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6 Attorney for Plaintiff

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, PASADENA COURTHOUSE
10 UNLIMITED JURISDICTION

11 DIANA CUAMEA, an individual,
12 Plaintiff,

13 vs.

14
15 BP RE MANAGEMENT LLC; ZHIMIN LI,
16 an individual; and DOES 1 through 50,
17 inclusive,

18 Defendants

CASE NO. 23AHCV01187
Dept. P, Honorable Margaret L. Oldendorf

AMENDED COMPLAINT FOR:

1. BREACH OF STATUTORY OBLIGATION ; MINIMUM WAGE (Labor Code § 1194 et seq)
2. BREACH OF STATUTORY OBLIGATION ; PAYCHECK STUBS (Labor Code § 226)
3. BREACH OF STATUTORY OBLIGATION; MAXIMUM RENT (Wage Order 5-2001)
4. COMMON COUNT (Money Paid, Laid Out, and Expended)
5. MIS-CLASSIFICATION AS INDEPENDENT CONTRACTOR
6. UNFAIR BUSINESS PRACTICES (B & P Code §17200 et seq)
7. BREACH OF STATUTORY OBLIGATION; LABOR CODE PRIVATE ATTORNEYS GENERAL ACT

Filed : May 25, 2023

1 Plaintiff alleges:

2 **FACTS COMMON TO ALL CAUSES OF ACTION**

3 **PARTIES**

4 1. Plaintiff DIANA CUAMEA (hereinafter referred to as "Cumea" or "plaintiff") is
5 an individual with her principal place of residence in the city of Baldwin Park, County of Los
6 Angeles, state of California. Beginning more than four (4) years prior to the filing of this action,
7 and continuing through the date this action is filed, and beyond, plaintiff has been employed by
8 defendants, and each of them, as the resident manager of an apartment complex owned or
9 operated by defendants located at 3426 Baldwin Park Blvd., in the city of Baldwin Park, state of
10 California (hereinafter "the property"), and within the territorial jurisdiction of this court.

11 2. A) Plaintiff is informed and believes, and based thereon alleges, that defendant BP
12 RE MANAGEMENT LLC is a California limited liability company doing business in the
13 counties of Los Angeles and Orange, and others unknown to plaintiff. Plaintiff is informed and
14 believes, and therefore alleges, that defendant BP RE Management LLC is in the business of
15 managing real property. Defendant BP RE Management LLC is the record owner of the
16 property.

17 B) Plaintiff is informed and believes, and based thereon alleges, that defendant
18 ZHIMIN LI, is an individual doing business in the city of Arcadia, and purports to be the
19 managing member of defendant BP RE Management LLC.

20 C) Plaintiff is informed and believes, and based thereon alleges, that the named
21 defendants and defendants Does 1 through 50 are the owner or owners, or in charge of the
22 general management of the apartment complex located at 3426 Baldwin Park Blvd., in the city of
23 Baldwin Park, state of California (the property) . Plaintiff is informed and believes, and based
24 thereon alleges, that each of the defendants was, at all times relevant hereto, a co-employer of
25 plaintiff, each knew of the employment of plaintiff as resident manager, suffered and permitted
26 her continued employment for their mutual benefit, controlled her working hours, conditions, and
27 wages, and failed to take any action to remove her from their employ or to comply with the
28 applicable laws and regulations governing her employment and compensation. Plaintiff further

1 alleges that both Defendants BP RE Management LLC and Zhimin Li are also liable for the
2 damages alleged herein pursuant to Labor Code Sections 1197.1 and 558.1.

3 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants Does 1
4 through 50, inclusive, are individuals or entities of unknown type, domiciled in either the State of
5 California or some other state and doing business in the State of California.

6 4. The true names and capacities, whether individual, corporate, or otherwise, of
7 Defendants named herein as Does 1 through 50, inclusive, are now unknown to Plaintiff who
8 therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and
9 based thereon alleges, that each of the fictitiously named Defendants was in some way
10 responsible for the acts complained of herein, or had some form of controlling interest in the
11 named Defendants. Plaintiffs will seek leave to insert the true names and capacities, as well as
12 the relationship to the other Defendants, of said fictitious Defendants herein when the same shall
13 have been ascertained.

14 5. Plaintiff is informed and believes, and based thereon alleges, that each of the
15 Defendants was the agent, employee, or representative of the remaining Defendants, and was
16 acting within the course and scope of such agency, employment, or representation, with the
17 knowledge and consent, express or implied, of each of the remaining Defendants in performing
18 the acts complained of herein.

19 **APPLICABLE LAW AND GENERAL ALLEGATIONS**

20 6. Plaintiff was employed by Defendants as resident manager of the above-described
21 apartment complex during the four years immediately preceding the filing of this Complaint.
22 Plaintiff did not have a written employment agreement or contract with Defendants which
23 complied with the requirements of Industrial Welfare Commission Order 5-2001 described
24 below.

25 7. At all times during the employment of Plaintiff by Defendants there was in full force
26 and effect an Order of the INDUSTRIAL WELFARE COMMISSION of the State of California,
27 designated Order No. 5-2001, as amended, (hereinafter occasionally referred to as the "Order"),
28 to which both Plaintiff and Defendants were subject, and which fixed a minimum wage to be

1 paid to employees in the "Public Housekeeping Industry", which is defined in that Order to
2 include "apartment houses". Pursuant to that Order, the minimum wage payable to Resident
3 Managers was \$11.00 per hour for all hours worked during calendar year 2019, \$12.00 per hour
4 for all hours worked during calendar year 2020, \$13.00 per hour for all hours worked during
5 calendar year 2021, and \$14.00 per hour for all hours worked during calendar year 2022
6 (assuming that defendants employ fewer than 25 employees).

7 8. Further, pursuant to the provisions of the Order, lodging may not be credited against
8 the employer's obligation to pay minimum wage to a resident manager of an apartment house
9 without a voluntary written agreement between the employer and the employee which provides
10 for the crediting against the employer's obligation to pay the employee minimum wage for all
11 hours worked by the employee.

12 9. Plaintiff was not fully compensated by Defendants for the time Plaintiff worked for
13 Defendants. Similarly, Defendants failed to comply with their legal obligation to keep "Time
14 records showing when the employee begins and ends each work period" (INDUSTRIAL
15 WELFARE COMMISSION Order No. 5-2001) in order to ascertain the amount of wages due the
16 employee Plaintiff.

17 **FIRST CAUSE OF ACTION**

18 (For Breach of Statutory Obligation; Minimum Wage,

19 Labor Code § 1194 et seq, by Plaintiff against all Defendants)

20 10. Throughout the employment by Defendants of Plaintiff, Defendants, and each of
21 them, failed to pay Plaintiff the minimum wage required by law and the Order for the hours
22 worked by Plaintiff for Defendants. Plaintiff estimates that she worked not less than 64 hours for
23 defendants per month during the entire time of her employment by defendants and was paid
24 nothing for her time. As a direct and proximate result of said failure to pay, Plaintiff has been
25 damaged as follows:

- 26 a. During the time period between June 1, 2020 and December 31, 2020, when
27 the minimum wage was \$12.00 per hour, Plaintiff estimates that she worked not
28 less than 448 hours (64 hours per month for 7 months), for a total for that period

1 of \$5,376.00, in unpaid wages. During the time period between January 1, 2021
2 and December 31, 2021, when the minimum wage was \$13.00 per hour, Plaintiff
3 estimates that she worked not less than 768 hours (64 hours per month for 12
4 months), for a total for that period of \$9,984.00 in unpaid wages. During the time
5 period between January 1, 2022 and December 31, 2022, when the minimum
6 wage was \$14.00 per hour, Plaintiff estimates that she worked not less than 768
7 hours (64 hours per month for 12 months), for a total for that period of
8 \$10,752.00, in unpaid wages. During the time period between January 1, 2023
9 and May 30, 2023, when the minimum wage was/is \$15.00 per hour, Plaintiff
10 estimates that she worked not less than 320 hours (64 hours per month for 5
11 months), for a total for that period of \$4,800.00, in unpaid wages.

12
13 b. Plaintiff therefore was due the combined sum of not less than \$30,912.00 for
14 the time period June 1, 2020 through the end of May, 2023. Plaintiff is therefore
15 owed not less than \$30,912.00 in unpaid wages, plus interest thereon at the legal
16 rate. This amount will continue to accrue each and every month thereafter in a
17 similar fashion.

18 11. As to each of the time periods identified herein-above, and as to the minimum wage
19 unpaid to Plaintiff, Plaintiff is entitled to an equal sum as Liquidated Damages pursuant to
20 Labor Code §1194.2, which provides for the award of Liquidated Damages equal to the amount
21 of wages unlawfully unpaid and interest thereon in favor of any employee bringing an action
22 pursuant to Labor Code §1194 for the recovery of unpaid minimum wage. Plaintiff is therefore
23 entitled to liquidated damages equal to not less than the \$30,912.00 in unpaid wages, plus
24 interest thereon at the legal rate. This amount will continue to accrue each and every month
25 thereafter in a similar fashion.

26 12. Labor Code §1194 provides for the award of reasonable attorney's fees in favor of an
27 employee in a civil action to recover the unpaid balance of the minimum wage due the employee.
28 Plaintiff has retained the Law Offices of Kenneth F. Moss to bring this action and is entitled to

1 the reasonable fees incurred thereby in an amount according to proof.

2 **SECOND CAUSE OF ACTION**

3 (For breach of statutory obligations; Pay Stubs

4 Labor Code §226 by plaintiff against all Defendants)

5 13. Labor Code §226 requires that every employer in the State of California shall, at the
6 time of each payment of wages, furnish each employee with an accurate itemized statement in
7 writing showing various items, including, inter alia, gross wages earned, total hours worked,
8 deductions, net wages earned, the inclusive dates of the period for which the employee is being
9 paid by that check, the name of the employee and his or her social security number, the
10 applicable hourly rates applying to that employee. For violation of §226, §226 provides for the
11 recovery by the employee of all actual damages or \$50.00 for the initial pay period in which a
12 violation occurs and \$100.00 per employee for each subsequent violation, not exceeding an
13 aggregate penalty of \$4000.00 per employee, as well as costs and reasonable attorney's fees.

14 14. Defendants failed to comply with Labor Code §226 and Plaintiff has been damaged
15 thereby in an amount subject to proof at trial, but not more than \$4000.00.

16 15. Plaintiff has also retained the services of the Law Offices of Kenneth F. Moss to
17 pursue this action, and is therefore entitled to reasonable attorney's fees, in an amount subject to
18 proof.

19 **THIRD CAUSE OF ACTION**

20 (For breach of statutory obligations; Maximum Rent;

21 Wage Order 5-2001 by plaintiff against all Defendants)

22 16. At all times during the last 36 months employment of plaintiff by defendants, and
23 each of them, the Order, at Paragraph 10(E), limited the rent which may be charged a resident
24 apartment manager required to live in premises on the property owned or under the control of the
25 employer to the amounts set forth in Paragraph 10(C) of the Order.

26 17. Throughout her employment by defendants, plaintiff was charged an amount as and
27 for rent by defendants which was in excess of and violated the provisions of the Order. Between
28 June 1, 2020 and December 31 of 2020 when the maximum monthly rent permitted by the Order

1 was \$677.75, plaintiff was charged \$1430.00 per month. From January through November of
2 2021 when the maximum monthly rent permitted by the Order was \$734.21, plaintiff was
3 charged \$1430.00 per month. In December of 2021 when the maximum monthly rent permitted
4 by the Order was \$734.21, plaintiff was charged \$1472.00 per month. From January through
5 November of 2022 when the maximum monthly rent permitted by the Order was \$790.67,
6 plaintiff was charged \$1472.00 per month. In December of 2022 when the maximum monthly
7 rent permitted by the Order was \$790.67, plaintiff was charged \$1546.50 per month. Between
8 January 1, 2023 the end of May, 2023, when the maximum monthly rent permitted by the Order
9 was \$847.12, plaintiff was charged \$1546.50 per month. Therefore, plaintiff was illegally
10 overcharged rent during the three years immediately preceding the filing of this complaint in the
11 amount of \$25,404.70. Plaintiff has been damaged in the amount, subject to proof, of
12 \$25,404.70, plus interest thereon.

13 **FOURTH CAUSE OF ACTION**

14 (For Common Count-For Money Paid, Laid Out and Expended
15 to or for Defendants. by plaintiff against all Defendants)

16 18. Plaintiff incorporates herein as though fully set forth hereat, in addition to the Facts
17 Common to All Causes of Action (Paras. 1 - 8), Paragraphs 16 & 17 of the Third Cause of
18 Action.

19 19. Within four (4) years last past, defendants became indebted to plaintiff, for money
20 paid, laid out, and expended to or for defendant at the special instance and request of defendants.

21 20. Defendants are therefore indebted to plaintiff in the amount of \$33,266.99, which is
22 the reasonable value due and unpaid despite plaintiff's demand, plus prejudgment interest
23 according to proof.

24 **FIFTH CAUSE OF ACTION**

25 (For Mis-Classification as Independent
26 Contractor by plaintiff against all Defendants)

27 21. Plaintiff was required to perform Plaintiff's duties strictly according to the
28 instructions and dictates of defendants, is not a licensed real estate broker, and is not in the

1 profession of providing management services to owners of rental housing. Further, in that
2 Defendants' business is largely devoted to the ownership and management of residential housing,
3 Plaintiff, and the work performed, was an integral part of the day-to-day operation of Defendants'
4 business.

5 22. Based upon the facts set forth above, and other facts to be established at trial,
6 Plaintiff was an employee of Defendants under ABC test established in Dynamex Operations
7 West, Inc. v. Superior Court (2018) S222732 and not an independent contractor during the entire
8 time of Plaintiff's employment by Defendants. However, Defendants purposefully mis-classified
9 Plaintiff as an independent contractor because, by so doing, Defendants lowered their cost of
10 doing business by means of, but not limited to, the following:

- 11 a. Defendants did not pay Plaintiff for all the hours Plaintiff worked;
- 12 b. Defendants did not pay Plaintiff the minimum wage of the State of California;
- 13 c. Defendants did not report or pay for the proper employer's share of federal or
14 state payroll taxes with respect to all funds paid to Plaintiff (or which may become due to
15 Plaintiff as determined herein), as required by federal and state law;
- 16 d. Defendants did not provide or pay for Workers Compensation insurance for
17 Plaintiff at all relevant times;
- 18 e. Defendants did not pay the Social Security taxes required of Defendants;
- 19 f. Defendants did not provide or pay for State Disability Insurance for Plaintiff at all
20 relevant times;
- 21 g. Defendants failed to report and pay into the Unemployment Insurance fund for
22 and on behalf of Plaintiff.

23 23. As a direct and proximate result of the aforementioned violations of California law
24 committed by Defendants, Plaintiff has suffered, and continues to suffer, substantial losses
25 relating to the loss of the employers' share of payroll taxes, the use and enjoyment of such
26 employee benefits, the inability of Plaintiff to apply for and receive Unemployment Insurance,
27 and expenses and attorneys' fees in seeking to compel Defendants to fully perform their
28 obligations under state law, all to Plaintiff's damage in amounts according to proof at trial, but in

1 amounts in excess of the minimum jurisdiction of this Court. Plaintiff is thus entitled to recover
2 nominal, actual and compensatory damages in amounts according to proof at trial, but in amounts
3 in excess of the minimum jurisdiction of this Court.

4 **SIXTH CAUSE OF ACTION**

5 (For Unfair Business Practices

6 by Plaintiff against all Defendants)

7 24. Plaintiff incorporates at this point, in addition to the "Facts Common to All Causes
8 of Action", Paragraphs 10 through 23 above as though fully set forth hereat.

9 25. Defendants' violations of the Wage Order and the Labor Code as hereinabove
10 alleged, and other applicable provisions of law, as alleged herein, all constitute unfair business
11 practices in violation of Business & Professions Code §17200 et seq.

12 26. As a result of Defendants' unfair business practices in the four (4) years immediately
13 preceding the filing of this Complaint, Defendants have reaped unfair benefits and illegal profits
14 at the expense of Plaintiffs and members of the general public. Defendants should be made to
15 disgorge their ill-gotten gains and restore such monies to Plaintiff in an amount not less than
16 \$72,946.99 plus interest at the legal rate.

17 **SEVENTH CAUSE OF ACTION**

18 (For Breach of Statutory Obligations;

19 by Plaintiff on behalf of herself

20 and all those similarly aggrieved pursuant to

21 the Labor Code Private Attorneys General Act

22 of 2004, against all Defendants)

23 27. In addition to the Facts Common to all Causes of Action above, Plaintiff
24 incorporates herein by this reference as though fully set forth, paragraphs 10 - 11 above.

25 28. Labor Code §2698, et seq, known as the Labor Code Private Attorneys General Act
26 of 2004, permits the recovery of any civil penalty otherwise to be collected by the Labor &
27 Workforce Development Agency or any of its departments or divisions on behalf of employees
28 for a violation of the Labor Code through a civil action brought by an aggrieved employee on

1 behalf of himself or herself and other current or former employees. Plaintiff brings this action on
2 behalf of herself and on behalf of other current or former employees similarly situated.

3 29. The Labor Code Private Attorneys General Act of 2004 further provides as
4 follows:

5 "(f) For all provisions of this Code except those for which a civil penalty
6 is specifically provided, there is established a civil penalty for a violation
7 of these provisions, as follows:

8 ... (2) If, at the time of the alleged violation, the person employs
9 one or more employees, the civil penalty is one hundred dollars
10 (\$100) for each aggrieved employee per pay period for the initial
11 violation and two hundred dollars (\$200) for each aggrieved
12 employee per pay period for each subsequent violation."(Labor
13 Code Section 2699.)

14 30. Plaintiff has given the notice required pursuant to Labor Code Section 2699.3, and
15 the waiting time required therein having expired brings this action on behalf of herself and other
16 similarly aggrieved employees of Defendant. A true and correct copy of that LWDA PAGA
17 Notice is attached hereto as Exhibit A.

18 31. Labor Code Section 1197.1 mandates a penalty for failure to pay minimum wage of
19 \$100.00 per employee for the first infraction, and \$250.00 per employee in each pay period
20 thereafter. Plaintiff is informed and believes and based thereon alleges, that Defendant failed to
21 pay plaintiff and Defendant's other resident manager employees in the same manner as alleged
22 herein, and plaintiff and all of those other employees, and the state of California are entitled to
23 the penalties alleged herein.

24 32. Similarly, Labor Code Section 558 mandates a penalty for violation of a wage order
25 promulgated by the Industrial Welfare Commission of \$50.00 per employee for the first
26 infraction, and \$100.00 per employee for each pay period thereafter. Plaintiff is informed and
27 believes and based thereon alleges, that Defendant failed to adhere to the requirements of Wage
28 Order 5-2001 as to plaintiff and Defendant's other resident manager employees in the same

1 manner as alleged herein, including but not limited to maintaining time records for Defendant's
2 employees, and plaintiff and all of those other employees and the state of California are entitled
3 to the penalties alleged herein.

4 33. In violation of Labor Code Section 204, Defendant failed to establish a regular
5 payday schedule, nor pay employees' wages due them on such regularly scheduled paydays.
6 Labor Code Section 210 sets the penalty for such failure at \$100.00 per employee for the first
7 violation, and \$250.00 per employee per pay period, plus 25% of the wages unlawfully withheld.
8 Plaintiff is informed and believes and based thereon alleges, that Defendant failed to adhere to
9 the requirements of Labor Code Section 204 as to plaintiff and Defendant's other resident
10 manager employees in the same manner as alleged herein, and plaintiff and all of those other
11 employees and the state of California are entitled to the penalties alleged herein.

12 34. Plaintiff, and, she is informed and believes, all of the other resident manager
13 employees of Defendants, were never compensated for the use of their personal cellular
14 telephone in the performance of their duties and were required to use their phone in the
15 performance of their duties on a daily basis, in violation of Labor Code Section 2802. No
16 specific penalty amount is stated for such infraction, and therefore the penalty amounts of
17 \$100.00 for each employee for the first violation, and \$200.00 for each employee per pay period
18 for each subsequent violation set forth in Labor Code Section 2699 (f) apply.

19 35. Defendant failed to keep any records showing hours worked or stop and start work
20 times for plaintiff and their other resident manager employees, as required by Labor Code
21 Section 1174(d) and Wage Order 5-2001. No specific penalty amount is stated for such
22 infraction, and therefore the penalty amounts of \$100.00 for each employee for the first violation,
23 and \$200.00 for each employee per pay period for each subsequent violation set forth in Labor
24 Code Section 2699 (f) apply.

25 36. Defendant failed and refused to provide wage statements as required by Labor
26 Code Section 226(a) to the plaintiff and their other resident manager employees. Labor Code
27 Section 226(e) provides for the recovery of a penalty of \$50.00 per employee for the first
28 violation of Section 226(a) and \$100.00 per employee for each subsequent violation, to a

1 maximum of \$4000.00 per employee.

2 37. Defendants, by failing to pay regular wages, and instead purporting to compensate
3 the plaintiff and their other resident manager employees with the provision of a “free” apartment,
4 improperly misclassified plaintiff and the others as independent contractors, in violation of Labor
5 Code Section 226.8. Labor Code Section 226.8(b) provides for the imposition of a penalty of not
6 less than \$5000.00 nor more than \$15,000.00 for each violation by misclassification.

7 38. Defendants failed and refused to provide the notice to plaintiff and each similarly
8 employed employee required by Labor Code Section 2810.5. No specific penalty amount is
9 stated for such infraction, and therefore the penalty amounts of \$100.00 for each employee for
10 the first violation, and \$200.00 for each employee per pay period for each subsequent violation
11 set forth in Labor Code Section 2699 (f) apply.

12 39. Plaintiff is informed and believes that Defendants routinely charged persons
13 employed as resident managers at apartment (or similar) buildings owned or operated by
14 defendants the full fair rental value of the residence provided to such employees. Labor Code
15 Section 1182.8 and Wage Order 5-2001 limit the amount of rent which may be charged to an
16 employee required to live on the premises to either 2/3 the fair rental value of the residence
17 (Labor Code §1182.8) or a specific amount set forth in the Wage Order. In either case, in order
18 for an employer to take advantage of those provisions there must exist a voluntary written
19 agreement with the employee. Defendants have no writing setting forth the “reduced” rent and
20 therefore are in violation of both or either of those limitations. No specific penalty amount is
21 stated for such infraction, and therefore the penalty amounts of \$100.00 for each employee for
22 the first violation, and \$200.00 for each employee per pay period for each subsequent violation
23 set forth in Labor Code Section 2699 (f) apply.

24 40. Plaintiff, on behalf of herself and all those similarly situated, is therefore entitled to
25 recover a civil penalty standing in the shoes of the state of California as described in paragraphs
26 25-34 above for each aggrieved employee per pay period for each violation as alleged herein.

27 41. Plaintiff has complied with the provisions of Labor Code §2699.3 prior to filing
28 this action.

1 42. The Labor Code Private Attorneys General Act of 2004 provides for the award of
2 reasonable attorney's fees and costs to an employee who prevails in any action pursuant thereto.
3 Plaintiff has retained the Law Offices of Kenneth F. Moss to pursue this action for those
4 penalties and is therefore entitled to an award of their reasonable attorney's fees and costs
5 according to proof.

6
7 WHEREFORE, Plaintiff prays for judgment as follows:

8 AS TO THE FIRST CAUSE OF ACTION:

- 9 1. For damages according to proof, but not less than \$30,912.00 together with interest
10 thereon;
11 2. For liquidated damages according to proof, but not less than \$30,912.00 , together
12 with interest thereon;
13 3. For reasonable Attorney's Fees according to proof;

14 AS TO THE SECOND CAUSE OF ACTION:

- 15 4. For damages according to proof, but not more than \$4000.00, together with interest
16 thereon;
17 5. For reasonable Attorney's Fees according to proof;

18 AS TO THE THIRD CAUSE OF ACTION:

- 19 6. For damages according to proof, but not less than \$25,404.70 together with interest
20 thereon;

21 AS TO THE FOURTH CAUSE OF ACTION:

- 22 7. For damages according to proof, but not less than \$33,266.99, together with interest
23 thereon;

24 AS TO THE FIFTH CAUSE OF ACTION:

- 25 8. For damages according to proof;

26 AS TO THE SIXTH CAUSE OF ACTION:

- 27 9. For damages according to proof, but not less than \$72,946.99, plus interest thereon;

28 AS TO THE SEVENTH CAUSE OF ACTION:

1 10. For damages and penalties according to proof on her own behalf and on behalf of all
2 others similarly aggrieved;

3 AS TO ALL CAUSES OF ACTION:

4 11. For Plaintiffs' costs of suit incurred herein; and

5 12. For such other and further relief as the Court deems just and proper, including but
6 not limited to applying a Lodestar Calculation to the attorneys fees awarded.

7
8 Respectfully submitted,

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10
11 Dated: August 10, 2023

12 /S
KENNETH F. MOSS, Attorney
for Plaintiff

KENNETH F. MOSS
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June 5, 2023

California Labor and Workforce
Development Agency
Via online filing

BP RE Management LLC
Zhimin Li
2408 El Capitan Ave.
Arcadia, California 91006
Via Certified Mail

BP RE Management LLC
Zhimin Li
2658 Willard Ave.
Rosemead, California 91770
Via Certified Mail

Re: PAGA Notice Pursuant to Labor Code Section 2699.3; Cuamea vs

This office represents Diana Cuamea (hereafter referred to as “Cuamea” or “Claimant”) who was employed as resident apartment manager at an apartment building owned and/or managed by BP RE Management LLC, & Zhimin Li, its managing member (hereinafter collectively referred to as “Li”) Specifically, the Claimant was employed to manage and reside at 3425 Baldwin Park Blvd., Baldwin Park, California 91706. The Claimant had no written employment agreement executed by Li in compliance with the Labor Code and wage Order 5-2001 and no withholding was taken, no “employer’s burden” was paid, and no wage statements (Labor Code § 226) were ever provided on any amounts paid to Claimant and others, among other violations.

Li did not require nor record any sort of time records for Claimant, did not compensate Claimant for travel time to and from the bank several times a month with rent deposits, reimburse Claimant for the use of her personal cellular telephone, for paper to be used in printing out various notices, etc., nor electricity used for the benefit of Li.

We are aware of and believe that Li owns several other apartment complexes at which Li is believed to employ resident managers under terms of compensation and employment substantially similar to those of Claimant. We request that you investigate, or decline to investigate, the following on behalf of Claimant and all other similarly situated employees of Li:

FAILURE TO PAY MINIMUM WAGE

Labor Code Sections 1194, 1197.1 & 558: The Claimant, and we believe all of the other resident manager employees of Li, were routinely not paid at least minimum wage for the hours worked during the three years last past and most certainly not in the one year prior to the filing of this complaint. As noted above, the Claimant, and we believe all of the other individuals employed as resident managers by Li, were compensated only by being provided an apartment at what was purported to be some reduced rent, and, we believe, without benefit of any written agreement. All of the resident managers were therefore illegally denied minimum wage for the hours they worked, per the provisions of Wage Order 5-2001, Paras. 4 & 10, and Labor Code Section 1194 because they were not paid at all, or were paid, if at all, an amount less than minimum wage. Labor Code Section 1197.1 provides for a penalty of \$100.00 per employee for the first such failure and \$250.00 per employee per pay period. Similarly Labor Code Section 558 provides for a penalty of \$50.00 per employee for the first such failure and \$100.00 per employee per pay period, plus an amount sufficient to recover underpaid wages.

FAILURE TO SET AND PAY ON REGULAR PAYDAYS

Labor Code Section 204: Li has not established a regular payday schedule, nor paid its/their employees wages due them on such regularly scheduled paydays, in violation of Labor Code section 204. Labor Code Section 210 sets the penalty for such failure at \$100.00 per employee for the first violation, and \$250.00 per employee per pay period, plus 25% of the wages unlawfully withheld.

FAILURE TO REIMBURSE FOR EXPENSES

Labor Code Section 2802: The Claimant, and we believe all of the other resident manager employees of Li, were never compensated for the use of their personal cellular telephone in the performance of their duties and were required to use their phone in the performance of their duties on a daily basis. Claimant, and we believe all of the other resident manager employees of Li, also was never compensated for use of her personal vehicle to drive on errands for Li and the buildings at which each work(ed) several times each month, and were not reimbursed for ink, toner and paper used in preparing reports and other documents for the benefit of Li. Claimants believe that the other resident manager employees of Li were similarly not compensated for all or some of the above-described expenses. No specific penalty amount is stated for such

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infraction, and therefore the penalty amounts of \$100.00 for each employee for the first violation, and \$200.00 for each employee per pay period for each subsequent violation set forth in Labor Code Section 2699 (f) apply.

FAILURE TO KEEP ACCURATE RECORDS OF HOURS WORKED

Labor Code Section 1174(d): Li has failed to keep any records showing hours worked or stop and start work times for their resident manager employees, as required by Labor Code Section 1174(d) and Wage Order 5-2001. No specific penalty amount is stated for such infraction, and therefore the penalty amounts of \$100.00 for each employee for the first violation, and \$200.00 for each employee per pay period for each subsequent violation set forth in Labor Code Section 2699 (f) apply.

FAILURE TO PROVIDE WAGE STATEMENTS

Labor Code Section 226(a)&(e): Li has failed and refused to provide wage statements as required by Labor Code Section 226(a) to the Claimant and the other resident manager employees. Labor Code Section 226(e) provides for the recovery of a penalty of \$50.00 per employee for the first violation of Section 226(a) and \$100.00 per employee for each subsequent violation, to a maximum of \$4000.00 per employee.

MISS-CLASSIFICATION AS INDEPENDENT CONTRACTOR

Labor Code Section 226.8: Li, by failing to pay regular wages, and instead purporting to compensate the Claimant and their other resident manager employees with the provision of a "discounted" or "free" apartment, improperly miss-classified the Claimant and the others as independent contractors. Labor Code Section 226.8(b) provides for the imposition of a penalty of not less than \$5000.00 nor more than \$15,000.00 for each violation by miss-classification.

FAILURE TO PROVIDE NOTICE OF TERMS OF EMPLOYMENT

Labor Code Section 2810.5: Li failed to comply with Section 2810.5 by failing to provide written notice of material terms of employment to Claimant and we believe all other resident managers and other employees. This violation was compounded by the failure to provide proper wage

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statements with wage payments, from which the employees could "promptly and easily determine" the amount being paid, withheld, deducted, etc. Labor Code Section 1197.1 provides for a penalty of \$100.00 per employee for the first such failure and \$250.00 per employee per pay period. Similarly Labor Code Section 558 provides for a penalty of \$50.00 per employee for the first such failure and \$100.00 per employee per pay period, plus an amount sufficient to recover underpaid wages.

CHARGING RENT IN EXCESS OF LEGALLY ALLOWED AMOUNT

Labor Code Section 1182.8: At various times during Claimant's employment by Li, Li purported to charge Claimant (and we believe the other resident managers) the full amount of the fair market value of the apartment, or some lesser excessive amount in violation of Labor Code Section 1182.8, which permits, pursuant to a written agreement, and if no credit is taken against minimum wage, an employer to charge up to 2/3 of the fair market value of an apartment which the employee is required to occupy as a condition of employment. Similarly, Li charged amounts of rent also in violation of Wage Order 5-2001 which provides specific amounts which may be charged as and for rent to a resident employee. No specific penalty amount is stated for such infraction, and therefore the penalty amounts of \$100.00 for each employee for the first violation, and \$200.00 for each employee per pay period for each subsequent violation set forth in Labor Code Section 2699 (f) apply.

Li has violated or caused to be violated a number of California wage and hour laws as set forth above. The Claimant requests that the Agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. In the alternative, we request that you inform us of your intent not to investigate these alleged violations so that we might proceed with a civil action to include the violations described above.

Very truly yours,
/S

KENNETH F. MOSS

KFM:rb
cc via Certified Mail:
BP RE Management LLC
Zhimin Li

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I am a business resident of the aforesaid county; I am over the age of eighteen years and not a party to the within above entitled action; my business address is 20335 Ventura Blvd., Suite 430, Woodland Hills, California 91364.

[] by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list.

**Farhad Novian
Lindsey Phipps
Novian & Novian
1801 Century Park East, Suite 1201
Los Angeles, California 90067**

☐ As follows: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid by you at Woodland Hills, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after the date of deposit.

☐ (BY PERSONAL SERVICE) By personally delivering it to

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Amended Complaint