

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Berkeh Alemzadeh (SBN: 324834)
balem@mahoney-law.net
Raleigh Dixon (SBN: 340483)
rdixon@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

FILED
4/20/2022 3:49 PM
Clerk of the Napa Superior Court
By: Allison Hayes, Deputy

Attorneys for Plaintiff ELVIA SERVIN, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF NAPA

22CV000433

ELVIA SERVIN, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

BORAL STONE PRODUCTS, LLC, and
DOES 1 through 50, inclusive,

Defendants.

Case No.:

**REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES AND FINES**

1. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Provide Rest Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statement; and
4. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Provide All Wages Due Upon Termination of Employment.

1 Plaintiff ELVIA SERVIN (“Plaintiff” or “Ms. Servin”), as a representative of the state of
2 California and the Labor and Workforce Development Agency (“LWDA”), and on behalf of
3 herself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly Aggrieved
6 Employees who were subjected to one or more of the violations alleged herein (“Aggrieved
7 Employees”) by Defendant BORAL STONE PRODUCTS, LLC (“BORAL STONE” or
8 “Defendant”). The term “Relevant Time Period” or “Time Period” is defined as one (1) year plus
9 sixty-five (65) days prior to the filing of the complaint. Plaintiff reserves the right to amend this
10 complaint to reflect a different “Time Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide rest periods or premium compensation in lieu thereof; (3) failure to keep
14 accurate payroll records and provide accurate itemized wage statements; and (4) failure to pay all
15 wages earned and owed at separation of employment.

16 3. At all relevant times herein, Defendants have consistently maintained and enforced
17 the following unlawful policies and practices against Plaintiff:

- 18 a. Willfully refusing to pay all hours worked, including both regular and overtime
19 wages;
- 20 b. Willfully refusing to permit rest periods or providing compensation in lieu
21 thereof;
- 22 c. Willfully refusing to furnish accurate itemized wage statements upon payment
23 of wages; and
- 24 d. Willfully refusing to pay all wages earned and owed at separation of
25 employment.

26 **JURISDICTION AND VENUE**

27 4. This Court has subject matter jurisdiction over the causes of action alleged in this
28 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise

1 excluded from exercising subject matter jurisdiction over said causes of action.

2 5. Venue is proper in the County of Napa, because the Defendant maintains its
3 location and transacts business in this county, the obligations and liability arise in this county,
4 and work performed by Plaintiff and Aggrieved Employees that form the subject of this action
5 occurred in this county.

6 6. The California Superior Court has jurisdiction in the matter, because the individual
7 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal
8 Court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or domiciled
9 in the State of California. Defendants are a corporation doing business in the State of California.

10 7. Further, there is no federal question at issue as the issues herein are based solely
11 on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and
12 Professions Code, and California Rules of Court.

13 **THE PARTIES**

14 **Plaintiff**

15 8. Plaintiff at various relevant times herein, was an employee of the Defendant and
16 is entitled to compensation for all hours worked, overtime compensation, and penalties from
17 Defendant. Plaintiff was employed by the Defendant from March 2021 until August 2021, in
18 Napa County at Defendant's place of business located at 350 Tower Road, American Canyon,
19 California 94503. Plaintiff was employed by the Defendants during the Relevant Time Period in
20 non-exempt hourly position as a non-exempt, hourly Production Specialist. Each of the Aggrieved
21 Employees are identifiable, current and/or formerly similarly Aggrieved Employees who were
22 employed in non-exempt hourly positions such as, including but not limited to, Production
23 Specialists and related positions in California for the Defendants during the Relevant Time Period.

24 **Defendants**

25 9. Plaintiff is informed and believes, and based thereon alleges that, Boral Stone is a
26 Delaware corporation, operating throughout California and is and/or was the employer of the
27 Plaintiff and Aggrieved Employees during the Relevant Time Period. During the Relevant Time
28 Period, Defendants employed Plaintiff and similarly Aggrieved Employees and failed to pay

1 Plaintiff and Aggrieved Employees for all hours worked as a result of working off the clock before
2 or after the start of their shifts, failing to pay minimum and overtime wages, failing to provide
3 meal periods or pay a meal period penalty in lieu of, failed to provide rest periods or pay a rest
4 period penalty in lieu of, and failed to provide accurate and itemized wage statements. On
5 information and belief, and based thereon alleges that Defendants are conducting business in good
6 standing in California.

7 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
8 a corporation and partnership doing business in the State of California, Napa County and/or were
9 the employers of Plaintiff and similarly Aggrieved Employees during the Relevant Time Period.
10 Plaintiff is informed and believes, Defendants operate in the state of California, including Napa
11 County.

12 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
13 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
14 inclusive, but on information and belief alleges that said Defendants are legally responsible for
15 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
16 capacities of the DOE Defendant when ascertained.

17 12. Plaintiff is informed believes, and thereon alleges, that each Defendants acted in
18 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
19 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
20 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
21 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
22 joint employers and conspire with one another to increase profits by engaging in the conduct
23 described in this complaint.

24 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
25 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
26 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
27 below was acting, at least in part, within the course and scope of that authority as such agent,
28 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with

1 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
2 are legally attributable to the other Defendants.

3 **PAGA ADMINISTRATIVE PREREQUISITE**

4 14. By this complaint, Plaintiff brings this case as a representative action seeking
5 penalties for the State of California in a representative capacity, as provided by PAGA, labor
6 Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was
7 employed by Defendant and subject to alleged violations set forth in Labor Code section 2699.5.
8 Plaintiffs and other Aggrieved Employees are current and former employees of Defendant starting
9 from three hundred sixty-five (365) days from the submission of the written notice to the LWDA
10 and Defendant to the resolution of this matter. Plaintiffs specifically alleged the following in their
11 notice to the Labor and Workforce Development Agency (“LWDA”) and the employer: violations
12 of Labor Code sections 226, 226.7, 510, 512, 558, 1171, and 1194.

13 15. Under Labor Code section 2699.3 subdivision(a), a Plaintiff may bring a cause of
14 action under PAGA only after giving notice to the LWDA and the employer of the Labor Code
15 section alleged to have been violated, and after sixty-five (65) days have passed without notice.
16 Prior to filing this complaint, on January 31, 2022, Plaintiff gave written notice by certified
17 electronic mail to the LWDA and to Defendants of the specified provisions alleged to have been
18 violated, including the facts and theories to support the alleged violation as required by Labor
19 Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA on
20 February 4, 2022, is attached hereto as Exhibit A.

21 16. More than sixty-five (65) days have passed since Plaintiff submitted her January
22 31, 2022, notice to the LWDA and Defendants of the specific alleged Labor Code violations and
23 the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
24 Plaintiff further has received no notice of Defendants’ intent to cure any of the alleged violations.
25 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
26 to her February 4, 2022, PAGA notice.

27 ///

28 ///

FACTUAL ALLEGATIONS

17. The lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its employees the benefits due under California's wage and hour laws for work performed in California. Defendant wrongfully refused to provide Plaintiff and the Aggrieved Employees minimum wages, overtime compensation, meal and rest periods, and other statutory benefits mandated by California.

18. Throughout the Relevant Time Period, Defendant employed Plaintiff and Aggrieved Employees in non-exempt positions throughout its California locations. Accordingly, these positions remain non-exempt from California's wage and hour laws, yet Defendant failed to pay overtime, provide rest breaks and otherwise pay all wages due to these non-exempt employees as required by law.

19. During the Relevant Time Period, Defendant failed to compensate Plaintiff and Aggrieved Employees legally mandated minimum wages and overtime rate for all work performed during their shifts in violation of the Labor Code and the Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. During the course of Plaintiff's employment with Defendant, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees primarily performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime compensation at time and a half rate, and when applicable, double time rates as set forth by the applicable Wage Orders, regulations and/or statutes. Further, Plaintiff and Aggrieved Employees regularly worked through rest breaks, and were not paid the legally mandated regular or overtime wages for the hours they worked.

20. Ms. Servin alleges she and the Aggrieved Employees were not compensated with premium pay for every rest period that was not provided, as required by Labor Code sections 226.7 and 512 and the applicable IWC Wage Order.

21. Ms. Servin further alleges that Defendant failed to compensate her and the Aggrieved Employees at the legally mandated wage rates for all hours worked. Ms. Servin and

1 the Aggrieved Employees performed work off-the-clock during rest periods resulting in unpaid
2 overtime wages.

3 22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
4 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
5 times the employee's base rate of pay. Defendant's failure to provide Plaintiff and the Aggrieved
6 Employees any pay whatsoever for off-the-clock hours worked therefore necessarily resulted in
7 overtime violations as well.

8 23. Furthermore, Defendant failed to keep accurate time records reflecting the time
9 Ms. Servin and the Aggrieved Employees began and ended their meal periods. Insofar as
10 Defendant required the employees to work before and/or after signing in/out, the timekeeping by
11 Defendant was non-compliant as required under the Labor Code and Code of Regulations.

12 24. By failing to include on Plaintiff and the Aggrieved Employees' paystubs all owed
13 meal and rest premium pay, and all minimum wage and overtime owed, Defendant failed to keep
14 accurate payroll records and failed to provide Plaintiff and the Aggrieved Employees with
15 complete and accurate wage statements.

16 **FIRST CAUSE OF ACTION**

17 **Violation of the Private Attorneys General Act for Failure to Pay All Wages Owed,**

18 **Including Minimum Wage and Overtime**

19 **(Plaintiff on behalf of herself and Aggrieved Employees Against Defendants)**

20 25. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
21 fully alleged herein.

22 26. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
23 and/or forty (40) hours per week. Defendants failed to pay Plaintiffs and Aggrieved Employees
24 minimum wage for all hours worked and overtime premium for hours worked in excess of over
25 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant.
26 Defendant failed to pay Plaintiffs and Aggrieved Employees overtime premium for hours worked
27 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
28 Defendant.

1 27. Defendant frequently denied Ms. Servin and Aggrieved Employees a rest period
2 and never paid them a premium for missing their rest period. Additionally, Defendant required
3 Ms. Servin and Aggrieved Employees to work ten (10)-hour days for five (5) days (50 total hours)
4 per workweek. Accordingly, Ms. Servin and Aggrieved Employees were entitled to overtime pay
5 for the two additional hours worked for each the first four days of the workweek, as well as ten
6 (10) hours of overtime for the last day of the workweek. Altogether, Ms. Servin and Aggrieved
7 Employees are entitled to receive eighteen (18) hours of overtime pay per week and 36 hours of
8 overtime pay per pay period. However, Defendant routinely compensated Ms. Servin and
9 Aggrieved Employees for fewer than ten (10) hours at the applicable overtime rate each pay
10 period.

11 28. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
12 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
13 Aggrieved Employees were denied proper wages as a result of Defendant's policy of requiring
14 Plaintiff and Aggrieved Employees to work ten hours per day and fifty hours per week, failing to
15 conduct and pass Alternative Workweek Election, and failing to compensate Ms. Servin and
16 Aggrieved Employees for all hours worked at the proper rate of pay pursuant to Labor Code
17 section 510.

18 29. Labor Code section 510, subdivision (a) states in pertinent part: "Any work in
19 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
20 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
21 any employee."

22 30. Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement
23 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
24 overtime compensation applicable to the employee is entitled to recover in a civil action the
25 unpaid balance of the full amount of this minimum wage or overtime compensation, including
26 interest thereon, reasonable attorney's fees, and costs of suit."

27 31. Further, pursuant to Labor Code section 1197, payment of less than the minimum
28 wage fixed by the Labor Commission is unlawful.

32. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

33. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and Aggrieved Employees for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

34. Plaintiff and the Aggrieved Employees regularly worked over eight (8) hours per day. Defendant failed to pay Plaintiff and the Aggrieved Employees all minimum wage and overtime premiums for all hours worked in excess of eight (8) hours per day for work performed for Defendant. Pursuant to the Labor Code and IWC Wage Order, Plaintiff and the Aggrieved Employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorneys' fees and costs.

SECOND CAUSE OF ACTION

Violation of the Private Attorneys General Act for Failure to Provide Rest Periods or Premium Compensation in Lieu Thereof
(Plaintiff and Aggrieved Employees against all Defendants)

35. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

36. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or major fraction thereof.

37. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided. Plaintiff and the Aggrieved Employees consistently worked over four (4) hours per shift with no rest breaks, due to Defendant's uniform policies and practices.

1 38. Defendant failed to reasonably make available rest breaks to Plaintiff and the
2 Aggrieved Employees during all relevant times herein. In addition, regardless of whether Plaintiff
3 and the Aggrieved Employees were provided with a rest period, Defendant's policy was to not
4 compensate them for this time.

5 39. Plaintiff, and Aggrieved Employees seek civil penalties pursuant to Labor Code
6 sections 2698-2699, attorney's fees and costs. is informed and believes

7 **THIRD CAUSE OF ACTION**

8 **Violation of Private Attorneys General Act for Failure to Provide Accurate Itemized**

9 **Wage Statements and Maintain Records**

10 **(Plaintiff and Aggrieved Employees against all Defendants)**

11 40. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
12 fully set forth herein.

13 41. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage
14 Orders, provide that employers must keep records and provide employees with itemized wage
15 statements showing all hours worked and each applicable rate of pay in effect during the pay
16 period with the corresponding number of hours worked at each hourly rate.

17 42. Labor Code section 1174, subdivision (d), requires employers to keep at a central
18 location in California or at the plant or establishment at which the employees are employed,
19 payroll records showing the hours worked daily, and the wages paid to, each employee.

20 43. Labor Code section 226, subdivision (a), requires employers to provide employees
21 – either as a detachable part of the check, draft, or voucher paying the employee's wages, or
22 separately when wages are paid by personal check or cash – an accurate itemized wage statement
23 in writing including specified information, including but not limited to: (1) gross wages earned;
24 (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4)
25 all deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
26 paid; (7) the name of the employee and only the last four digits of her or her social security number
27 or an employee identification number other than a social security number; (8) the name and
28 address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect

1 during the pay period and corresponding number of hours worked at each hourly rate by the
2 employee.

3 44. Labor Code section 226, subdivision (e), provides that if an employer knowingly
4 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
5 the total hours worked by the employee and the applicable hourly overtime rates, causing the
6 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
7 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
8 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
9 Defendant willfully failed to make or keep accurate records for Plaintiff and Aggrieved
10 Employees.

11 45. IWC Wage Orders require that every employer shall keep accurate information
12 with respect to each employee, including time records showing when each employee begins and
13 ends each work periods, the total daily hours worked by each employee and the total hours worked
14 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that
15 Defendant willfully and intentionally failed to make and/or keep records which accurately reflect
16 the hours worked by Plaintiff and the Aggrieved Employees. Specifically, Plaintiff believes that
17 Defendant did not maintain accurate records for Plaintiff and the Aggrieved Employees reflecting
18 when they were working during their meal periods.

19 46. An employee is deemed to suffer injury if the employer fails to provide a wage
20 statement containing all of the required information set forth in Labor Code section 226,
21 subdivision (a). (Lab. Code § 226(e)(2).) In addition, the omission of time worked, proper rates
22 of pay, records of missed meal and rest breaks and/or premium pay make it difficult for employees
23 to determine whether they were paid all wages due without complicated calculations and/or
24 reconstruction of records required to be maintained by the employer.

25 47. For each employee suffering an injury as a result of Defendant's knowing and
26 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
27 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
28 a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a

1 subsequent pay period.

2 48. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
3 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
4 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
5 Code section 2699, subdivision (f)(2). Plaintiff and the Aggrieved Employees are entitled to
6 penalties of one hundred (\$100.00) for the initial violation, and two hundred (\$200.00) for each
7 subsequent violation for every pay period during which these records and information were not
8 kept by Defendant.

9 49. Plaintiff is informed and believes that Defendant's failure to keep and maintain
10 accurate records and information and provide to Plaintiff and the Aggrieved Employees itemized
11 wage statements containing all of the information mandated by the Labor Code, as described
12 above, was knowing and intentional. Accordingly, Plaintiff and Aggrieved Employees seek civil
13 penalties pursuant to Labor Code sections 2698-2699, attorneys' fees and costs.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of the Private Attorneys General Act for Failure to Pay Wages Due upon**

16 **Termination of Employment**

17 **(Plaintiff and Aggrieved Employees against all Defendants)**

18 50. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
19 fully set forth herein.

20 51. Plaintiff is informed and believes, and based thereon alleges, that as part of
21 Defendant's ongoing unfair business practices, Defendant failed to pay all employees all wages
22 earned during their employment at the time of their separation in violation of Labor Code sections
23 201, 202, and 203.

24 52. Labor Code section 201 provides that employers are required to pay an employee
25 whose employment is terminated by the employer all wages earned throughout their employment
26 and unpaid immediately upon termination.

27 53. Labor Code section 202 requires employers to pay an employee who quits her or
28 her employment all wages earned and unpaid no later than seventy-two (72) hours thereafter.

54. Labor Code section 203 provides that when an employer who fails to pay all wages earned and due to an employee, who is discharged or quits within the appropriate timeframes set forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up to thirty (30) days.

55. Accordingly, Plaintiff and Aggrieved Employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Similarly Aggrieved Employees pray for judgment as follows:

1. For penalties pursuant to Labor Code sections 2698-2699;
2. For attorneys' fees pursuant to Labor Code sections 2698-2699;
3. For costs pursuant to Labor Code sections 2698-2699; and
4. For all such other and further relief as the Court may deem just and proper.

Dated: April 20, 2022

MAHONEY LAW GROUP, APC


Kevin Mahoney, Esq.

Kevin Mahoney, Esq.
Attorneys for Plaintiff ELVIA SERVIN, as an
individual and on behalf of all employees similarly
situated

EXHIBIT A



Raleigh Dixon, Esq.
562.590.5550 phone
562.590.8400 facsimile
rdixon@mahoney-law.net

February 4, 2022

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL # 7019 0950 0001 6447 5056

Return Receipt Requested

Darren Shultz – Managing Member
Boral Stone Products LLC
200 Mansell Court East, Suite 310
Roswell, GA 30076

VIA CERTIFIED MAIL #7019 0950 0001 6447 5063

Return Receipt Requested

Irundy Ramos – Managing Member
Boral Stone Products dba Boral NAPA Cultured Stone
350 Tower Road
American Canyon, CA 94503

VIA CERTIFIED MAIL #7019 0950 0001 6447 5049

Return Receipt Requested

NATIONAL REGISTERED AGENTS, INC. (C1941323)
818 W 7th Street, Suite 930
Los Angeles, CA 90017

Re: Elvia Servin v. Boral Stone Products LLC

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2698 ET SEQ.**

To: Labor and Workforce Development Agency; Boral Stone Products, LLC("Employer")

From: Elvia Servin, on behalf of herself and all aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Elvia Servin (“Ms. Servin”), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”), on behalf of herself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Boral Stone Products, LLC is a Delaware Company conducting business throughout the United States, and was the employer of Ms. Servin. Boral Stone Products, LLC is a leading manufacturer of building and construction materials in the United States, Mexico, Canada, the Philippines, and the United Kingdom. In construction materials, Boral has a national footprint and industry-leading position in the processing and distribution of fly ash. In building products, it manufactures and supplies cladding, roof tiles, windows, and other light building products for residential and commercial markets nationally.

Irundy Ramos and Darren Schultz are current owners and/or managing members of Boral Stone Products, LLC. Irundy Ramos and Darren Schultz may be held liable for the violations set forth herein under and pursuant to Labor Code section 558 as “person[s] acting on behalf of an employer who violates, or causes to be violated ... any provision regulating hours and days of work in any order of the Industrial Welfare Commission.” For purposes of this notice, Boral Stone Products, LLC, Boral NAPA Cultured Stone, Irundy Ramos, and Darren Schultz are collectively referred to as “Employers”.

Ms. Servin is a former employee of Employers and worked for employers as a Production Specialist from March 2021 until August 2021.

Ms. Servin alleges that Employers violated various sections of the Labor Code, including sections 201, 202, 226, 226.7 510, 558, and 1194, by:

- a) Failing to pay Ms. Servin and aggrieved employees for all hours worked;
- b) failing to provide Ms. Servin and aggrieved employees with rest periods or premium compensation in lieu thereof
- c) failing to provide Ms. Servin and aggrieved employees with accurate itemized wage statements; and
- d) failing to pay Ms. Servin and aggrieved employees all wages earned and owed at separation of employment.

Ms. Servin and the similarly aggrieved employees are identifiable current, and/or former hourly non-exempt employees who worked for Employers in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employers failed to pay Ms. Servin and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “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.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours 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.”

Employers failed to compensate Ms. Servin and aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Ms. Servin and aggrieved employees were required to work 10-hour days for 5 days (50 total hours) per workweek. This means that Ms. Servin and aggrieved employees were entitled to overtime pay for the two additional hours worked for each the first four days of the workweek, as well as 10 hours of overtime for the last day of the workweek. Accordingly, Ms. Servin and aggrieved employees are entitled to receive 18 hours of overtime pay per week and 36 hours of overtime pay per pay period. However, Ms. Servin and aggrieved employees routinely received fewer than 10 hours of overtime pay per pay period.

Employers’ failure to pay Ms. Servin and aggrieved employees for all hours worked, including applicable overtime rates, as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employers failed to provide Ms. Servin and aggrieved employees with rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee’s regular rate of pay for each workday that a required rest period is not provided.

At times, Ms. Servin and aggrieved employees were not permitted to take a rest period when they were busy. At times, Ms. Servin and aggrieved employees were required to work for six (6) hours before being permitted to take a rest period. When they worked six (6) to eight (8) hours in a workday, Ms. Servin and aggrieved employees sometimes only received one rest period instead of the two required by law. Further, when Ms. Servin and aggrieved employees worked more than ten (10) hours in a workday, they never received the requisite third rest period.

Employers failed or refused to provide premium compensation to Ms. Servin and aggrieved employees for late rest periods.

Employers’ conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7.

C. Employers failed to provide Ms. Servin and aggrieved employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the name and address of the legal entity that is the employer. Labor Code section 1174 further requires employers to keep accurate payroll records that include “the hours worked daily” by employees.

By failing to pay Ms. Servin and aggrieved employees for all hours worked, including the applicable overtime rates, Employers provided wage statements that were incomplete and inaccurate. Specifically, Employers provided wage statements with an inaccurate corresponding number of hours worked at each hourly rate which resulted in inaccurate gross and net wages.

Employer’s conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

D. Employers failed to pay Ms. Servin and aggrieved employees all wages earned and owed upon separation of employment

Pursuant to Labor Code section 201, subdivision (a), “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202, subdivision (a) provides, “[i]f 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.”

At the time that Ms. Servin and aggrieved employees resigned or were terminated, Employers failed to compensate them for all wages earned and owed at the applicable overtime rate as well as premiums for missed rest periods.

Labor Code section 203, subdivision (a), states that “[i]f an employer willfully fails to pay ... any 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.” Accordingly, Ms. Servin and aggrieved employees are entitled to thirty days of waiting time penalties.

E. Irundy Ramos and Darren Schultz are personally liable for Labor Code Violations

Plaintiff is informed and believes that Irundy Ramos and Darren Schultz are current owners and/or managing members of Boral Stone Products, LLC. Irundy Ramos and Darren Schultz may be held liable for the violations set forth herein under and pursuant to Labor Code section 558 as “person[s] acting on behalf of an employer who violates, or causes to be violated ... any provision regulating hours and days of work in any order of the Industrial Welfare Commission.”

Specifically, Plaintiff is informed and believes that Irundy Ramos and Darren Schultz are the persons who implemented and enforced the policies described herein and as such, are liable under Labor Code section 558.

F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Servin becomes aware of additional compensation owed or losses incurred by Ms. Servin or by any other aggrieved employee of the Employers, Ms. Servin expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Raleigh Dixon, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: rdixon@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to read "Raleigh Dixon", is written over a horizontal line.

Raleigh Dixon, Esq.

MAHONEY LAW GROUP, APC