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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

COURTNEY HUGHES, on behalf of the State
of California, as a private attorney general,

Plaintiff,

v.

PUBLIC STORAGE, a Maryland Corporation;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: **22STCV35826**

**REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Courtney Hughes (“Plaintiff”) on behalf of the State of California hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against defendant Public Storage, and DOES
3 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Public Storage is a real estate investment trust. Public Storage principal
6 business activities include the acquisition, development, ownership, and operation of self-storage
7 facilities in the United States and across the State of California. Plaintiff brings this PAGA
8 representative action solely on behalf of the State of California against Defendants for alleged
9 violations of the California Labor Code.

10 2. As set forth below, Plaintiff alleges that Defendants failed to include all forms of
11 compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive
12 pay, and other forms of remuneration when calculating the “regular rate of pay” used for payment of
13 overtime wages. Plaintiff further alleges that Defendants failed to pay all sick days at the legal
14 “regular rate of pay.” Plaintiff also alleges that Defendants failed to reimburse all necessary business
15 expenses, including but not limited to costs associated with their personal cell phones and other items.
16 As a result, Plaintiff alleges that Defendants failed to provide non-exempt employees with accurate
17 written itemized wage statements and failed to timely pay all final wages upon separation of
18 employment.

19 **JURISDICTION**

20 3. This is a representative action brought pursuant to Labor Code § 2698 *et. seq.* on
21 behalf of the State of California and the group of aggrieved employees defined as follows: “All
22 individuals who are or were employed as hourly, non-exempt, employees by Defendants, or their
23 predecessors or merged entities, in the State of California from December 21, 2020, and continuing
24 to the present (“Aggrieved Employees).”

25 4. Plaintiff, of behalf of the State of California brings this representative action pursuant
26 to Labor Code § 2699, *et seq.* seeking penalties for Defendants’ violation of California Labor Code
27 §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 227.3, 246, 510, 516, 1197.1, 1194, 1199, 2802-
28 2804 and all applicable IWC Wage Orders.

5. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq.*

6. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are found within the County of Ventura, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

7. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California.

8. Plaintiff is informed and believes and thereon alleges that defendant Public Storage is a Maryland corporation authorized to and doing business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 227.3, 246, 510, 516, 1194, 1194.2, 1197.1, 1199, 2802-2804 and applicable Wage Orders.

9. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Los Angeles.

10. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said

1 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
3 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
4 corporate, were responsible in some manner for the acts and omissions alleged herein, and
5 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
6 practices alleged herein.

7 11. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
8 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
9 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
10 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
11 the agents, servants, and employees of each and every one of the other Defendants, as well as the
12 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
13 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
14 otherwise ratified each and every one of the acts or omissions complained of herein.

15 12. At all times mentioned herein, Defendants, and each of them, were members of and
16 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
17 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
18 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
19 employees.

20 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

21 13. Public Storage is a real estate investment trust. Public Storage principal business
22 activities include the acquisition, development, ownership, and operation of self-storage facilities in
23 the United States and across the State of California.

24 14. Plaintiff worked for Defendant as a customer service representative from in or around
25 February 2020 and until her separation of employment on or about July 8, 2022. Plaintiff and other
26 non-exempt employees were responsible for all aspects of Defendants' business in California.

27 15. First, during the relevant time period, Plaintiff and other non-exempt employees were
28 not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per

1 workday and/or forty (40) hours per workweek. Although Plaintiff and other non-exempt employees
2 regularly worked overtime hours, they were not always compensated at one and one-half times their
3 “regular rate of pay” because Defendants regularly failed to include all forms of compensation,
4 including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other
5 forms of remuneration when calculating the “regular rate of pay” used for payment of overtime
6 wages.

7 16. Under the California Labor Code (as well as the FLSA), courts have consistently held
8 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
9 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
10 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
11 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
12 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
13 California and federal law on the grounds, that Defendant improperly calculated overtime by
14 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

15 17. By their policy of requiring Plaintiff and the other non-exempt employees to work in
16 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
17 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated
18 the provisions of Labor Code § 510 and the applicable Wage Orders.

19 18. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
20 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
21 210, 510, and 1197.1.

22 19. Similarly, at all relevant times, Defendants failed in their obligation to pay Plaintiff and
23 other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
24 pursuant to Labor Code §§ 246(a), (b).

25 20. Pursuant to Labor Code § 246(a),(b), “[a]n employee who, on or after July 1, 2015,
26 works in California for the same employer for 30 or more days within a year from the commencement
27 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
28 worked, beginning at the commencement of employment.”

1 21. Furthermore, Labor Code § 246(l)(1) provides that paid sick time for non-exempt
2 employees must be “calculated in the same manner as the regular rate of pay for the workweek in
3 which the employee uses paid sick time, whether or not the employee actually works overtime in that
4 workweek.”

5 22. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
6 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
7 hours worked in the full pay periods of the prior 90 days of employment.”

8 23. Finally, Labor Code §246(i) requires employers to “provide an employee with written
9 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
10 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
11 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
12 of wages.”

13 24. Here, at all relevant times, Defendants failed in the obligation to pay Plaintiff and other
14 non-exempt employees the legally required paid sick days at the “regular rate of pay” pursuant to
15 Labor Code §§ 246(a), (b). Instead, Defendants paid sick time at the base rate of pay, rather than the
16 “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).

17 25. Further, at all relevant times, Defendants required Plaintiff and other non-exempt
18 employees to incur necessary business expenses including, but not limited to, the costs associated
19 with using their personal cell phones and other items. However, at all relevant times, Defendants
20 failed to reimburse non-exempt employees adequately for these necessary expenditures in violation
21 of Labor Code §§ 2802-2804. *See Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th
22 1137, 1144 “[i]f an employee is required to make work-related calls on a personal cell phone, then
23 he or she is incurring an expense for the purposes of section 2802...To show liability under section
24 2802, an employee need only show that he or she was required to use a personal cell phone to make
25 work-related calls, and he or she was not reimbursed”].

26 26. Accordingly, Defendants are liable for civil penalties due to Defendants’ uniform
27 failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§
28 2802-2804 and applicable Wage Orders.

27. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for all overtime wages and sick pay at the "regular rate of pay", Defendants issued wage statements which often failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

28. Additionally, during the relevant time period, the wage statements wage statements independently fail to state “all applicable rates of pay and units” in violation of Labor Code 226(a)(9).

29. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

30. Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

31. Finally, because of, Defendants’ failure to pay all overtime wages and sick pay at the “regular rate of pay”, Defendants also often failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203, and 256.

32. Based on the foregoing, Plaintiff seeks to represent the State of California and all aggrieved employees, as defined by Labor Code § 2699(c) in order to recover civil penalties paid directly to Plaintiff and other aggrieved employees, as well as additional civil penalties as mandated by Labor Code § 2699(f) and the California Court of Appeals in *Thurman v. Bayshore Management, Inc.* (2012) 203 Ca. App. 4th 1112, 1147.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Plaintiff and Similarly Aggrieved Employees Against All Defendants)

33. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

2 34. Defendants have committed several Labor Code violations against Plaintiff and
3 other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
4 Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action
5 against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees,
6 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
7 but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per
8 employee per pay period for those violations of the Labor Code for which no civil penalty is
9 specifically provided based on the following Labor Code violations:

10 (a) Failing to pay all overtime wages at the “regular rate of pay” because Defendants failed
11 to include all forms of compensation, including, but not limited to, shift differentials, non-
12 discretionary bonuses, incentive pay, and other forms of remuneration;

13 (b) Failing to pay all sick pay at the “regular rate of pay”;

14 (c) Whether Defendants reimbursed all necessary business expenses, including but not
15 limited to costs associated with the costs associated with using personal cell phones and other items
16 for work purposes;

17 (d) Failing to furnish legally compliant wage statements pursuant to Labor Code § 226(a);
18 and

19 (e) Failing to timely pay final wages to aggrieved employees at the time of separation from
20 employment were unlawful.

21 29. On or about August 29, 2022, Plaintiff notified Defendant Public Storage via certified
22 mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of
23 Defendant’s violations of the California Labor Code § 2698 *et seq.* with respect to violations of the
24 California Labor Code identified in Paragraph 28 (a)-(3). Now that sixty-five days have passed from
25 Plaintiff notifying Defendant of these violations, Plaintiff has exhausted her administrative
26 requirements for bringing a claim under the Private Attorneys General Act with respect to these
27 violations.

35. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment on behalf of the State of California against Defendants, as follows:

36. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code;

37. For attorneys' fees and costs as provided by Labor Code §§2698 *et seq.*, and Code of Civil Procedure §1021.5; and

38. For such other and further relief, the Court may deem just and proper.

Dated: November 10, 2022

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