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PURPLEBRICKS INC. d/b/a/ PURPLEBRICKS REALTY, INC.

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 SHAWNA OLSEN, on behalf of herself and as
Private Attorney General,

12 Plaintiff,

13 vs.

14 PURPLEBRICKS INC., a Delaware Corporation;
15 and DOES 1 through 20; inclusive,

16 Defendants.

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

Assigned for All Purposes to the Honorable
Gregory H. Lewis, Dept. C26

**DEFENDANT PURPLEBRICKS, INC. D/B/A/
PURPLEBRICKS REALTY, INC. ANSWER
TO UNVERIFIED COMPLAINT FOR
VIOLATIONS PURSUANT TO LABOR CODE
SECTIONS 2698, ET SEQ.**

Complaint Filed: January 22, 2019
Trial Date: Not Set

19 Defendant PURPLEBRICKS, INC. d/b/a/ PURPLEBRICKS REALTY, INC. (“Defendant”)
20 hereby answer Plaintiff SHAWNA OLSEN’s (“Plaintiffs”) unverified Complaint for Violation of the
21 California Labor Code Private Attorneys General Act of 2004 (“Complaint”) as follows:

22 **GENERAL DENIAL**

23 Pursuant to the California Code of Civil Procedure section 431.30(d), Defendant denies generally
24 and specifically each and every allegation contained in the Complaint and deny that Plaintiff and any
25 alleged aggrieved employee has suffered any injury or been damaged in any sum whatsoever.

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1 **AFFIRMATIVE DEFENSES**

2 Defendant further alleges the following affirmative defenses to the purported causes of action in
3 the Complaint, without conceding that they bear the burden of proof or persuasion as to any one of them,
4 as follows:

5 **FIRST AFFIRMATIVE DEFENSE**

6 1. Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, fails
7 to state facts sufficient to constitute a cause of action against Defendant upon which relief may be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 2. Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, is
10 barred in whole or in part by the applicable statute of limitations, including but not limited to, Code of
11 Civil Procedure Section 340.

12 **THIRD AFFIRMATIVE DEFENSE**

13 3. Plaintiff's Complaint, and each purported cause of action contained therein, is barred
14 because Plaintiffs and the purported aggrieved employees were not employed by Defendant.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 4. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred because
17 Plaintiff and the purported aggrieved employees are estopped by their own conduct to claim any right to
18 damages or any relief against Defendant.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 5. Plaintiff's Complaint, and each purported cause of action therein, is barred by the doctrine
21 of laches, because Plaintiff and the purported aggrieved employees delayed inexcusably and unreasonably
22 in pursuing any alleged claims, causing substantial prejudice to Defendant.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 6. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred by the
25 doctrine of waiver.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 7. Plaintiff and the purported aggrieved employees come to this Court with unclean hands,
28 and are therefore barred from recovery under this Complaint, or any cause of action therein.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 8. To the extent Plaintiff and the purported aggrieved employees were employees, which
3 Defendant expressly denies, Plaintiff's and the purported aggrieved employees' claims are barred, in
4 whole or in part, by the doctrine of *in pari delicto* due to the conduct of Plaintiff and the purported
5 aggrieved employees, including but not limited to their voluntary waiver of the meal periods and rest
6 breaks that they were provided the opportunity to take, and their voluntary decision not to request
7 reimbursement for any expenses they incurred.

8 **NINTH AFFIRMATIVE DEFENSE**

9 9. Defendant is entitled to an offset for amounts Plaintiff and the purported aggrieved
10 employees owe Defendant for receipt of any wages, remuneration, and/or other benefits to which they are
11 not entitled and/or did not earn, or to which they would not be entitled as employees, including to an offset
12 against any damages allegedly incurred or restitution or penalties sought by Plaintiff and the purported
13 aggrieved employees for the value of the goods that Plaintiff and the purported aggrieved employees
14 received in connection with their purchases.

15 **TENTH AFFIRMATIVE DEFENSE**

16 10. Defendant is informed and believes, and thereon alleges, that Plaintiff and the purported
17 aggrieved employees are barred, or at least limited, by the doctrine of unknown hours worked.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 11. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred, in
20 whole or in part, to the extent that Plaintiff or any purported aggrieved employees previously have pursued
21 the same claim in any court or administrative forum.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 12. To the extent Plaintiff and the purported aggrieved employees were employees, which
24 Defendant expressly denies, Plaintiff's and the purported aggrieved employees' claims are barred, in
25 whole or in part, because Plaintiff and the purported aggrieved employees did not suffer injury as a result
26 of a knowing and intentional failure by their claimed and alleged employer to comply with Labor Code
27 section 226(a).

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1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 13. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to state a
3 valid claim for attorneys' fees against Defendant.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 14. Plaintiff's PAGA claim is barred pursuant to the United States Constitution and the
6 California Constitution to the extent Labor Code section 2698 *et seq.* imposes double penalties and violates
7 the due process rights of Defendant.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 15. Plaintiff's PAGA claim is barred pursuant to the Eighth Amendment of the United States
10 Constitution and Article I, Section 17, of the California Constitution because the penalties impose
11 excessive fines and violates the due process rights of Defendant.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 16. Plaintiff's PAGA claim is barred because she is not an aggrieved employee as that term is
14 defined in Labor Code section 2699(c).

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 17. Plaintiff's PAGA claim is barred because Plaintiffs failed to exhaust administrative
17 remedies that are a precondition to suit under PAGA.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 18. Defendant is informed and believes, and thereon alleges, that there exists a bona fide
20 dispute as to whether any additional compensation is actually due to Plaintiff and the purported aggrieved
21 employees, and if so, the amount thereof.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 19. Plaintiff's PAGA claim is barred pursuant to the United States Constitution and the
24 California Constitution because the standards governing the differentiation of employees from non-
25 employees are unconstitutionally vague and ambiguous, and therefore violates Defendant's due process
26 rights.

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1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 20. Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, is
3 barred in whole or in part because Plaintiff lacks standing to bring and maintain the instant action on
4 behalf of the purported aggrieved employees.

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 21. To the extent Plaintiff and the purported aggrieved employees were employees, which
7 Defendant expressly denies, Plaintiff's and the purported aggrieved employees' claims under Labor Code
8 § 221 are barred, in whole or in part, because, at all relevant times, Defendant reimbursed its employees
9 for the costs of expenses incurred in the discharge of their duties and/or did not otherwise require them to
10 bear such costs.

11 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

12 22. To the extent Plaintiff and the purported aggrieved employees were employees, which
13 Defendant expressly denies, Plaintiff's and the purported aggrieved employees' claims under Labor Code
14 §§ 221 are barred, in whole or in part, because the IWC Wage Orders specifically permit an employer to
15 make a reasonable deduction and/or obtain reimbursement from an employee for losses and shortages
16 caused by an employee's dishonest or willful act or gross negligence.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 23. To the extent Plaintiff and the purported aggrieved employees were employees, which
19 Defendant expressly denies, Plaintiff's and the purported aggrieved employees' claims under Labor Code
20 Sections 2802 are barred, in whole or in part, because the purchases about which Plaintiff complains on
21 behalf of herself and the purported aggrieved employees were not necessary.

22 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

23 24. Any recovery on Plaintiff's Complaint with respect to allegations of failure to reimburse
24 employee expenses or unlawful deduction of employee expenses is barred because, assuming *arguendo*
25 that such expenses were reasonably incurred by Plaintiff and/or the purported aggrieved employees in the
26 course and scope of employment with Defendant (which Defendant denies), none ever gave Defendant
27 notice that any such expenses were incurred, they did not request reimbursement for such expenses from
28 Defendant, and Defendant was, at all relevant times, unaware that such expenses had been incurred.

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 25. Any recovery on Plaintiff’s Complaint with respect to allegations of failure to reimburse
3 employee expenses or unlawful deduction of employee expenses is barred, in whole or in part, because
4 Plaintiff and the purported aggrieved employees did not incur “necessary expenditures or losses . . . in
5 direct consequence of the discharge of [their] duties” as defined under California Labor Code Section
6 2802, and any award of such expenditures or losses would unjustly enrich Plaintiff and the purported
7 aggrieved employees.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9 26. Plaintiff’s claim for liquidated damages under California Labor Code § 1194.2 fails
10 because the alleged acts or omissions giving rise to Defendant’s alleged failure to pay Plaintiffs and the
11 aggrieved employees the minimum wage, was in good faith and Defendant had reasonable grounds for
12 believing that the acts and omissions were not a violation of any provision of the Labor Code relating to
13 minimum wage, any applicable prevailing wage determination, or an order of the commission.

14 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

15 27. Plaintiff’s Complaint as a whole, and each purported cause of action alleged therein, is
16 barred or reduced to the extent that Plaintiff and any purported aggrieved employees entered into an accord
17 and satisfaction of any claim asserted in this lawsuit.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 28. Plaintiff is not entitled to any equitable or injunctive relief as prayed for in the Complaint
20 because Plaintiff and the purported aggrieved employees have suffered no irreparable injury based on any
21 alleged conduct of Defendant, and Plaintiff has an adequate remedy at law for any such alleged conduct.

22 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

23 29. To the extent Defendant was required to provide Plaintiff and the purported aggrieved
24 employees with meal and rest periods, which Defendant expressly denies, Plaintiffs’ and the purported
25 aggrieved employees’ claims are barred because Defendant provided them with meal and rest periods, and
26 they voluntarily waived their right to take the meal and rest periods as provided.

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THIRTIETH AFFIRMATIVE DEFENSE

30. To the extent Plaintiff seeks statutory penalties for alleged willful failure to comply with the requirements of the Labor Code, such penalties are barred or must be reduced because Defendant did not willfully violate the requirements of Labor Code sections 201, 202, and 203, or any other applicable Labor Code section, and a good faith dispute exists concerning such alleged violations.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Without admitting the allegations of Plaintiff's Complaint, but rather expressly denying them, Defendant maintains that any recovery for unpaid wages, including but not limited to claims for unpaid overtime and unpaid meal and rest period premiums, as well as unreimbursed business expenses for Plaintiff and the purported aggrieved employees, are barred because any unpaid wages or unreimbursed expenses are *de minimis*.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because provisions of the California Labor Code and the IWC Wage Orders that Plaintiff relies upon are superseded, abrogated, and/or preempted, under the Supremacy Clause of the United States Constitution, provisions of the Internal Revenue Code, and/or by the Federal Fair Labor Standards Act.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. Plaintiff and the purported aggrieved employees are not entitled to recovery of penalties under PAGA to the extent that such penalties represent duplicative recovery and/or unjust enrichment for Plaintiff and the purported aggrieved employees.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred because the actions taken by the employees or agents of Defendant, if any, were justified and/or privileged, and consistent with all applicable obligations and duties of Defendant.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. Defendant alleges that if Plaintiff and the purported aggrieved employees suffered or sustained any loss or damages as alleged in the Complaint, which is denied, such loss or damage was

1 occasioned by risks that Plaintiff and the purported aggrieved employees knowingly and voluntarily
2 assumed.

3 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

4 36. Plaintiff's purported PAGA cause of action is barred because Plaintiff consented to and
5 ratified all of the alleged acts or omissions of Defendant by reason of Plaintiff's knowledge, conduct, and
6 statements.

7 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

8 37. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred and any
9 recovery should be reduced, because of Plaintiff's and the purported aggrieved employees' own neglect
10 and fault in connection with the matters alleged.

11 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

12 38. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred because
13 any conduct complained of against Defendant and its agents, if any, was just and proper exercise of
14 management discretion undertaken for a fair and honest reason regulated by good faith under the
15 circumstances then existing.

16 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

17 39. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to state facts
18 sufficient to constitute a cause of action against Defendant that would support an award of penalties and/or
19 punitive damages.

20 **FORTIETH AFFIRMATIVE DEFENSE**

21 40. Defendant alleges that the hours for which Plaintiff and the purported aggrieved employees
22 claim they are entitled to were not "hours worked" within the meaning of the applicable state and federal
23 laws, and that Plaintiff and the purported aggrieved employees are not entitled to any penalties, income or
24 overtime compensation for these hours.

25 **FORTY-FIRST AFFIRMATIVE DEFENSE**

26 41. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred because
27 Plaintiff and the purported aggrieved employees have agreed to arbitrate all of the purported claims by
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1 way of an arbitration agreement, including but not limited to any claims for recovery of alleged “unpaid
2 wages”.

3 **FORTY-SECOND AFFIRMATIVE DEFENSE**

4 42. Plaintiff and the purported aggrieved employees were properly classified as independent
5 contractors under state and federal law and were thus exempt from state and federal minimum wage and
6 overtime pay requirements.

7 **FORTY-THIRD AFFIRMATIVE DEFENSE**

8 43. Defendant alleges the existence of a valid and enforceable contract, which bars or limits
9 Plaintiff and the purported aggrieved employees from obtaining relief; Defendant further alleges Plaintiff
10 and the purported aggrieved employees breached that contract which likewise bars or limits them from
11 obtaining relief.

12 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

13 44. Plaintiff’s PAGA claim is barred to the extent private actions seeking PAGA penalties
14 manifest an unlawful delegation of executive authority.

15 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

16 45. The purported PAGA cause of action is barred to the extent Plaintiff and the purported
17 aggrieved employees seek penalties beyond the “initial” violation described in California Labor Code §
18 2699 and/or any other applicable California Labor Code provision.

19 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

20 46. Plaintiff’ purported PAGA cause of action is barred to the extent it seeks to recover
21 penalties on behalf of individuals who are not “aggrieved employees.”

22 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

23 47. Because Plaintiff’s Complaint is couched in conclusory terms, Defendant cannot fully
24 anticipate all defenses that may be applicable to this action. Accordingly, Defendant reserves the right to
25 assert additional defenses, if and to the extent such defenses are later found applicable.

26 **PRAYER**

27 **WHEREFORE**, Defendant prays for judgment as follows:

28 1. That Plaintiff takes nothing by her Complaint;

- 1 2. That the Complaint and each cause of action be dismissed in its entirety with prejudice;
2 3. That Plaintiff be denied each and every demand and prayer for relief contained in the
3 Complaint;
4 4. For costs of suit incurred herein, including reasonable attorneys' fees; and
5 5. For such other and further relief as the Court deems just and equitable.

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8 Dated: March 15, 2019

JACKSON LEWIS P.C.

9 By: *Robert A. Orozco*
10 Michael A. Hood
 Robert A. Orozco

11 Attorneys for Defendant
12 PURPLEBRICKS INC. d/b/a/ PURPLEBRICKS
13 REALTY, INC.
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1 PROOF OF SERVICE

2 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

3 CASE NAME: *OLSEN v. PURPLEBRICKS INC.*

4 CASE NUMBER: 30-2019-01045703-CU-OE-CJC

5 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
6 party to the within action; my business address is 200 Spectrum Center Drive, Suite 500, Irvine, CA 92618.

7 On March 15, 2019, I served the foregoing document(s) described as:

8 **DEFENDANT PURPLEBRICKS, INC. D/B/A/ PURPLEBRICKS REALTY, INC. ANSWER TO**
9 **UNVERIFIED COMPLAINT FOR VIOLATIONS PURSUANT TO LABOR CODE SECTIONS**
10 **2698, ET SEQ.**

11 in this action by placing a true copy thereof in a sealed envelope addressed as follows:

12 Timothy B. Del Castillo
13 Kent L. Bradbury
14 CASTLE LAW
15 3200 Douglas Blvd., Suite 300
16 Roseville, CA 95661

Attorneys for Plaintiff
SHAWNA OLSEN

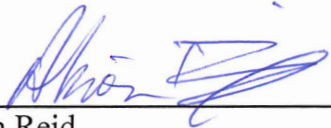
Telephone: (916) 245-0122

Email: tdc@castleemploymentlaw.com
kb@castleemploymentlaw.com

17 **[XX] BY MAIL** I am "readily familiar" with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that
19 same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am
20 aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage
21 meter date is more than one day after date of deposit for mailing in affidavit.

22 **[XX] STATE** I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed on March 15, 2019, at Irvine, California.

25 
26 _____
27 Alison Reid
28

4836-4232-3850, v. 1