’ “PAGA Filing” website.
14 This letter concerned Westside Habitats, LLC and its Labor Code violations. A copy of
15 this letter was also mailed to Defendant, via USPS Certified Mail. The letter contained
16 the specific provisions of the California Labor Code violated by Defendant, as well as the
17 facts and theories in support of Plaintiff’s claims. (Please see **Exhibit 1**, a true and
18 correct copy of this letter.)

19 19. The statutory time period for the LWDA to investigate and/or respond, and for the
20 employers to cure, has concluded.

21 20. Throughout the operative limitations period, Plaintiff and all other aggrieved employees
22 were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due
23 to Defendant's standard practices. Said violations are set forth below.

24 **FIRST CAUSE OF ACTION**

25 **Minimum Wage Violations**

26 **[Cal. Lab. Code § 2698 et seq.]**

27 **Representative Action**

28 **(By Plaintiff against Defendant and DOES 1 through 10)**

21. Plaintiff hereby incorporates by reference each and every allegation contained in the
preceding paragraphs as though fully set forth herein.

22. Defendant failed to pay its employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendant's failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, Defendant failed to maintain accurate time records indicating the time Plaintiff, or other aggrieved employees, worked. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendant knowingly failing to consider other work performed by the employees, including all time Plaintiff and all other aggrieved employees were under Defendant's control, particularly time spent working outside of office hours. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation. With a lack of specific and accurate time keeping, Plaintiff and all other aggrieved employees had their time records limited and subject to Defendant's discretion.
23. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
24. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.
25. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.
26. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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SECOND CAUSE OF ACTION

Overtime Violations

[Cal. Lab. Code § 2698 *et seq.*]

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

27. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

28. Defendant failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. These violations occurred due to Defendant's illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of Plaintiff's- and other employees'- shifts, the unpaid work time often would have been owed at the overtime rate of pay. These systematic failures to provide proper overtime compensation are in violation of California law.

29. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

30. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

31. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

32. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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THIRD CAUSE OF ACTION
Wage Statement Violations
[Cal. Lab. Code § 2698 *et seq.*]
Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

33. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
34. Defendant willfully failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226. These violations include, but are not limited to, Defendant's failure to accurately identify all applicable regular and overtime rates of pay in violation of section 226(a)(9), and failing to provide any representations of both "gross" or "net wages." Defendant also failed to provide any showing of the "total hours worked," in violation of Labor Code § 226(a)(2).
35. Defendant violated Labor Code § 226(a)(1) by failing to furnish any showing of the gross wages earned by its employees. For example, Defendant (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, if Overtime Pay was given at all, and (c) would fail to pay Meal and/or Rest Period Penalties when due.
36. Defendant violated Labor Code § 226(a)(2) by failing to furnish any showing of all hours worked at each hourly rate by the employee. Plaintiff and the other employees were not compensated for all hours worked. For example, Defendant required Plaintiff and other nonexempt employees to report estimates of time employees spent working and further failed to record time spend answering emails and calls, and responding to resident complaints, despite Defendant's knowledge of this work time.
37. Defendant violated Labor Code § 226 (a)(4) by willfully failing to furnish accurate showings of applicable deductions. For example, Defendant did not include the applicable rent deductions on wage statements supplied to Plaintiff and other aggrieved employees.

38. Defendant violated Labor Code § 226(a)(5) by willfully failing to furnish any showing of the gross and net wages earned by its employees. For example, Defendant (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, if Overtime was given at all, and (c) would fail to pay Meal and/or Rest Period Penalties when due.

39. Defendant violated Labor Code § 226(a)(9) by failing to furnish any showing of all applicable hourly rates, in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the other employees were not compensated for all hours worked (Defendant would require employees to list only their scheduled work-times, and failed to pay employees for the actual work-times.)

40. Defendant's failure to include the above information in its calculation of Plaintiff's, and other aggrieved employees', gross and net wages subjects Defendant to liability under Labor Code § 226.

41. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

42. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

43. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

44. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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FOURTH CAUSE OF ACTION

Meal and Rest Period Violations

[Cal. Lab. Code § 2698 *et seq.*]

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

45. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

46. Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendant violated this section by establishing working conditions below the standard of the applicable Wage Order.

47. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11050 (11)(A).

48. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11050 (11).

49. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (12).

50. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11050 (11), (12).

- 1 51. Within the operative time period, Defendant failed to possess compliant Meal and Rest
2 Period policies.
- 3 52. For example, Defendant Rest Period policy and practice does not provide the right for
4 employees to “leave the premises,” by requiring employees to remain on the premises
5 during Rest Periods. Additionally, employees often do not have time to take a break due
6 to the demands of residents and volume of work that must be completed before the end of
7 the employee’s office hours.
- 8 53. Moreover, Defendant policies and practices preclude “duty-free” Meal and Rest Periods.
9 These institutional and established practices of Defendant are illegal, in that Plaintiff and
10 all other employees were denied proper and/or timely Meal and Rest Periods.
- 11 54. These violations are due, in part, to the fact that Defendant do not possess a legal Rest
12 Period policy or practice because Defendant failed to furnish any rest period policy to its
13 employees. As a result, all employees fail to receive all Rest Periods legally due.
14 Defendant does not provide Rest Periods, as defined by California law. Further,
15 Defendant has never provided a Rest Period penalty payment to any employee.
- 16 55. Defendant also does not possess a legal Meal Period policy, and make no attempt to
17 ensure that its employees are either timely or wholly provided Meal Periods. The
18 employees would often either miss a Meal Period entirely, be provided a short or late
19 Meal Period, or be provided only one Meal Period, even when they were working in
20 excess of 10 hours a day. Additionally, Defendant failed to accurately record its
21 employees’ actual start and stop times of Meal Periods, in violation of the IWC Wage
22 Orders. 8 Cal. Code Regs. § 11050 (7)(A)(3).
- 23 56. Moreover, Defendant policies and practices preclude “duty-free” Meal and Rest Periods,
24 in that the employees are required to remain “On Call” at all times, including during the
25 Meal and Rest Periods, in order to (among other reasons) deliver the large volume of
26 orders in a timely manner before the end of the shift. These institutional and established
27 practices of Defendant are illegal, in that Plaintiff and all other aggrieved employees were
28 denied proper and/or timely Meal and Rest Periods.

- 1 57. Defendant willfully failed and refused to pay Plaintiff and all other aggrieved employees
2 one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
3 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 5
4 (11), (12).
- 5 58. Any payments made by Defendant for missed or late Meal Periods were not paid at an
6 employee's regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
7 Orders. Instead, these payments were made at an employee's base rate and did not
8 include the value of, inter alia, additional compensation and/or employee benefits
9 (including rent).
- 10 59. As a direct result of Defendant's failure to comply with the foregoing provisions of the
11 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
12 amount to be proven at trial.
- 13 60. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
14 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
15 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
16 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
17 Prayer For Relief.
- 18 61. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
19 Defendant pursuant to Labor Code § 2699(a) for each of these employees.
- 20 62. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor
21 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

22 **FIFTH CAUSE OF ACTION**

23 **Failure to Reimburse**

24 **[Cal. Lab. Code § 2698 *et seq.*]**

25 **Representative Action**

26 **(By Plaintiff Representative against Defendant and DOES 1 through 10)**

- 27 63. Plaintiff hereby incorporates by reference each and every allegation contained in the
28 preceding paragraphs as though fully set forth herein.
64. Defendant failed to reimburse their nonexempt employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation

1 of, among other statutes, Labor Code § 2802. These expenditures are the result of, inter
2 alia, Defendant standard policies which require its employees to incur computer and
3 internet costs without reimbursement.

4 65. As a direct result of Defendant's failure to comply with the foregoing provisions of the
5 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
6 amount to be proven at trial.

7 66. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
8 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
9 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
10 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
11 Prayer For Relief.

12 67. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
13 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

14 68. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor
15 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

16 **SIXTH CAUSE OF ACTION**

17 **Failure to Timely Pay Wages**

18 **[Cal. Lab. Code § 2698 *et seq.*]**

19 **Representative Action**

20 **(By Plaintiff Representative against Defendant and DOES 1 through 10)**

21 69. Plaintiff hereby incorporates by reference each and every allegation contained in the
22 preceding paragraphs as though fully set forth herein.

23 70. Plaintiff and all other aggrieved employees performed work for Defendant, as an
24 employee of Defendant, as stated herein. Throughout Plaintiff's and all other aggrieved
25 employees' employment, they earned wages that were not paid to them, as stated herein,
26 in an amount according to proof at trial.

27 71. California Labor Code § 204, applicable at all times relevant herein to Plaintiffs' and all
28 other aggrieved employees' employment by Defendant, provides that all wages earned by
any person in any employment are due and payable twice during each calendar month.

Defendant failed to pay Plaintiff and all other aggrieved employees the wages they were entitled to under the Code.

72. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

73. As a result of Defendant's willful failure to pay wages, in addition to such other damages and penalties as may properly be recovered herein, Plaintiffs and all other aggrieved employees are entitled to waiting time penalties, costs, and attorneys' fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.

74. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

75. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

76. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SEVENTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation

[Cal. Lab. Code § 2698 *et seq.*]

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

77. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

78. Defendant willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendant willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

79. Defendant failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203 due, in part, to the fact that Defendant failed to provide proper compensation for all hours worked by merely paying a flat monthly rate, and failed to pay meal and/or rest period penalties.

80. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

81. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

82. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

83. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

EIGHTH CAUSE OF ACTION

Failure to Provide Sick Pay

[Cal. Lab. Code § 2698 *et seq.*]

Representative Action

(By Plaintiff Representative Against Defendant and DOES 1 through 10)

84. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

85. Labor Code § 246 (a)-(b) states that an employee who has worked for the same employer for 30 days or more within a calendar year is entitled to "paid sick days at the rate of one hour per every 30 hours worked [...] provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued pick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-mon period."

86. Labor Code § 246 (c) further states that “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

87. Labor Code 246 (n) states, “An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after sick leave was taken.”

88. As set forth herein, Plaintiff and other aggrieved employees worked the requisite amount of days for sick time to accrue. However, Defendant did not permit its employees to take sick time, and did not pay its employees sick time when it was taken.

89. As a direct result of Defendant’s violations alleged herein, Plaintiff and other aggrieved employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such sick wages, including lost interest on such monies and expenses, and attorney’s fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial.

90. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

91. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

92. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

NINTH CAUSE OF ACTION
Failure to Provide Personnel Records
[Cal. Lab. Code § 2698 *et seq.*]
Representative Action

(By Plaintiff Representative Against Defendant and DOES 1 through 10)

93. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

94. California law provides that current and former employees, as a matter of right are entitled to inspect and receive a copy of their personnel records, including time records and employee handbooks. Pursuant to Labor Code § 266(f) upon a written request from a current or former employee, or a representative, the employer shall provide a copy of the personnel records not less than 21 calendar days from the date the employer receives the request.

95. Pursuant to California Labor Code section 226 (f), “A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven hundred-fifty-dollar (\$750) penalty from the employer.”

96. Plaintiff submitted a written records request to Defendant on April 11, 2023, via U.S. Mail. On May 12, 2023, Plaintiff received some records, including wage statements, but did not receive any time records. Plaintiff’s counsel alerted Defendant’s counsel that time records were not produced. To date, Plaintiff has not received her time records from Defendant.

97. By failing to provide employees with all personnel records within the thirty (30) days of receiving an employee’s records request, Defendant willfully violated the provisions of Labor Code section 226(f).

98. Plaintiff seeks an award of statutory civil penalties for each aggrieved employee of Defendant pursuant to Labor Code § 2699(a).

99. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 226(h), and interest, pursuant to Labor Code § 218.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on her own behalf and on behalf of all California non-exempt employees of Defendant, prays for judgment as follows:

1. For penalties according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;

2. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 5 (or any applicable Wage Order);
3. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
4. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: September 12, 2023

GRUENBERG LAW



JOSHUA GRUENBERG, ESQ.
KATHERINE DISHONGH, ESQ.
Attorneys for Plaintiff
ALISHA BAKKUM

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EXHIBIT 1

(1) PLAINTIFF’S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



April 21, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Alisha Bakkum v. Westside Habitats, LLC

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Westside Habitats, LLC (hereinafter “Westside”), in the above-referenced matter.

This “written notice” is filed on behalf of Alisha Bakkum and all current and former non-exempt employees employed by Westside. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Westside are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-204, 223, 226, 226.7, 246, 510, and, 512, as well as IWC Wage Order 5, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11050 et seq.

Facts and theories supporting the allegations: Our client, Alisha Bakkum, worked as a non-exempt employee employed by Westside from approximately March 15, 2022 to present. Alisha Bakkum is a property manager for Westside.

Throughout the term of Ms. Bakkum’s employment, Westside required Ms. Bakkum and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Westside failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, inter alia, Labor Code sections 223, 1194, 510, IWC Wage Order 5, and any other applicable wage orders. This illegal action is due, in part, to Westside’s policies of **(1)** failing to properly retain accurate Time Records, in violation of California law, and **(2)** failing to provide

compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, as Ms. Bakkum was paid a flat rate each month, she did not receive compensation for working beyond her scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, Westside would often require Ms. Bakkum to work extended hours (beyond her scheduled hours) without compensation.

Additionally, among other issues, Westside had notice of Ms. Bakkum, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Period, but failed to provide any compensation for this work time.

Finally, because Ms. Bakkum, and other non-exempt employees, were paid a flat rate, Westside failed to properly calculate the legal Overtime Rate of Pay (or pay Overtime Pay, at all), as Westside ignores certain compensation when calculating the Regular Rate of Pay. Even when Ms. Bakkum and other non-exempt employees were later compensated for *some* of their Overtime hours due, employees were not compensated for *all* Overtime, and Doubletime worked, nor were employees paid interest and penalties resulting therefrom.

Failure to Provide Compliant Meal Periods

Westside failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, or any other applicable wage orders. For example, Westside does not possess a legal Meal Period policy and makes no attempt to ensure its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of her employment, Ms. Bakkum was instructed on numerous occasions to remain available during her Meal Periods.

Westside would pressure its employees to either skip or cut short a Meal Period as employees were expected to respond to supervisors and residents at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e. California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can

pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73.) To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Westside failed to pay Meal Period Premiums at the proper rate, as Westside fails to either **(1)** pay a full hour’s worth of pay, or **(2)** properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.)

Finally, Westside illegally retained control over its employees during Meal Periods. For example, Westside required its employees to “remain on the premises” (i.e. remain at their office and/or work site) and to remain “on call” (i.e. monitor their telephones and/or computers) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Westside failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 5, and any other applicable wage orders. For example, Westside does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Westside makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Westside would pressure its employees to either skip or cut short a Rest Period as employees were expected to respond to supervisors residents at all times. Westside has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Westside would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

Finally, Westside illegally retained control over its employees during Rest Periods. For example, Westside required its employees to “remain on the premises,” (i.e. remain at their office and/or work site) and to remain “On Call” (i.e. monitor their telephones and/or computers) at all times, including during Rest Periods.

Wage Statement Violations

Westside violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example,

Westside **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and *lesser*) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

Westside violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. The wage statements do not list the hours worked at any rate, for any pay period. Additionally, Ms. Bakkum and other employees were not compensated for all hours worked (due in part to Westside's requirement that employees list only *scheduled* work times, not actual work times). Furthermore, Westside failed to state the Overtime Rate of Pay on its earning records.

Westside violated Labor Code section 226(a)(3) by failing to furnish an accurate showing of the number of piece-rate units earned and/or any applicable piece rate. The wage statements do not list the rates worked, for any pay period. The wage statements fail to list any rate at all.

Westside violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Westside **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Westside would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

Westside violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Westside's wage statements do not list the hourly rate for either Regular or Overtime Rates of pay, for any Pay Period. Additionally, Ms. Bakkum, and the other employees, were not compensated for all hours worked (due in part to Westside requiring employees to list only *Scheduled* work time, not actual work time to include "on-call" hours). In fact, the Wage Statements only list the type of work performed and not the total amount. The Wage Statements do not state the hourly rates for any work. Therefore, Westside failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

Failure to Provide Sick Time

Westside failed to provide accrued sick hours in violation of, *inter alia*, Labor Code § 246. Moreover, Westside failed to accurately list the amount of sick time earned on its employees' wage statements. For example, on the rare occasions Ms. Bakkum attempted to use her sick time, Westside informed her she would not be paid for her sick time.

Willful Failure to Provide All Compensation to Current Employees

Westside failed to provide all compensation during employment in violation of Labor Code section 204, due in part, to the fact that Westside failed to provide proper compensation for all hours worked, and failed to pay full Meal and Rest Period penalties, as discussed above. Ms. Bakkum has not received all wages due and owed to her, including all accrued vacation and sick leave.

To confirm, Westside is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Katherine A Dishongh

Cc: Via Certified U.S. Mail

ROHIT MEH
Agent of Service of Process for
Westside Habitats, LLC
11022 SANTA MONICA BLVD., #400
LOS ANGELES, CA 90025

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave., 10th Floor
San Francisco, CA 94102