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Assigned for All Purposes

Judge Lon F. Hurwitz

CX-103

Attorneys for Plaintiff MAYRA DIAZ CARDENAS,
on behalf of herself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MAYRA DIAZ CARDENAS, on behalf of
herself and current and former aggrieved
employees

Plaintiff,

vs.

FORESIDE MANAGEMENT COMPANY; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: 30-2024-01415867-CU-OE-CXC

PAGA ACTION

**PLAINTIFF MARIA DIAZ
CARDENAS'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff MAYRA DIAZ CARDENAS ("Plaintiff"), who alleges and
complains on information and belief except as to those allegations relating to plaintiff
himself/herself, which are asserted on personal knowledge, against FORESIDE MANAGEMENT
COMPANY and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself and

1 other current and former aggrieved employees of Defendants who worked as hourly non-exempt
2 employees in California during the relevant time period seeking civil penalties associated with
3 Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all hours
4 worked at the employees' minimum wage rate or overtime rate, indemnification for all necessary
5 expenditures or losses incurred by employees in direct consequence of discharging their duties;
6 failure to timely pay earned wages during employment, failure to provide complete and accurate
7 wage statements, failure to timely pay all unpaid wages following separation of employment.
8 Plaintiff seeks on a representative basis, following notice to the Labor and Workforce Development
9 Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and
10 costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
16 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Orange County, including but not limited to, at 26023 Acero,
20 Mission Viejo, CA 92691.

21 **III. PARTIES**

22 3. Plaintiff brings this action as a representative of the Labor and Workforce
23 Development Agency on behalf of herself and other current and former employees subject to
24 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
25 filed include current, former and/or future employees of Defendants who work, worked, or will work
26 for Defendants as direct employees as well as temporary employees employed through temp
27 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
28 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by

1 Defendants in an hourly position at Defendants' location in Orange County from approximately
2 September 2023 until on or about currently.

3 4. Defendant FORESIDE MANAGEMENT COMPANY is authorized to do business
4 within the State of California and is doing business in the State of California and/or that Defendants
5 DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant
6 FORESIDE MANAGEMENT COMPANY in the establishment of, or ratification of, the
7 aforementioned illegal wage and hour practices or policies. Defendant FORESIDE
8 MANAGEMENT COMPANY operates in Orange County and employed Plaintiff and aggrieved
9 employees in Orange County , including but not limited to, at 26023 Acero, Mission Viejo, CA
10 92691.

11 5. Defendants DOES 1 through 50 are corporations or other business entities or
12 organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-
13 exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over
14 the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

15 6. Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each
16 Defendant is sued individually and in their capacity as an agent, shareholder, owner, representative,
17 manager, supervisor, independent contractor and/or employee of each defendant who violated or
18 caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any
19 provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

20 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
21 sues said defendants by said fictitious names and will amend this complaint when the true names
22 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
23 permitted by law or by the Court. Each fictitiously named defendant is in some manner responsible
24 for the events and allegations set forth in this complaint.

25 8. Plaintiff makes the allegations in this complaint without any admission that, as to
26 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
27 reserves all of Plaintiff's right to plead in the alternative.
28

FIRST CAUSE OF ACTION

COMPLAINT

**CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE SECTIONS 2698, ET SEQ.**

**(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and
Other Current and Former Aggrieved Employees)**

9. Plaintiff incorporates by reference and re-alleges each and every allegation contained in this pleading as though fully set forth herein.

10. During Plaintiff's employment and continuing through the present, Plaintiff alleges Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 510, 1194, 1197, 2802, and the applicable Wage Orders.

11. Specifically, Defendants have committed the following violations of California Labor Code:

12. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

13. Labor Code sections 1194 and 1197 require an employer to compensate employees for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

14. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to,

(a) Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were paid based upon scheduled shifts times even though Plaintiff and other current and

1 former aggrieved California-based hourly non-exempt employees routinely work beyond scheduled
2 shifts;

3 i. Defendants told Plaintiff and other current and former aggrieved California-
4 based hourly non-exempt employees during on-boarding orientation that Defendants
5 don't pay overtime wages.

6
7 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
8 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
9 control without paying wages for that time. This resulted in Plaintiff and other current and former
10 aggrieved California-based hourly non-exempt employees working time for which they were not
11 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
12 Wage Order.

13 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
14 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
15 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
16 which includes all time that an employee is under control of the employer and all time the employee
17 is suffered and permitted to work. This includes the time an employee spends, either directly or
18 indirectly, performing services that inure to the benefit of the employer.

19 17. Labor Code sections 510 and 1194 require an employer to compensate employees a
20 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)
21 hours in a workweek, and on any seventh consecutive day of work in a workweek:

22 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours
23 in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in
24 any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half
25 (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours
26 in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay
27 for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a
28 workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
employee. Labor Code § 510.

18. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved
California-based hourly non-exempt employees overtime wages for all overtime hours worked due

1 to Defendants' policies, practices, and/or procedures including, but not limited to,

2 (a) Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees were paid based upon scheduled shifts times even though Plaintiff and other current and
4 former aggrieved California-based hourly non-exempt employees routinely work beyond scheduled
5 shifts;

6 i. Defendants told Plaintiff and other current and former aggrieved California-
7 based hourly non-exempt employees during on-boarding orientation that Defendants
8 don't pay overtime wages.

9 19. The foregoing policies, practices, and/or procedures resulted in time during each
10 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
11 employees were under the control of Defendants but were not compensated. To the extent that the
12 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
13 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
14 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
15 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
16 sections 510, 1194 and 1198, and the applicable Wage Order.

17 20. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
18 **Employment:** California law requires that every employer must indemnify its employees for all
19 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the
20 obedience of the directions of the employer. Moreover, an employer is prohibited from passing the
21 ordinary business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

22 21. Defendants violated Labor Code Section 2802 by failing to indemnify Plaintiff and
23 other current and former aggrieved California-based non-exempt hourly employees' necessary
24 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed a
25 policy, practice, and procedure but were not limited to, requiring Plaintiff and similarly situated
26 employees to use or purchase their own tools and/or resources in order to work for Defendants,
27 including but not limited to:
28

1 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees to clock in and out using an application on their personal cell phones without
3 any other means of clocking in and out, but Defendant failed to reimburse Plaintiff and other current
4 and former aggrieved California-based hourly non-exempt employees for the costs of the cellular
5 data expense associated with this functionality.
6

7
8 22. Moreover, Defendants employed policies and procedures which ensured Plaintiff and
9 aggrieved employees would not receive indemnification for their employment related expenses.
10 This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in
11 compliance with California law.

12 23. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
13 employment related expenses, including but not limited to costs related to use of their personal cell
14 phones and costs associated with their uniforms pursuant to Labor Code section 2802.

15 24. **Failure to timely pay earned wages during employment:** In California, wages
16 must be paid at least twice during each calendar month on days designated in advance by the
17 employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned
18 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
19 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
20 calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll
21 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
22 calendar days following the close of the payroll period in which wages were earned. Labor Code §
23 204(d).

24 25. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
25 timely pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
26 employees their earned wages (including minimum wages and/or overtime wages), in violation of
27 Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures resulted
28 in their failure to pay Plaintiff and other current and former aggrieved California-based hourly non-
exempt employees their earned wages within the applicable time frames outlined in Labor Code

1 section 204.

2 26. **Secret payment of lower wages than designated by statute:** Labor Code section
3 223 provides that, where any statute or contract requires an employer to maintain the designated
4 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
5 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
6 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful
7 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246,
8 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor
9 Code section 1198, Defendants secretly paid a lower wage than designated by statute while
10 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

11 27. **Failure to provide complete and accurate wage statements:** Labor Code section
12 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee
13 his or her wages, the employer must "furnish each of his or her employees ... an itemized statement
14 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
15 employee whose compensation is solely based on a salary and who is exempt from payment of
16 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
17 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders
19 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
20 dates of the pay period for which the employee is paid, (7) the name of the employee and his or her
21 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
22 applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate by the employee."

24 28. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
25 and other current and former aggrieved California-based hourly non-exempt employees all wages
26 earned (including minimum wages and/or overtime wages), rendered Plaintiff's and other current
27 and former aggrieved California-based hourly non-exempt employees' wage statements inaccurate,
28 in violation of Labor Code section 226(a)(1, 2, 5 & 9).

1 29. **Failure to pay employees all wages due at time of termination/resignation:** An
2 employer is required to pay all unpaid wages timely after an employee's employment ends. The
3 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
4 hours of resignation (Labor Code section 202).

5 30. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
6 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all
7 of their earned wages (including minimum wages and/or overtime wages), Defendants failed to pay
8 those employees timely after each employee's termination and/or resignation, in violation of Labor
9 Code sections 201, 202, and 203.

10 31. Labor Code sections 2699, subdivisions (a) and (g), authorize an aggrieved
11 employee, on behalf of himself or herself and other current or former employees, to bring a civil
12 action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor
13 Code section 2699.3.

14 32. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
15 section 2699.3. On May 20, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
16 provided notice to Defendants by certified mail which provided notice of the specific provisions of
17 the Labor Code alleged to have been violated, including the facts and theories to support the
18 violations alleged.

19 33. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
20 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
21 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
22 parties notice within 65 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
23 to investigate Plaintiff's claims.

24 34. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
25 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 510,
26 and 1194, During Plaintiff's employment and continuing through the present, preceding Plaintiff
27 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

28 a. For violations of Labor Code sections 201, 202, 203, 226(a), and 2802; one

1 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
2 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation
3 [penalty amounts established by Labor Code section 2699(f)(2)].

4 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
5 dollars (\$250) for each employee for each pay period for the initial violation, and one thousand
6 dollars (\$1,000) for each subsequent violation, for each underpaid employee for each pay period
7 [penalty amounts established by Labor Code section 226.3].

8 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
9 employee for each pay period for the initial violation, and one hundred dollars (\$100) for each
10 subsequent violation, for each underpaid employee for each pay period [penalty amounts established
11 by Labor Code section 558].

12 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
13 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
14 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
15 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
16 section 210].

17 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
18 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
19 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
20 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
21 section 225.5].

22 35. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
23 reasonable attorneys' fees and costs in connection with his/her claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED**
26 **EMPLOYEES, PRAYS AS FOLLOWS:**

27 **ON THE FIRST CAUSE OF ACTION:**

28 1. That Defendants be found to have violated the provisions of the Labor Code and the

1 IWC Wages Orders as to the Plaintiff and aggrieved employees;

2 2. For any and all legally applicable penalties during the relevant statute of limitations
3 subject to any permissible tolling, including but not limited to those recoverable under the California
4 Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

5 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
6 under California Labor Code section 2699(g); and

7 4. For such and other further relief, in law and/or equity, as the Court deems just or
8 appropriate.
9

10 Dated: July 25, 2024

Respectfully submitted,
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11
12
13 By:



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