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14 EVE STORM, and all others similarly situated  
15

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF RIVERSIDE**  
12 **(UNLIMITED JURISDICTION)**

13 EVE STORM, as an “aggrieved employee” on  
14 behalf of other similarly situated “aggrieved  
15 employees” under the Labor Code Private  
16 Attorney General Act of 2004,

17 *Plaintiff,*

18 vs.

19 EXPRESS SERVICES, INC., a Colorado  
20 corporation doing business as Express  
21 Employment Professionals; O’REILLY  
22 AUTOMOTIVE STORES, INC., a Missouri  
23 corporation; and DOES 1–50, inclusive,

24 *Defendants.*

Case No.: **CVRI 21 04730**

**COMPLAINT FOR VIOLATIONS OF  
THE LABOR CODE AND CIVIL  
PENALTIES UNDER THE LABOR  
CODE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004, LABOR  
CODE §§ 2698, ET SEQ.**

**JURY TRIAL DEMANDED**



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1 Plaintiff, EVE STORM (hereafter “Plaintiff”), on behalf of herself, the State of California,  
2 and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the  
5 California Labor Code and Industrial Welfare Commission Order No. 9-2001 (hereafter “the  
6 Wage Order”), against Defendants EXPRESS SERVICES, INC., a Colorado corporation dba  
7 Express Employment Professionals, O’REILLY AUTOMOTIVE STORES, INC., a Missouri  
8 corporation, and DOES 1-50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
10 her, the State of California, and other similarly situated and aggrieved current and former  
11 employees who worked in California as hourly, non-exempt employees, for civil penalties and  
12 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest and  
13 meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned  
14 for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage  
15 statements; (5) Timely pay wages during and upon termination of employment and; (6) Provide  
16 toilet and storage facilities, lockers, change rooms, and acceptable work temperatures, and (7)  
17 Maintain accurate employment records. Accordingly, Plaintiff now seeks to recover civil  
18 penalties and related relief through this representative action.

19 **II. THE PARTIES**

20 3. Plaintiff, an individual and resident of California, on approximately October 19,  
21 2020, began working for Defendants at the O’Reilly Auto Parts Distribution Center Moreno  
22 Valley, Riverside County in the non-exempt, hourly position of picker. Defendants continuously  
23 employed her in that capacity until on or about January 7, 2021 when her employment ended.

24 4. Defendant EXPRESS SERVICES, INC., dba Express Employment Professionals,  
25 is a corporation organized and existing under the laws of Colorado and a citizen of California  
26 based on Plaintiff’s information and belief.

27 5. Defendant O’REILLY AUTOMOTIVE STORES, INC., is a corporation  
28 organized and existing under the laws of Missouri and a citizen of California based on Plaintiff’s  
information and belief.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but



1 is informed and believes and thereon alleges that said Defendants are legally responsible for the  
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants  
4 when ascertained.

5 **A. THE AGGRIEVED EMPLOYEES**

6 7. The “Aggrieved Employees” are all individuals Defendants have currently and  
7 formerly employed or otherwise contracted with in California, as hourly, non-exempt employees,  
8 including, but not limited to pickers, individuals performing work comparable to the  
9 aforementioned, and persons in comparable positions, at any time during the period of August 11,  
2020 and entry of judgment (“the PAGA Period”).

10 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
12 remaining defendants, and in doing the things hereinafter alleged, were acting within the course  
13 and scope of such agency or employment, and with the approval and ratification of each of the  
14 other Defendants.

15 9. At all relevant times, in perpetrating the acts and omissions alleged herein,  
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack  
17 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved  
Employees in accordance with applicable California labor laws as alleged herein.

18 10. Plaintiff is informed and believes and thereon alleges that each and every one of  
19 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,  
20 each acting as agents and/or employees, and/or under the direction and control of each of the other  
21 defendants, and that said acts and failures to act were within the course and scope of said agency,  
22 employment, and/or direction and control.

23 **III. FACTUAL ALLEGATIONS**

24 11. On approximately October 19, 2020, Defendants began to employ Plaintiff at the  
25 O’Reilly Auto Parts Distribution Center Moreno Valley, Riverside County in the non-exempt,  
26 hourly position of picker. From that date, Defendants continuously employed her in that capacity  
until on or about January 7, 2021 when her employment ended.

27 12. At all relevant times, Defendants issued wages to Plaintiff and all of the other  
28 Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all



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relevant times, Defendants classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

13. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiff and the Aggrieved Employees to spend time in security and COVID19 procedures before entering their work areas and clocking in for purposes of payroll. Defendants did not pay Plaintiff and the Aggrieved Employees for these activities. Defendants also required Plaintiff and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-clock meal periods. Defendants did not pay Plaintiff and the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked.

14. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight (8) in a day, over forty (40) in a week, and for the first eight (8) hours of the seventh day of the workweek. The unpaid activities above extended the workdays of Plaintiff and the Aggrieved Employees in excess of eight hours in a day and in excess of forty (40) hours in a week. However, Defendants did not compensate Plaintiff and the Aggrieved Employees at overtime premium rates of pay for such work.

15. Defendants failed to compensate Plaintiff and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over twelve (12) in a day, and all over the first eight (8) of the seventh day of the workweek. The unpaid activities above extended the workdays of Plaintiff and the Aggrieved Employees in excess of twelve (12) hours in a day. However, Defendants did not compensate Plaintiff and the Aggrieved Employees at doubletime premium rates of pay for such work.

16. At all relevant times, Defendants failed to provide Plaintiff and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As explained above, Defendants also required Plaintiff and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-clock meal periods. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, Defendants required Plaintiff and the Aggrieved Employees to undergo the security procedures during their off-the-clock meal periods. Defendants did not pay Plaintiff and the Aggrieved Employees for



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1 time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal  
2 period as time worked. Defendants also failed to pay premium wages for days on which they  
3 failed to provide Plaintiff and all of the other Aggrieved Employees with meal periods as required  
4 by law.

5 17. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of  
6 the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours  
7 worked or major portion thereof. As explained above, Defendants also required Plaintiff and the  
8 Aggrieved Employees to spend time in security and COVID19 procedures during their off-duty  
9 rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones,  
10 and other electronic devices, Defendants required Plaintiff and the Aggrieved Employees to  
11 undergo the security procedures during their off-duty rest breaks. Defendants did not pay Plaintiff  
12 and the Aggrieved Employees for time spent in these rest break time activities. Defendants also  
13 failed to pay premium wages for days on which they failed to authorize and permit Plaintiff and  
14 all of the other Aggrieved Employees to take rest breaks as required by law.

15 18. At all relevant times, Defendants required Plaintiff and all of the other Aggrieved  
16 Employees to incur certain business expenses in the course of performing their duties. Defendants  
17 required Plaintiff and all of the other Aggrieved Employees to supply gloves and other protective  
18 gear and PPE to perform their job duties. However, Defendants did not provide these items and  
19 did not reimburse Plaintiff and the other Aggrieved Employees for these items.

20 19. At all relevant times, Defendants failed to issue to Plaintiff and all of the other  
21 Aggrieved Employees complete and accurate wage statements that state all hours worked at the  
22 correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state  
23 on the wage statements they issued to Plaintiff and all of the other Aggrieved Employees the  
24 unpaid wages discussed above. The wage statements fail to state all hours worked at the correct  
25 rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all  
26 doubletime wages earned, all meal period premium wages earned, and all rest break premium  
27 wages earned.

28 20. Defendants also failed to timely pay Plaintiff and all of the other Aggrieved  
Employees all earned wages as described above during and at the conclusion of employment.

21 21. Defendants failed to maintain accurate employee records of Plaintiff and all of the  
22 other Aggrieved Employees.



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22. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- A. Not provided with all off duty meal periods;
- B. Not provided with all rest break periods as required by law;
- C. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, regular and overtime wages for work performed while clocked out;
- F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;
- G. Not provided with accurate and complete wage statements;
- H. Not provided with toilet and storage facilities, lockers, change rooms, and acceptable work temperatures; and
- I. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

**IV. FIRST (AND ONLY) CAUSE OF ACTION**

**CIVIL PENALTIES**

**(Lab. Code §§ 2698, et seq.)**

**(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all Defendants)**

23. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

**A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

25. In relevant part, California 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.



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1 26. In relevant part, In relevant part, California Labor Code § 512 states:

2 An employer shall not employ an employee for a work period of  
3 more than five hours per day without providing the employee with  
4 a meal period of not less than 30 minutes, except that if the total  
5 work period per day of the employee is no more than six hours, the  
6 meal period may be waived by mutual consent of both the  
7 employer and employee.

8 An employer shall not employ an employee for a work period of  
9 more than 10 hours per day without providing the employee with  
10 a second meal period of not less than 30 minutes, except that if the  
11 total hours worked is no more than 12 hours, the second meal  
12 period may be waived by mutual consent of the employer and the  
13 employee only if the first meal period was not waived.

14 27. In relevant part, Section 12 of the Wage Order states:

15 **Rest Periods**

16 (A) “Every employer shall authorize and permit all employees  
17 to take rest periods, which insofar as practicable shall be in the  
18 middle of each work period. The authorized rest period time shall  
19 be based on the total hours worked daily at the rate of ten (10)  
20 minutes net rest time per four (4) hours or major fraction thereof.  
21 However, a rest period need not be authorized for employees  
22 whose total daily work time is less than three and one-half (3 1/2)  
23 hours. Authorized rest period time shall be counted as hours  
24 worked for which there shall be no deduction from wages.”

25 (B) If an employer fails to provide an employee a rest period in  
26 accordance with the applicable provisions of this Order, the  
27 employer shall pay the employee one (1) hour of pay at the  
28 employee’s regular rate of compensation for each work day that  
the rest period is not provided.”

29 28. In relevant part, Section 11 of the Wage Order states:

30 **Meal Periods**

31 (A) “No employer shall employ any person for a work period  
32 of more than five (5) hours without a meal period of not less than  
33 30 minutes, except that when a work period of not more than six  
34 (6) hours will complete the day’s work the meal period may be  
35 waived by mutual consent of the employee and the employee.  
36 Unless the employee is relieved of all duty during a 30 minute meal  
37 period, the meal period shall be considered an ‘on duty’ meal  
38



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period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

29. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

30. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

31. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

32. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.



1           33. At all relevant times, Defendants failed to provide Plaintiff and all of the other  
2 Aggrieved Employees with all timely meal periods. Defendants denied Plaintiff and all of the  
3 other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of  
4 work. As explained above, Defendants also required Plaintiff and the Aggrieved Employees to  
5 spend time in security and COVID19 procedures during their off-the-clock meal periods. To  
6 enjoy the use of personal items such as food brought from home, mobile phones, and other  
7 electronic devices, Defendants required Plaintiff and the Aggrieved Employees to undergo the  
8 security procedures during their off-the-clock meal periods. Defendants did not pay Plaintiff and  
9 the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of  
10 the interrupted 30-minute meal period as time worked. Furthermore, Defendants failed to pay  
11 premium wages for days on which they failed to provide Plaintiff and all of the other Aggrieved  
Employees with timely meal periods.

12           34. At all relevant times, Defendants failed to authorize and permit Plaintiff and all  
13 of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours  
14 worked or major fraction thereof. Defendants did not seek an exemption from the rest period  
15 protections of the Wage Order from the California Division of Labor Standards Enforcement. As  
16 explained above, Defendants also required Plaintiff and the Aggrieved Employees to spend time  
17 in security and COVID19 procedures during their off-duty rest breaks. To enjoy the use of  
18 personal items such as food brought from home, mobile phones, and other electronic devices,  
19 Defendants required Plaintiff and the Aggrieved Employees to undergo the security procedures  
20 during their off-duty rest breaks. Defendants did not pay Plaintiff and the Aggrieved Employees  
21 for time spent in these rest break time activities. Moreover, Defendants failed to pay Plaintiff and  
22 all of the other Aggrieved Employees premium wages on workdays Defendants failed to provide  
23 Plaintiff and all of the other Aggrieved Employees with 10-minute rest periods every four hours  
24 worked or major fraction thereof.

25           35. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
26 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
27 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty  
28 meal periods and rest breaks required by California law.

**B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT  
THE CORRECT RATES OF PAY**

36. Section 2 of the Wage Order defines “hours worked” as “the time during which an



1 employee is subject to the control of an employer, and includes all the time the employee is  
2 suffered or permitted to work, whether or not required to do so.”

3 37. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to employees 18 years of  
6 age or over and to employees 16 or 17 years of age who are not required by law  
7 to attend school and are not otherwise prohibited by law from engaging in the  
8 subject work. Such employees shall not be employed more than eight (8) hours in  
9 any workday or more than 40 hours in any workweek unless the employee  
10 receives one and one-half (1 ½) times such employee’s regular rate of pay for all  
11 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes  
12 a day’s work. Employment beyond eight (8) hours in any workday or more than  
13 six (6) days in any workweek is permissible provided the employee is  
14 compensated for such overtime at not less than:

15 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours  
16 worked in excess of eight (8) hours up to and including 12 hours in any workday,  
17 and for the first eight (8) hours worked on the seventh (7th) consecutive day of  
18 work in a workweek.

19 (b) Double the employee’s regular rate of pay for all hours worked in excess of  
20 12 hours in any workday and for all hours worked in excess of eight (8) hours on  
21 the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

22 (c) The overtime rate of compensation required to be paid to a nonexempt full-  
23 time salaried employee shall be computed by using the employee’s regular hourly  
24 salary as one-fortieth (1/40) of the employee’s weekly salary.

25 38. Section 4 of the Wage Order requires an employer to pay non-exempt employees  
26 at least the minimum wage set forth therein for all hours worked, which consists of all hours that  
27 an employer has actual or constructive knowledge that employees are working.

28 39. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours  
in one workday and any work in excess of 40 hours in any one workweek and the  
first eight hours worked on the seventh day of work in any one workweek shall  
be compensated at the rate of no less than one and one-half times the regular rate  
of pay for an employee. Any work in excess of 12 hours in one day shall be  
compensated at the rate of no less than twice the regular rate of pay for an  
employee. In addition, any work in excess of eight hours on any seventh day of a  
workweek shall be compensated at the rate of no less than twice the regular rate  
of pay of an employee. Nothing in this section requires an employer to combine



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1 more than one rate of overtime compensation in order to calculate the amount to  
2 be paid to an employee for any hour of overtime work.

3 40. Labor Code section 1194 invalidates any agreement between an employer and an  
4 employee to work for less than the minimum wage required under the applicable Wage Order.

5 41. Labor Code section 1197 makes it unlawful for an employer to pay an employee  
6 less than the minimum wage required under the applicable Wage Order for all hours worked  
7 during a payroll period.

8 42. Labor Code section 1198 makes it unlawful for an employer to employ an  
9 employee under conditions that violate the Wage Order.

10 43. In conjunction, these provisions of the Labor Code require employers to pay non-  
11 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours  
12 worked, including unrecorded hours when the employer knew or reasonably should have known  
13 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22  
14 Cal.4th 575, 585.)

15 44. At all relevant times during the applicable limitations period, Defendants required  
16 Plaintiff and the Aggrieved Employees to spend time in security and COVID19 procedures before  
17 entering their work areas and clocking in for purposes of payroll. Defendants did not pay Plaintiff  
18 and the Aggrieved Employees for these activities. Defendants also required Plaintiff and the  
19 Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-  
20 clock meal periods. Defendants did not pay Plaintiff and the Aggrieved Employees for time spent  
21 in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as  
22 time worked. The unpaid activities above extended the workdays of Plaintiff and the Aggrieved  
23 Employees in excess of eight hours in a day and in excess of 40 hours in a week. However,  
24 Defendants did not compensate Plaintiff and the Aggrieved Employees at overtime premium rates  
25 of pay for such worktime. The unpaid activities above extended the workdays of Plaintiff and the  
26 Aggrieved Employees in excess of 12 hours in a day. However, Defendants did not compensate  
27 Plaintiff and the Aggrieved Employees at doubletime premium rates of pay for such worktime.

28 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'  
failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as  
required by California law.



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1 **C. FAILURE TO INDEMNIFY**

2 46. In pertinent part, California Labor Code § 2802(a) states:

3 “An employer shall indemnify his or her employee[s] for all  
4 necessary expenditures incurred by the employee in direct  
5 consequence of the discharge of his or her duties.”

6 47. California Labor Code § 1198 prohibits employers from employing their  
7 employees under conditions prohibited by the Wage Order.

8 48. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees  
9 to incur certain business expenses in the course of performing their duties. During the applicable  
10 limitations period, Defendants required Plaintiff and all of the other Aggrieved Employees to  
11 supply gloves, other protective gear, and PPE to perform their job duties. However, Defendants  
12 did not provide these items and did not reimburse Plaintiff and the other Aggrieved Employees  
13 for these items.

14 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
15 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’  
16 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they  
17 incurred during the course of performing their duties.

18 **D. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**  
19 **STATEMENTS**

20 50. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved  
21 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an  
22 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable  
23 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at  
24 each hourly rate by the employee.

25 51. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury  
26 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if  
27 the employer fails to provide accurate and complete information as required by California Labor  
28 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement  
alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during  
the pay period or any of the other information required to be provided on the itemized wage



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1 statement pursuant to California Labor Code § 226(a);

2 B. Which deductions the employer made from gross wages to determine the  
3 net wages paid to the employee during the pay period;

4 C. The name and address of the employer and, if the employer is a farm labor  
5 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name  
6 and address of the legal entity that secured the services of the employer during the pay period;

7 D. The name of the employee and only the last four digits of his or her social  
8 security number or an employee identification number other than a social security number; and

9 E. The number of piece-rate units earned and the piece rate.

10 52. “Promptly and easily determine,” as stated in California Labor Code § 226(e),  
11 means a reasonable person would be able to readily ascertain the information without reference  
12 to other documents or information.

13 53. As alleged herein, at all relevant times during the applicable limitations period,  
14 Defendants violated California Labor Code section 226 because they did not properly and  
15 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,  
16 the corresponding number of hours worked at each rate by the employee and other requirements  
17 of California Labor Code section 226. Defendants failed to state in the wage statements they  
18 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,  
19 including, but not limited to, regular and overtime wages for work they performed off-the-clock.  
20 The wage statements do not state all hours worked at the correct rates of pay, all minimum wages  
21 earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all  
22 meal period premium wages earned, and all rest break premium wages earned.

23 54. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with  
24 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
25 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally  
26 provided wage statements that Defendants knew were not accurate.

27 55. As a result of being provided with inaccurate wage statements by Defendants,  
28 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive  
accurate wage statements were violated and they were misled about the amount of wages they  
had actually earned and were owed. In addition, the absence of accurate information on their wage  
statements prevented immediate challenges to Defendants’ unlawful pay practices, has required



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discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

**E. UNTIMELY WAGES DURING EMPLOYMENT**

56. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or



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semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

57. Defendants failed to compensate Plaintiff and the Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, at the intervals stated above. As a result, Defendants failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204.

**F. UNTIMELY FINAL WAGES**

58. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

59. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

60. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

61. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

**G. FAILURE TO PROVIDE TOILET AND STORAGE FACILITIES, LOCKERS, CHANGE ROOMS, AND ACCEPTABLE WORK TEMPERATURES**

62. California Labor Code § 2350 states:

“Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for



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the use of each sex, which shall be plainly so designated..”

63. In relevant part, § 13 of the Wage Order states:

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees’ outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

64. In relevant part, § 15 of the Wage Order states:

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

65. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

66. At all relevant times during the applicable limitations period, Defendants failed to provide any toilet facilities for use by Plaintiff and the Aggrieved Employees within reasonable access. Defendants also failed to provide lockers, closets, storage facilities, and changing rooms for use by Plaintiff and all the other Aggrieved Employees. Moreover, Defendants failed to provide acceptable temperatures for the work areas they expected Plaintiff and the Aggrieved Employees to perform their job duties in.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to provide Plaintiff and the Aggrieved Employees with toilet and storage facilities, lockers, change rooms, and acceptable work temperatures.



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1 **H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

2 68. Labor Code § 1174 states:

3 Every person employing labor in this state shall:

4 ...

5 (c) Keep a record showing the names and addresses of all employees  
6 employed and the ages of all minors.

7 (d) Keep, at a central location in the state or at the plants or establishments  
8 at which employees are employed, payroll records showing the hours worked  
9 daily by and the wages paid to, and the number of piece-rate units earned by  
10 and any applicable piece rate paid to, employees employed at the respective  
11 plants or establishments. These records shall be kept in accordance with rules  
12 established for this purpose by the commission, but in any case shall be kept  
13 on file for not less than three years. An employer shall not prohibit an  
14 employee from maintaining a personal record of hours worked, or, if paid on  
15 a piece-rate basis, piece-rate units earned.

16 69. Labor Code § 1174.5 states:

17 Any person employing labor who willfully fails to maintain the records  
18 required by subdivision (c) of Section 1174, or to allow any member of the  
19 commission or employees of the division to inspect records pursuant to  
20 subdivision (b) of Section 1174, shall be subject to a civil penalty of five  
21 hundred dollars (\$500).

22 70. Section 7 of the Wage Order states,

23 (a) Every employer shall keep accurate information with respect to each  
24 employee including the following:

- 25 1. Full name, home address, occupation, and social security number.
- 26 2. Birth date, if under 18 years, and designation as a minor.
- 27 3. Time records showing when the employee begins and ends each  
28 work period. Meal periods, split shift intervals and total daily  
hours worked shall also be recorded. Meal periods during which  
operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board,  
lodging, or other compensation actually furnished to the  
employee.
5. Total hours worked in the payroll period and applicable rates of  
pay. This information shall be made readily available to the  
employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or  
an explanation of the incentive plan formula shall be provided to  
employees. An accurate production record shall be maintained by  
the employer.

71. Labor Code § 1198 prohibits employers from employing their employees under



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conditions prohibited by the Wage Order.

72. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees

**I. CIVIL PENALTIES SOUGHT**

73. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

74. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

75. During the applicable time period, Defendants violated California Labor Code



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1 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2350, and 2802.

2 76. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on  
3 behalf of themselves and other current or former employees, to bring a civil action to recover civil  
4 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

5 77. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved  
6 Employees are entitled to recover civil penalties for each of the Defendants' violations of  
7 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198,  
8 2350, and 2802 during the applicable limitations period in the following amounts:

9 A. For violations of California Labor Code § 204, one hundred dollars  
10 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars  
11 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation  
12 (penalty amounts established by California Labor Code § 210).

13 B. For violations of California Labor Code § 226(a), two hundred fifty dollars  
14 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee  
15 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

16 C. For violations of California Labor Code §§ 510 and 512, fifty dollars  
17 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the  
18 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for  
19 each pay period for which the employee was underpaid (penalty amounts established by  
20 California Labor Code § 558).

21 D. For violations of California Labor Code § 1174, five hundred dollars  
22 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established  
23 by Labor Code § 1174.5).

24 E. For violations of California Labor Code § 1197, one hundred dollars  
25 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred  
26 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period  
27 (regardless of whether the initial violations were intentionally committed) (penalty amounts  
28 established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
1198, 2350, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period  
for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay



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1 period for each subsequent violation (penalty amounts established by California Labor Code  
2 § 2699(f)(2)).

3 **J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

4 78. Plaintiff has complied with the procedures for bringing suit specified in California  
5 Labor Code § 2699.3. By letter dated August 11, 2021, Plaintiff gave written notice by certified  
6 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific  
7 provisions of the California Labor Code alleged to have been violated, including the facts and  
8 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA  
9 dated August 11, 2021 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s  
10 letter.

11 79. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved  
12 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in  
13 connection with their claims for civil penalties.

14 **VI. PRAYER FOR RELIEF**

15 80. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays  
16 for relief and judgment against Defendants as follows:

- 17 A. Civil penalties;  
18 B. Costs of suit;  
19 C. Reasonable attorneys’ fees; and  
20 D. Such other relief as the Court deems just and proper.

21 ///

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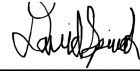
**VII. DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 15, 2021

By:   
DAVID SPIVAK  
GREGORY B. WILBUR  
MAYA CHEAITANI, Attorneys for Plaintiff,  
EVE STORM, and all others similarly situated



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# **EXHIBIT A**



SPIVAK LAW

**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL\***

August 11, 2021

Attn: PAGA Administrator  
Labor and Workforce Development Agency  
Attn: PAGA Administrator  
<http://dir.tflaforms.net>  
*Via Electronic Submission*

Re: Eve Storm / Express Services

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Eve Storm (hereafter “Storm” or “Complainant”) provides notice that Express Services, Inc., a Colorado corporation dba Express Employment Professionals, O’Reilly Automotive Stores, Inc, a Missouri corporation, and related entities (collectively “the Express Services Employers” or “the Employers”) violated her rights and those of all other individuals the Express Services Employers have employed or otherwise contracted with in California as non-exempt, hourly workers, including pickers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 201.3, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. On behalf of herself and all other Aggrieved Employees, Storm hereby provides this notice to the Labor & Workforce Development Agency and the Express Services Employers and their agents and representatives.

At all relevant times, the Express Services Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Storm and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

On approximately October 19, 2020, the Express Services Employers began to employ Storm at the O'Reilly Auto Parts Distribution Center Moreno Valley, Riverside County in the position of picker. The Express Services Employers continuously employed her in that capacity until on or about January 7, 2021 when her employment ended.

At all relevant times, the Express Services Employers issued wages to Storm and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Express Services Employers classified Storm and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Express Services Employers required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures before entering their work areas and clocking in for purposes of payroll. The Express Services Employers did not pay Storm and the Aggrieved Employees for these activities. The Express Services Employers also required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-clock meal periods. The Express Services Employers did not pay Storm and the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked.

The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The unpaid activities above extended the workdays of Storm and the Aggrieved Employees in excess of eight hours in a day and in excess of 40 hours

in a week. However, the Express Services Employers did not compensate Storm and the Aggrieved Employees at overtime premium rates of pay for such such.

The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The unpaid activities above extended the workdays of Storm and the Aggrieved Employees in excess of 12 hours in a day. However, the Express Services Employers did not compensate Storm and the Aggrieved Employees at doubletime premium rates of pay for such such.

At all relevant times, the Express Services Employers failed to provide Storm and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As explained above, the Express Services Employers also required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-clock meal periods. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, the Express Services Employers required Storm and the Aggrieved Employees to undergo the security procedures during their off-the-clock meal periods. The Express Services Employers did not pay Storm and the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked. The Express Services Employers also failed to pay premium wages for days on which failed to provide Storm and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Express Services Employers failed to authorize and permit Storm and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As explained above, the Express Services Employers also required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-duty rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, the Express Services Employers required Storm and the Aggrieved Employees to undergo the security procedures during their off-duty rest breaks. The Express Services

Employers did not pay Storm and the Aggrieved Employees for time spent in these rest break time activities. The Express Services Employers also failed to pay premium wages for days on which failed to authorize and permit Storm and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Express Services Employers required Storm and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Express Services Employers required Storm and all of the other Aggrieved Employees to supply gloves and other protective gear and PPE to perform their job duties. However, the Express Services Employers did not provide these items and did not reimburse Storm and the other Aggrieved Employees for these items.

At all relevant times, the Express Services Employers failed to issue to Storm and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Express Services Employers knowingly and intentionally failed to state on the wage statements they issued to Storm and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, and all rest break premium wages earned.

The Express Services Employers also failed to timely pay Storm and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Express Services Employers failed to provide Storm and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures.

The Express Services Employers failed to maintain accurate employee records of Storm and all of the other Aggrieved Employees.

For the reasons stated herein, Storm alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Express Services Employers failed to pay Storm and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Express Services Employers failed to provide Storm and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Express Services Employers failed to authorize and permit Storm and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees at one hour's pay for each day in which the Express Services Employers failed to provide them with one or more meal periods as required by law;
- (e) The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees at one hour's pay for each day in which the Express Services Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Express Services Employers failed to indemnify Storm and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Express Services Employers knowingly and intentionally failed to provide Storm and all of the other Aggrieved Employees with accurate wage statements;

- (h) The Express Services Employers willfully failed to timely pay Storm and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Express Services Employers and when their employment ended;
- (i) The Express Services Employers failed to provide Storm and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures; and
- (j) The Express Services Employers failed to maintain accurate employment records pertaining to Storm and all of the other Aggrieved Employees.

Accordingly, Storm now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Express Services Employers' alleged violations of the Labor Code and the Wage Order.

### **The Wage Order**

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Express Services "Employers, Storm, and all of the Aggrieved Employees were covered by the Wage Order because the Express Services Employers operated, and Storm, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses. Accordingly, Storm and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

### **Failure To Pay Wages For All Hours Worked At The Correct**

**Rates of Pay**  
**(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or

reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Express Services Employers required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures before entering their work areas and clocking in for purposes of payroll. The Express Services Employers did not pay Storm and the Aggrieved Employees for these activities. The Express Services Employers also required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-clock meal periods. The Express Services Employers did not pay Storm and the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked. The unpaid activities above extended the workdays of Storm and the Aggrieved Employees in excess of eight hours in a day and in excess of 40 hours in a week. However, the Express Services Employers did not compensate Storm and the Aggrieved Employees at overtime premium rates of pay for such worktime. The unpaid activities above extended the workdays of Storm and the Aggrieved Employees in excess of 12 hours in a day. However, the Express Services Employers did not compensate Storm and the Aggrieved Employees at doubletime premium rates of pay for such worktime.

At all relevant times during the applicable limitations period, the Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Storm now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

**Failure to Provide Meal Periods**  
**(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on

duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Express Services Employers failed to provide Storm and all of the other Aggrieved Employees with all timely meal periods. The Express Services Employers denied Storm and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. As explained above, the Express Services Employers also required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-the-clock meal periods. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, the Express Services Employers required Storm and the Aggrieved Employees to undergo the security procedures during their off-the-clock meal periods. The Express Services Employers did not pay Storm and the Aggrieved Employees for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked. Furthermore, the Express Services Employers failed to pay premium wages for days on which they failed to provide Storm and all of the other Aggrieved Employees with timely meal periods. Accordingly, Storm now seeks civil penalties for these Labor Code violations that the Express Services Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

**Failure to Authorize and Permit Rest Periods**  
**(Lab. Code §§ 226.7 & 1198)**

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Express Services Employers failed to authorize and permit Storm and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Express Services Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. As explained above, the Express Services Employers also required Storm and the Aggrieved Employees to spend time in security and COVID19 procedures during their off-duty rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, the Express Services Employers required Storm and the Aggrieved Employees to undergo the security procedures during their off-duty rest breaks. The Express Services Employers did not pay Storm and the Aggrieved Employees for time spent in these rest break time activities. Moreover, the Express Services Employers failed

to pay Storm and all of the other Aggrieved Employees premium wages on workdays the Express Services Employers failed to provide Storm and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Storm now seeks civil penalties for these Labor Code violations that the Express Services Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

**Failure to Reimburse for Expenses**  
**(Lab. Code §§ 1198 and 2802)**

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.  
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an

employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Express Services Employers required Storm and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Express Services Employers required Storm and all of the other Aggrieved Employees to supply gloves, other protective gear, and PPE to perform their job duties. However, the Express Services Employers did not provide these items and did not reimburse Storm and the other Aggrieved Employees for these items. Accordingly, Storm seeks civil penalties for these Labor Code violations that the Express Services Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

**Failure to Provide Accurate Wage Statements**  
**(Lab. Code § 226)**

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Express Services Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor

Code section 226. The Express Services Employers failed to state in the wage statements they issued to Storm and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Express Services Employers knowingly and intentionally failed to state on the wage statements they issued to Storm and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, and all rest break premium wages earned. Accordingly, Storm seeks civil penalties for the Labor Code violations that the Express Services Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

**Failure to Timely Pay Wages During Employment**  
**(Lab. Code § 204)**

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, at the intervals stated above. As a

result, the Express Services Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Storm now seeks civil penalties for the Labor Code violations that the Express Services Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

**Failure to Timely Pay Wages Upon Termination of Employment**  
**(Lab. Code §§ 201-203)**

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under Labor Code § 201.3,

if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week.

Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Express Services Employers failed to pay Storm and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above not later than the regular payday of the following calendar week, or by the conclusion of their employment with Storm, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Storm and all of the other Aggrieved Employees as set forth above at the end of employment, the Express Services Employers are liable for violations of Labor Code §§ 201, 201.3, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Storm seeks civil penalties from the Express Services Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 201.3, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent, willful, or intentional violations of § 202 occurred (penalties set by Labor Code § 210);
3. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

4. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

**Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and Acceptable Work Temperatures**  
**(Lab. Code §§ 1198 and 2350)**

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15(A) of Wage Order states, “A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.”

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Express Services Employers failed to provide any toilet facilities for use by Storm and all of the other Aggrieved Employees within reasonable access. Accordingly, on behalf of herself and aggrieved employees, Storm demands that the Express Services Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. The Express Services Employers also failed to provide lockers, closets, storage facilities, and changing rooms for use by Storm and all of the other Aggrieved Employees. Moreover, the Express Services Employers failed to provide acceptable temperatures for the work areas it expected Storm and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this notice, the Express Services Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Storm, on behalf of herself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Express Services Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved

employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure to Maintain Accurate Employment Records**  
**(Lab. Code §§ 1174 & 1198)**

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division

to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Express Services Employers failed to compensate Storm and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned. As a result, the Express Services Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Storm and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Storm seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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**Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Eve Storm will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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