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on behalf of herself and current and former aggrieved employees

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

ROSALBA ORTIZ CORTEZ, on behalf of
herself and current and former aggrieved
employees

Plaintiff,

vs.

EXPRESS SERVICES, INC.; WESTLAKE
ROYAL BUILDING PRODUCTS INC.; and
DOES 1 to 100, inclusive,

Defendants

Case No.: **CVRI 2405997**

PAGA ACTION

**PLAINTIFF ROSALBA ORTIZ
CORTEZ'S COMPLAINT FOR:**

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

COMES NOW Plaintiff ROSALBA ORTIZ CORTEZ ("Plaintiff"), who alleges and
complains against Defendants EXPRESS SERVICES, INC.; WESTLAKE ROYAL BUILDING
PRODUCTS INC.; 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, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-exempt

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

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
17 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to Riverside County, at 909 Railroad Street, Corona, CA 92882.

21 **III. PARTIES**

22 1. 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 Riverside County from in or around
2 November 1, 2023 until on or about July 8, 2024.

3 2. Plaintiff is informed and believes and thereon alleges that Defendant EXPRESS
4 SERVICES, INC. is authorized to do business within the State of California and is doing business
5 in the State of California and/or that Defendants DOES 1-33 are, and at all times relevant hereto
6 were persons acting on behalf of Defendant EXPRESS SERVICES, INC. in the establishment of,
7 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
8 EXPRESS SERVICES, INC. operates in Riverside County and employed Plaintiff and aggrieved
9 employees in Riverside County, including but not limited to, at 909 Railroad Street, Corona, CA
10 92882.

11 3. Plaintiff is informed and believes and thereon alleges that Defendant WESTLAKE
12 ROYAL BUILDING PRODUCTS INC. is authorized to do business within the State of California
13 and is doing business in the State of California and/or that Defendants DOES 34-66 are, and at all
14 times relevant hereto were persons acting on behalf of Defendant WESTLAKE ROYAL
15 BUILDING PRODUCTS INC. in the establishment of, or ratification of, the aforementioned illegal
16 wage and hour practices or policies. Defendant WESTLAKE ROYAL BUILDING PRODUCTS
17 INC. operates in Riverside County and employed Plaintiff and aggrieved employees in Riverside
18 County, including but not limited to, at 909 Railroad Street, Corona, CA 92882.

19 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
20 through 66 are corporations or are other business entities or organizations of a nature unknown to
21 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
22 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working
23 conditions of employment of Plaintiff and aggrieved employees.

24 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 67
25 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
26 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
27 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
28 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the

1 Industrial Welfare Commission's wage orders regulating hours and days of work.

2 6. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
3 sues said defendants by said fictitious names, and will amend this complaint when the true names
4 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
5 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
6 named defendants is in some manner responsible for the events and allegations set forth in this
7 complaint.

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

11 **FIRST CAUSE OF ACTION**

12 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
13 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

16 8. Plaintiff incorporates all paragraphs above as though fully set forth herein.

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

20 10. Specifically, Defendants have committed the following violations of California
21 Labor Code:

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

28 12. Labor Code sections 1194 and 1197 require an employer to compensate employees

1 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
2 Wage Orders.

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

9 (a) Requiring Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees were required to only report their daily hours worked in accordance
11 to scheduled shifts designated by Defendants – despite Plaintiff and other current and former
12 aggrieved California-based hourly non-exempt employees routinely working beyond their
13 scheduled shifts.

14 14. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
15 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
16 control without paying wages for that time. This resulted in Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees working time for which they were not
18 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
19 Wage Order.

20 15. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
21 **and/or failure to pay overtime wages at the proper rate of pay:** Defendants employed many of
22 their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer
23 is required to pay hourly employees for all “hours worked,” which includes all time that an employee
24 is under control of the employer and all time the employee is suffered and permitted to work. This
25 includes the time an employee spends, either directly or indirectly, performing services that inure to
26 the benefit of the employer.’

27 16. Labor Code sections 510 and 1194 require an employer to compensate employees a
28 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)

hours in a workweek, and on any seventh consecutive day of work in a workweek:

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

Labor Code section 510.

17. 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 to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were required to only report their daily hours worked in accordance to scheduled shifts designated by Defendants – despite Plaintiff and other current and former aggrieved California-based hourly non-exempt employees routinely working beyond their scheduled shifts.

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

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

1 20. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff
2 and other current and former aggrieved California-based non-exempt hourly employees' necessary
3 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed
4 policies, practices, and/or procedures included, but not limited to:

5 (a) Requiring Plaintiff and other current and former aggrieved California-based
6 hourly non-exempt employees were required to only report their daily hours worked in accordance
7 to scheduled shifts designated by Defendants – despite Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees routinely working beyond their
9 scheduled shifts.

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

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

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

26 24. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
27 timely pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt
28 employees' earned wages (including minimum wages, overtime wages, reporting time pay, meal

1 period premium wages and/or rest period premium wages), in violation of Labor Code section 204.
2 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
3 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
4 their earned wages within the applicable time frames outlined in Labor Code section 204.

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

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

27 27. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
28 and other current and former aggrieved California-based hourly non-exempt employees all wages

1 earned (including minimum wages, overtime wages, reporting time pay, meal period premium
2 wages, and/or rest period premium wages) rendered Plaintiff's and other current and former
3 aggrieved California-based hourly non-exempt employees' wage statements inaccurate, in violation
4 of Labor Code section 226(a)(1, 2, 5 & 9).

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

9 29. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
10 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all
11 their earned wages (including minimum wages, overtime wages, reporting time pay, meal period
12 premium wages, and/or rest period premium wages), Defendants failed to pay those employees
13 timely after each employee's termination and/or resignation, in violation of Labor Code sections
14 201, 202, and 203.

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

19 31. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
20 section 2699.3. On August 3, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
21 provided notice to Defendants by certified mail which provided notice of the specific provisions of
22 the Labor Code alleged to have been violated, including the facts and theories to support the
23 violations alleged.

24 32. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
25 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
26 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
27 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
28 to investigate Plaintiff's claims.

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

5 a. For violations of Labor Code sections 201, 202, 203, 226(a), and 2802; one
6 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation
8 [penalty amounts established by Labor Code section 2699(f)(2)].

9 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
10 dollars (\$250) for each employee for each pay period for the initial violation, and for each
11 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period
12 [penalty amounts established by Labor Code section 226.3].

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

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

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

27 34. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
28 reasonable attorneys' fees and costs in connection with her claims for civil penalties.

1 **PRAYER FOR RELIEF**

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

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

5 1. That Defendants be found to have violated the provisions of the Labor Code and the
6 IWC Wages Orders as to the Plaintiff and aggrieved employees;

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

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

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

14
15
16 Dated: October 24, 2024

Respectfully submitted,
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17
18
19 By:



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