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10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 SHAWNA OLSEN, on behalf of herself)
13 and as Private Attorney General)

14 Plaintiff,)

15 vs.)

16)
17)
18 PURPLEBRICKS INC., a Delaware)
19 Corporation; and DOES 1 to 20, inclusive,)

20 Defendants)

Case No. 30-2019-01045703-CU-OE-CJC

Judge Gregory H. Lewis

COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Failure to Provide Meal and Rest Breaks
4. Failure to Provide Reimbursement of Expenses
5. Failure to Provide Accurate Wage Statements
6. Waiting Time Penalties
7. Unfair Competition (Business & Professions Code § 17200 *et seq.*)
8. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff SHAWNA OLSEN (“Plaintiff”) hereby files this Complaint against Defendant
2 PURPLEBRICKS INC., a Delaware Corporation; and DOES 1 to 20, inclusive, (hereinafter
3 collectively referred to as “Defendants”). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff SHAWNA OLSEN is an individual over the age of eighteen (18) and is now
6 and/or at all times mentioned in this Complaint was a resident of the State of California.

7 2. Plaintiff was an employee of Defendants, performing services as a real estate agent
8 throughout various locations in Orange County, California.

9 3. Plaintiff is informed and believes, and thereon alleges, that Defendant PURPLEBRICKS
10 INC. is a Delaware Corporation doing business in California as Purplebricks Realty Inc.
11 PURPLEBRICKS INC.’s headquarters in California is located in Irvine, which is in Orange County.
12 Defendants are engaged in the buying and selling of real estate property throughout California.

13 4. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
14 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
15 venturer of the remaining defendants and was acting within the course and scope of that relationship.
16 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
17 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
18 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
19 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
20 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
21 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
22 when they have been determined.

23 5. The Orange County Superior Court has jurisdiction in this matter due to alleged
24 violations of California Labor Code §§ 201, 203, 226, 226.7, 510, 512, 1194, 2802, Business and
25 Professions Code § 17200 *et seq.*, and the applicable Wage Orders.

26 6. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
27 the wrongful acts and violations of law asserted herein occurred within Orange County.
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1 7. On October 25, 2018, Plaintiff filed her Labor Code § 2699.3 Private Attorney General
2 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
3 The LWDA did not respond to Plaintiff’s PAGA notice within 65 days.

4 **FACTS COMMON TO ALL CAUSES OF ACTION**

5 8. In or around October 2017, Plaintiff was hired by Defendants to work as a real estate
6 agent. Defendants classified Plaintiff, and many similarly aggrieved employees, as independent
7 contractors even though it exercised complete control over Plaintiff’s job duties. Defendants and
8 Plaintiff, and any similarly aggrieved employees, were engaged in the business of buying and selling
9 real estate, not in distinct occupations or businesses. Thus, Defendants willfully misclassified
10 Plaintiff, and any similarly aggrieved employees, as independent contractors in violation of the wage
11 orders and California Labor Code. *See Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903,
12 917, 416 P.3d 1, 7 (2018). Plaintiff worked many hours over the course of several months without
13 compensation or other benefits of employment provided for under the Labor Code.
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15 9. Although Defendants classified Plaintiff as an independent contractor, multiple factors
16 (in addition to the *Dynamex* test) demonstrate that Plaintiff was actually an employee, including but
17 not necessarily limited to:

18 a. Plaintiff was told that she was “basically an employee” or words to that effect by
19 her “Territory Owner” (or manager), Damon Cohen;

20 b. The skill required in the position was typical of that required of employees, not
21 specialized like an independent contractor;

22 c. The length of time in which services were performed was exclusive, extended,
23 and continuous;

24 d. The work was a part of the regular business of Defendants;

25 e. Plaintiff did not hold herself out to be in business with an independent business
26 license doing the kind of work she was doing for Defendants;

27 f. Plaintiff did not have her own employees;
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1 g. Defendants exercised a great amount of control over Plaintiff's work hours, work
2 duties, and other details of her work; and

3 h. The services Plaintiff rendered were an integral part of Defendants' businesses.

4 10. Although Defendants provided virtually all the tools and instrumentalities of work for
5 Plaintiff, it did not reimburse Plaintiff, and similarly aggrieved employees, for the work use of their
6 personal cell phones. Nor did it reimburse Plaintiff, and similarly aggrieved employees, for other
7 reasonable business expenses such as mileage.

8 11. Additionally, Defendants did not provide Plaintiff, and any similarly aggrieved
9 employees, with statutorily required meal and rest breaks. Plaintiff and similarly situated employees
10 regularly worked over eight (8) hours a day and/or forty (40) hours a week. Defendants did not pay
11 Plaintiff and similarly situated employees all overtime and/or minimum wages earned during their
12 employment.

13 12. Plaintiff was tasked by Defendants with numerous duties directly related to core business
14 operations. However, over the entire course of her employment, Plaintiff was not paid regular
15 wages. Plaintiff, and any similarly aggrieved employees, earned only "commissions" on listings and
16 sales, not regular wages as required under the law.

17 13. Nor did Plaintiff, and any similarly aggrieved employees, receive wage statements in
18 compliance with California Labor Code section 226.

19 14. Defendants also did not provide Plaintiff and similarly aggrieved employees all wages
20 owed upon their termination or within seventy-two (72) hours of their separation from employment.

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22 **FIRST CAUSE OF ACTION**
23 **FAILURE TO PAY OVERTIME WAGES**
24 **(As to All Defendants)**

25 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
26 set forth herein.

27 16. During the period Plaintiff was employed by Defendants, Defendants were required to
28 compensate her one and one-half (1½) times the regular rate of pay for hours worked in excess of

1 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
2 hours worked in excess of twelve (12) hours per day. *See* California Labor Code §§ 510, 1194, and
3 applicable wage orders. Although Plaintiff regularly worked in excess of eight (8) hours a day
4 and/or forty (40) hours per week, Defendants failed to pay all overtime wages owed to her.

5 17. Provisions regulating minimum wages or hours and days of work in any order of the
6 Industrial Welfare Commission, such as IWC Wage Order No. 4-2001, and California Labor Code
7 section 1194 have been violated by, or were caused to be violated by, Defendants.

8 18. Defendants' conduct described herein violates California Labor Code sections 510 and
9 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged
10 and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seeks these
11 wages, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.
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13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PAY MINIMUM WAGES**
15 **(As to All Defendants)**

16 19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully
17 set forth herein.

18 20. For the three (3) years preceding the filing of this Action, Defendants were required to
19 compensate Plaintiff with at least the State's minimum wage. *See, e.g.*, MW Order-2014; MW
20 Order-2017; California Labor Code § 1194.

21 21. California law does not permit averaging of payments during a pay period over hours
22 worked in order to meet an employer's minimum wage obligation. *Armenta v. Osmose*, 135 Cal.
23 App. 4th 314, 324 (2006) (“[T]he FLSA model of averaging all hours worked ‘in any work week’ to
24 compute an employer’s minimum wage obligation is inappropriate. The minimum wage obligation
25 applies to each hour worked by respondents for which they were not paid.”).

26 22. Plaintiff was not exempt from the State's Wage Orders as an employee.

27 23. Defendants' conduct described herein violates California Labor Code section 1194, and
28 Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and
deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these

1 wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and
2 costs, and interest pursuant to California Labor Code sections 1194.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL AND REST BREAKS**
5 **(As to All Defendants)**

6 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
7 set forth herein.

8 25. An employer must provide an employee a meal period and/or rest period in accordance
9 with the applicable Wage Order and Labor Code sections 226.7 and 512.

10 26. Labor Code section 510 and Wage Order 4-2001, section 11(A) require an employer to
11 provide a meal period of not less than thirty (30) minutes for each work period of more than five (5)
12 hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a
13 second meal period.

14 27. Labor Code section 510 and Wage Order 4-2001 section 12(A) require an employer to
15 provide a rest period of not less than ten (10) minutes for each work period of more than four (4)
16 hours or a major fraction thereof.

17 28. Plaintiff alleges that Defendants failed to provide Plaintiff with meal breaks of at least
18 thirty (30) minutes for several work periods that Plaintiff worked more than five (5) hours in a day,
19 or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff
20 worked more than ten (10) hours in a day.

21 29. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten (10)
22 minutes for each work period that he worked more than four (4) hours.

23 30. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiff is
24 entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period
25 not provided, as a wage, from three (3) years of the filing of this action, in an amount to be
26 established at trial. *See* Labor Code § 226.7 and Wage Order 4-2001 §§ 11(B), 12(B).

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FOURTH CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENT EXPENSES
(As to All Defendants)

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

33. Defendants knew that Plaintiff used her personal cell phone for work purposes, including for calls and texts required for work purposes. However, Defendants did not reimburse Plaintiff for these expenses.

34. Defendants knew that Plaintiff used her personal vehicle for work purposes, including for work trips to service Defendants’ business. However, Defendants did not reimburse Plaintiff for these expenses.

35. Defendants’ conduct described herein violated California Labor Code section 2802. As a proximate result of Defendants’ conduct, Plaintiff has been damaged in an amount to be established at trial, and is entitled to recover these damages, as well as interest and reasonable attorney’s fees and costs, pursuant to statute.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(As to All Defendants)

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under

1 *subdivision (a) of Section 515 or any applicable order of the*
2 *Industrial Welfare Commission, (3) the number of piece-rate units*
3 *earned and any applicable piece rate if the employee is paid on a*
4 *piece-rate basis, (4) all deductions, provided that all deductions*
5 *made on written orders of the employee may be aggregated and*
6 *shown as one item, (5) net wages earned, (6) the inclusive dates of*
7 *the period for which the employee is paid, (7) the name of the*
8 *employee and the last four digits of his or her social security number*
9 *or an employee identification number other than a social security*
10 *number, (8) the name and address of the legal entity that is the*
11 *employer and, if the employer is a farm labor contractor, as defined*
12 *in subdivision (b) of Section 1682, the name and address of the legal*
13 *entity that secured the services of the employer, and (9) all*
14 *applicable hourly rates in effect during the pay period and the*
15 *corresponding number of hours worked at each hourly rate by the*
16 *employee. The deductions made from payment of wages shall be*
17 *recorded in ink or other indelible form, properly dated, showing the*
18 *month, day, and year, and a copy of the statement and the record of*
19 *the deductions shall be kept on file by the employer for at least three*
20 *years at the place of employment or at a central location within the*
21 *State of California.*

22 38. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
23 itemized statement or failed to provide an accurate and complete itemized statement showing the
24 requirements set forth in Labor Code section 226(a). Due to Defendants' timekeeping policies
25 during Plaintiff's employment that resulted in failing to document accurately all hours worked,
26 especially when Plaintiff was misclassified as an independent contractor, Defendants did not
27 properly itemize all hours worked.

28 39. Additionally, Plaintiff alleges he suffered injury as a result of Defendants' failure to
29 provide accurate and complete information as required by any one or more of items (1) to (9),
30 inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily
31 determine (*i.e.* a reasonable person in each Plaintiff's position would not be able to readily ascertain
32 the information without reference to other documents or information) from the wage statement
33 alone. Moreover, pursuant to Labor Code section 226(e)(2), Plaintiff is deemed to have suffered
34 injury whenever Defendants failed to provide a wage statement, which happened for the majority of
35 the time Plaintiffs worked for Defendants.

1 40. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendant to
2 comply with Labor Code §§ 226(a) and 1174(d), and the all applicable damages and civil penalties.

3 **SIXTH CAUSE OF ACTION**
4 **WAITING TIME PENALTIES**
5 **(As to All Defendants)**

6 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
7 set forth herein.

8 42. An employer must pay an employee who is terminated all unpaid wages immediately
9 upon termination. Labor Code § 201.

10 43. An employer who willfully fails to pay an employee wages in accordance with California
11 Labor Code sections 201 must pay the employee a waiting time penalty of up to thirty (30) days.
12 California Labor Code § 203.

13 44. Plaintiff did not receive all wages, including minimum and overtime wages and meal and
14 rest period premiums, at her termination from employment.

15 45. Defendants knew of their obligation to pay Plaintiff for all hours worked because they
16 had knowledge Plaintiff was, at all times, a non-exempt employee, worked over eight (8) hours a day
17 and/or forty (40) hours a week, worked through thirty (30) minute meal periods when Plaintiff
18 worked for periods lasted for more than five (5) hours and more than ten (10) hours, and worked at
19 many times without any compensation whatsoever. Thus, Defendants' failure to pay for all hours
20 worked was in complete disregard of their obligations. Such conduct shows Defendants' knowledge
21 of their obligation to pay all wages owed upon termination and willful refusal.

22 46. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and
23 deprived of her wages and thereby seeks an appropriate daily rate of pay multiplied by thirty (30)
24 days for Defendants' failure to pay all wages due, in an amount to be established at trial.

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to All Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the California Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

49. Plaintiff was not paid all wages owed during her employment, especially since Defendants misclassified Plaintiff as an independent contractor, or non-employee. Defendants also failed to provide legally compliant paystubs to Plaintiff throughout the employment relationship.

50. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (California Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163 (2000).

51. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of Defendants’ unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for up to four (4) years from the filing of this Action.

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EIGHTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.
(As to All Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully set forth herein.

53. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of the

1 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
2 violations identified above.

3 54. On or about October 25, 2018, Plaintiff, through counsel, sent written notice to the
4 LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code
5 section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not
6 informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such,
7 Plaintiff has exhausted her administrative remedies under PAGA and may proceed in this Court.

8 55. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
9 all aggrieved employees for all violations of the Labor Code from October 25, 2018, through trial on
10 this matter.

11 56. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
12 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
13 aggrieved employees for all violations of the California Labor Code, whether she experienced them
14 personally or not.
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16 **DAMAGES**

17 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 18 1. A jury trial;
- 19 2. For compensatory damages, including, but not limited to, unpaid wages, plus interest,
20 according to proof allowed by law;
- 21 3. For civil and statutory penalties and liquidated damages under the California Labor
22 Code according to proof allowed by law;
- 23 4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
24 fees;
- 25 5. For injunctive relief;
- 26 6. For an award of prejudgment and post-judgment interest; and
- 27 7. For an award to Plaintiff of such other and further relief as the Court deems just and
28 proper.

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Dated: January 22, 2018

Castle Law: California Employment Counsel

By:  _____

Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff SHAWNA OLSEN

JURY TRIAL DEMAND

Plaintiff SHAWNA OLSEN hereby demands a trial by jury.

Dated: January 22, 2018

Castle Law: California Employment Counsel

By:  _____

Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff SHAWNA OLSEN