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7 as an aggrieved employee, and on behalf of all other
aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 CHRISTIAN VILLALOBOS SANCHEZ, as
12 an aggrieved employee, and on behalf of all
13 other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

14 Plaintiff,

15 v.

16 EXPRESS SERVICES, INC., a Colorado
corporation; and DOES 1 through 100,
17 inclusive,

18 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 04 2022

BY 
LILIANA MARISCAL, DEPUTY

CASE NO.: CIVSB2134683

[Assigned for all purposes to the Hon. David
Cohn in Dept. S-26]

**FIRST AMENDED COMPLAINT UNDER
THE LABOR CODE PRIVATE
ATTORNEYS' GENERAL ACT OF 2004
FOR CIVIL PENALTIES UNDER LABOR
CODE SECTION 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

By Fax

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26 COMES NOW Plaintiff CHRISTIAN VILLALOBOS SANCHEZ ("Plaintiff"), as
27 aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private
28 Attorneys' General Act of 2004, and alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against EXPRESS
4 SERVICES, INC., a Colorado corporation, and any of its respective subsidiaries or affiliated
5 companies within the State of California ("EXPRESS"), and together with DOES 1 through 100, as
6 further defined below ("Defendants"), as a proxy of the Labor and Workforce Development Agency
7 of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-
8 exempt employees of Defendants working within the Civil Penalty Period, as further defined herein,
9 and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5 on
10 behalf of all employees of Defendants working within the Civil Penalty Period (collectively,
11 "Aggrieved Employees").

12 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
13 of Civil Procedure section 410.10.

14 3. Venue is proper in San Bernardino County, California pursuant to Code of Civil
15 Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where the
16 causes of action complained of herein arose; the county in which the employment relationship
17 began; the county in which performance of the employment contract, or part of it, between Plaintiff
18 and Defendants was due to be performed; the county in which the employment contract, or part of
19 it, between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged
20 herein have a direct effect on Plaintiffs and Aggrieved Employees in San Bernardino County, and
21 because Defendants employ numerous Aggrieved Employees in San Bernardino County.

22 4. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code
24 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil
25 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
26 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus
27 reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former
28 employees of Defendants during the Civil Penalty Period.

1 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
2 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
3 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
4 PAGA allegations described herein is not required.

5 6. During the period beginning one (1) year preceding the provision of notice to the
6 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
7 Defendants violated, *inter alia*, Labor Code sections 2810.5, among others.

8 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
9 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
10 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
11 specified in Labor Code section 2699.3.

12 8. On or around October 18, 2021, Plaintiff provided written notice pursuant to Labor
13 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
14 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
15 as well as by certified mail, with return receipt requested to Defendants, and each of them.

16 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
17 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
18 calendar days of the October 18, 2021 postmarked date of the herein-described notice sent by
19 Plaintiff to the LWDA and Defendants.

20 **PAGA REPRESENTATIVE ALLEGATIONS**

21 10. At all relevant times mentioned herein, Defendants have had a policy or practice of
22 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
23 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
24 Employees with the rates of pay and overtime rates of pay applicable to their employment;
25 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
26 name, address, and telephone number of the workers’ compensation insurance carrier; information
27 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
28 under Labor Code section 2810.5.

11. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 2699, among other things, for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

12. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, grinding and sanding. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately October of 2020 through at least November of 2020.

B. Defendants

13. Plaintiff is informed and believes and based thereon alleges that Defendant EXPRESS is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Colorado and doing business in the County of San Bernardino, State of California.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this First Amended Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to

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1 "Defendants," it shall include EXPRESS and any of its parent, subsidiary, or affiliated companies
2 within the State of California, as well as DOES 1 through 100 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

4 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 mentioned herein, each of the defendants was the agent, principal, employee, employer,
6 representative, joint venture or co-conspirator of each of the other defendants, either actually or
7 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
8 employment, joint venture, and conspiracy.

9 16. All of the acts and conduct described herein of each and every corporate defendant
10 was duly authorized, ordered, and directed by the respective and collective defendant corporate
11 employers, and the officers and management-level employees of said corporate employers. In
12 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
13 their said employees, agents, and representatives, and each of them; and upon completion of the
14 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
15 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
16 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
17 aforementioned corporate employees, agents and representatives.

18 17. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
19 thereon alleges that Defendants, and each of them, are joint employers.

20 **FIRST CAUSE OF ACTION**

21 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

22 18. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 19. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
25 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
26 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
27 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil

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1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Labor Code section 2699.3.

3 20. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
4 Code except those for which a civil penalty is specifically provided, the established civil penalty for
5 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
7 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
8 employee per pay period for each subsequent violation.

9 21. Labor Code section 2810.5 requires employers, at the time of hiring, to provide each
10 employee with a written notice, in the language the employer normally uses to communicate
11 employment-related information to the employee, containing, among other things: the rate or rates
12 of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or
13 otherwise, including any rates for overtime, as applicable; allowances, if any, claimed as part of the
14 minimum wage, including meal or lodging; the name of the employer including any "doing business
15 as" names used by the employer; the physical address of the employer's main office or principal
16 place of business, and a mailing address, if different; the telephone address of the employer; the
17 name, address and telephone number of the employer's workers' compensation insurance carrier;
18 that an employee may accrue and use sick leave, has a right to request and use accrued paid sick
19 leave, may not be terminated or retaliated against for using or requesting the use of accrued paid
20 sick leave, and has the right to file a complaint against an employer who retaliates; and any other
21 information the Labor Commissioner deems material and necessary.

22 22. Plaintiff is informed and believes that the Labor Code section 2810.5 requirement is
23 a filing and/or reporting requirement involving mandatory payroll and/or workplace injury
24 reporting.

25 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
26 each of them, violated the Labor Code sections described herein, including, without limitation, for
27 the failure to include: the name of the employer, including any "doing business as" names used, the
28 name, address and telephone number of the workers' compensation insurance carrier, information

1 regarding paid sick leave, and other pertinent information required to be disclosed by Employer
2 under Labor Code section 2810.5.

3 24. Moreover, Plaintiff and other Aggrieved Employees within the State of California
4 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
5 connection with their herein-described claims for civil penalties.

6 **REQUEST FOR JURY TRIAL**

7 25. Plaintiff hereby requests a trial by jury.

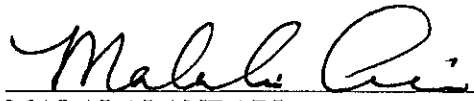
8 **PRAYER**

9 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
10 judgment against Defendants as follows:

- 11 A. An award of civil penalties pursuant to Labor Code sections 2699;
12 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
13 2699;
14 C. Pre-judgment and post-judgment interest;
15 D. For costs of suit incurred herein; and
16 E. Such other and further relief as the Court deems just and proper.

17 Dated: March 4, 2022

BIBIYAN LAW GROUP, P.C.

19 BY: 
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MALALAI ANBARI

21 DAVID D. BIBIYAN

22 Attorneys for Plaintiff CHRISTIAN
23 VILLALOBOS SANCHEZ, as an aggrieved
24 employee, and on behalf of all other aggrieved
25 employees under the Labor Code Private
26 Attorneys' General Act of 2004
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