

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
16530 Ventura Blvd., Ste 203
4 Encino, CA 91436
5 Telephone (818) 582-3086
Facsimile (818) 582-2561
6

7 Attorneys for Plaintiff,
NOEL BUCKHANON
8 (Additional Counsel on following Page)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/26/2020 at 08:00:00 AM
Clerk of the Superior Court
By Nancy Fabian, Deputy Clerk

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**
12 **(UNLIMITED JURISDICTION)**

13 NOEL BUCKHANON, on behalf of herself,
14 and as an "aggrieved employee" on behalf of
other "aggrieved employees" under the Labor
15 Code Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 SAN DIEGO GAS & ELECTRIC
19 COMPANY, a California corporation;
20 SEMPRA ENERGY, a California corporation;
and DOES 1 through 50, inclusive,
21

22 *Defendant(s).*

Case No.: 37-2020-00013933-CU-OE-NC

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE LABOR CODE
AND CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
walter@whaines.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (888) 474-7242
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff NOEL BUCKHANON (hereafter “Plaintiff”), on behalf of herself and all
2 others Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the
6 Wage Order”) against SAN DIEGO GAS & ELECTRIC COMPANY and SEMPRA
7 ENERGY, and Does 1-50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 her and other aggrieved current and former employees in California for civil penalties and
10 other related relief. These claims are based on Defendants’ alleged failures to (1) pay all
11 wages for all hours worked at the correct rates of pay, (2) provide accurate written wage
12 statements, and (3) timely pay final wages upon termination of employment. Accordingly,
13 Plaintiff now seeks to recover civil penalties and related relief through this representative
14 action.

15 **JURISDICTION AND VENUE**

16 3. This Court has subject matter jurisdiction because the aggregate claims of
17 Plaintiff and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in
18 controversy.

19 4. There is no basis for federal question subject matter jurisdiction in this case.
20 Specifically, Plaintiff asserts claims on behalf of herself and Aggrieved Employees that solely
21 arise under California law, rather than federal law.

22 5. There is also no basis for federal diversity jurisdiction in this case.

23 6. Venue is proper in San Diego County pursuant to California Code of Civil
24 Procedure § 395(a) and § 395.5 in that liability arose in San Diego County because at least some
25 of the transactions that are the subject matter of this Complaint occurred therein and/or because
26 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

27 **PARTIES**

28 7. Plaintiff is an individual. At all relevant times, Plaintiff was an “employee”
within the meaning of Title 8 California Code of Regulations Section 11040 and an “aggrieved
employee” within the meaning of Labor Code Section 2699(c).

8. Plaintiff currently resides in San Diego, California.



1 9. The “Aggrieved Employees” are all individuals employed by Defendants in
2 California as non-exempt, hourly employees, including, but not limited to, energy service
3 specialists, and in other comparable positions, at any time during the period beginning January
4 23, 2019 and ending on the date that final judgment is entered in this action.

5 10. Defendant SAN DIEGO GAS & ELECTRIC COMPANY is a corporation
6 organized and existing under the laws of California based on Plaintiff’s information and belief.

7 11. Defendant SEMPRA ENERGY is a corporation organized and existing under
8 the laws of California based on Plaintiff’s information and belief.

9 12. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
10 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive,
11 but is informed and believes and thereon alleges that said defendants are legally responsible
12 for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious
13 names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE
14 defendants when ascertained.

15 13. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
17 remaining defendants, and in doing the things hereinafter alleged, were acting within the
18 course and scope of such agency or employment, and with the approval and ratification of
19 each of the other Defendants.

20 14. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
22 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
23 Employees in accordance with applicable California labor laws as alleged herein.

24 15. Plaintiff is informed and believes and thereon alleges that each and every one
25 of the acts and omissions alleged herein were performed by, and/or attributable to, all
26 defendants, each acting as agents and/or employees, and/or under the direction and control of
27 each of the other defendants, and that said acts and failures to act were within the course and
28 scope of said agency, employment and/or direction and control.

///

///

///



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

(Lab. Code §§ 2698, *et seq.*)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

23
24
25
26
27
28

24
25
26
27
28

15
16
17
18
19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

25
26
27
28

28



1 20. Labor Code section 510 states:

2 Eight hours of labor constitutes a day's work. Any work in excess of
3 eight hours in one workday and any work in excess of 40 hours in any
4 one workweek and the first eight hours worked on the seventh day of
5 work in any one workweek shall be compensated at the rate of no less
6 than one and one-half times the regular rate of pay for an employee. Any
7 work in excess of 12 hours in one day shall be compensated at the rate of
8 no less than twice the regular rate of pay for an employee. In addition,
9 any work in excess of eight 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. Nothing in this section requires an employer to
 combine more than one rate of overtime compensation in order to
 calculate the amount to be paid to an employee for any hour of overtime
 work.

10 21. Labor Code section 1197 makes it unlawful for an employer to pay an employee
11 less than the minimum wage required under the applicable Wage Order for all hours worked
12 during a payroll period.

13 22. California Labor Code § 1194 invalidates any agreement between an employer
14 and an employee to work for less than the minimum or overtime wage required under the
15 applicable Wage Order.

16 23. Labor Code section 1198 makes it unlawful for an employer to employ an
17 employee under conditions that violate the Wage Order.

18 24. Plaintiff is informed and believes that, at all relevant times, Defendants have
19 applied centrally devised policies and practices to her and the Aggrieved Employees with
20 respect to working conditions and compensation arrangements.

21 25. On or about December of 2017, Defendants first employed Plaintiff to work in
22 San Diego, California as an energy service specialist. Defendants employed Plaintiff
23 continuously from that time until she resigned from her employment on or about May 22, 2019.
24 As an energy service specialist, Plaintiff provided customer service to Defendants' clients,
25 responded to their telephone inquiries, and resolved any complaints or issues they encountered
26 with their accounts.

27 26. Defendants compensated Plaintiff and the Aggrieved Employees with an hourly
28 rate of pay on a bi-weekly basis.

 27. At all relevant times, Defendants failed to compensate Plaintiff and the
 Aggrieved Employees for all hours worked at the correct rates of pay, including but not limited



1 to, overtime hours at the legally required rates for overtime work in California. Defendants
2 required Plaintiff and the Aggrieved Employees to spend approximately six (6) to fifteen (15)
3 minutes at the beginning of each shift logging into their computers and Defendants' network
4 before they could access their time keeping application to clock in for their shifts. Defendants
5 knowingly and intentionally required Plaintiff and the Aggrieved Employees to perform these
6 duties off-the-clock and failed to compensate them for all hours worked at the correct rates of
7 pay, including, but not limited to, all overtime hours they worked.

8 28. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
10 Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all hours worked
11 as required by California law, including, but not limited to overtime wages for all overtime
12 hours they worked.

13 **B. FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

14 29. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
15 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
16 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
17 applicable hourly rates in effect during the pay period; and d) the corresponding number of
18 hours worked at each hourly rate by the employee.

19 30. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
20 injury if the employer fails to provide a wage statement. Also, an employee is deemed to
21 suffer injury if the employer fails to provide accurate and complete information as required by
22 California Labor Code § 226(a) and the employee cannot "promptly and easily determine"
23 from the wage statement alone one or more of the following:

24 A. The amount of the gross wages or net wages paid to the employee
25 during the pay period or any of the other information required to be provided on the itemized
26 wage statement pursuant to California Labor Code § 226(a);

27 B. Which deductions the employer made from gross wages to determine
28 the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm
labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code,
the name and address of the legal entity that secured the services of the employer during the



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 pay period; and

2 D. The name of the employee and only the last four digits of his or her
3 social security number or an employee identification number other than a social security
4 number.

5 31. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
6 means a reasonable person would be able to readily ascertain the information without
7 reference to other documents or information.

8 32. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
9 Employees all wages owed, including but not limited to, minimum and overtime wages. As a
10 result, Defendants have failed to properly and accurately itemize each employee’s gross wages
11 earned, net wages earned, the total hours worked, the corresponding number of hours worked
12 by employees and other requirements of California Labor Code § 226. As a result, Defendants
13 have violated California Labor Code § 226.

14 33. Defendants’ failure to provide Plaintiff and the Aggrieved Employees with
15 accurate wage statements was knowing and intentional. Defendants had the ability to provide
16 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally
17 provided wage statements that Defendants knew were not accurate.

18 34. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff and the Aggrieved Employees have suffered injury. Their legal rights to receive
20 accurate wage statements were violated and they were misled about the amount of wages they
21 had actually earned and were owed. In addition, the absence of accurate information on their
22 wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has
23 required discovery and mathematical computations to determine the amounts of wages owed,
24 has caused difficulty and expense in attempting to reconstruct time and pay records and/or has
25 led to the submission of inaccurate information about wages to state and federal government
26 agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the
27 wage statements whether Defendants complied with their obligations under California Labor
28 Code § 226(a).

26 **C. UNTIMELY FINAL WAGES**

27 35. Labor Code § 201 provides that all earned and unpaid wages of an employee
28 who is discharged are due and payable immediately at the time of discharge.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 36. Labor Code § 202 provides that all earned and unpaid wages of an employee
2 who quits after providing at least 72-hours notice before quitting are due and payable at the
3 time of quitting and that all earned and unpaid wages of an employee who quits without
4 providing at least 72-hours notice before quitting are due and payable within 72 hours.

5 37. By failing to pay earned minimum and overtime wages to Plaintiff and the
6 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
7 violation of Labor Code § 201 or § 202.

8 38. Labor Code § 203 provides that the wages of an employee continue on a daily
9 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
10 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

11 39. Plaintiff is informed and believes that Defendants' failures to timely pay
12 Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful
13 in that, at all relevant times, Defendants have deliberately maintained policies and practices
14 that violate the requirements of the Labor Code and the Wage Order even though, at all
15 relevant times, they have had the ability to comply with those legal requirements.

16 **D. UNTIMELY WAGES DURING EMPLOYMENT**

17 40. Labor Code § 204 states

18 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
19 or 204.2, earned by any person in any employment are due and payable twice
20 during each calendar month, on days designated in advance by the employer as
21 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
22 of any calendar month shall be paid for between the 16th and the 26th day of the
23 month during which the labor was performed, and labor performed between the
24 16th and the last day, inclusive, of any calendar month, shall be paid for between
25 the 1st and 10th day of the following month. ...

26 (b) (1) Notwithstanding any other provision of this section, all wages
27 earned for labor in excess of the normal work period shall be paid no later than
28 the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set
out in a subsequently issued paystub shall state the inclusive dates of the pay
period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining



1 agreement that provides different pay arrangements, those arrangements shall
2 apply to the covered employees.

3 (d) The requirements of this section shall be deemed satisfied by the payment
4 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
5 more than seven calendar days following the close of the payroll period.

6 41. Defendants paid wages to employees on regular intervals. However, Defendants
7 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
8 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
9 Employees on such intervals for all wages earned and all hours worked.

10 **E. CIVIL PENALTIES SOUGHT**

11 42. During the applicable time period, Defendants violated California Labor Code §§
12 201, 202, 203, 204, 226, 510, 1194, 1197, and 1198.

13 43. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
14 behalf of themselves and other current or former employees, to bring a civil action to recover
15 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

16 44. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
17 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
18 violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 1194, 1197, and 1198
19 during the applicable limitations period in the following amounts:

20 A. For violations of California Labor Code § 204, one hundred dollars
21 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
22 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
23 (penalty amounts established by California Labor Code § 210).

24 B. For violations of California Labor Code § 226(a), two hundred fifty
25 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
26 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
27 established by California Labor Code § 226.3).

28 C. For violations of California Labor Code § 510, fifty dollars (\$50.00) for
each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
Aggrieved Employee for each subsequent violation per pay period (penalty amounts established
by California Labor Code § 558).



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 D. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
3 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation per
4 pay period (regardless of whether the initial violations were intentionally committed) (penalty
5 amounts established by California Labor Code § 1197.1).

6 E. For violations of California Labor Code §§ 201, 202, 203, 1194, and
7 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
8 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
9 for each subsequent violation (penalty amounts established by California Labor Code §
10 2699(f)(2)).

11 F. **NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

12 45. Plaintiff has complied with the procedures for bringing suit specified in
13 California Labor Code § 2699.3. By letter dated January 23, 2020, Plaintiff filed written notice
14 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
15 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
16 to have been violated, including the facts and theories to support the alleged violations. A true
17 and correct copy of the notice to the LWDA dated January 23, 2020 is attached as Exhibit A.
18 Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has
19 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
20 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it
21 does not intend to investigate these allegations.

22 46. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
24 connection with their claims for civil penalties.

25 **PRAYER FOR RELIEF**

26 47. WHEREFORE, Plaintiff, on behalf of herself, the State of California, and the
27 Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- 28 A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 48. For clarity, any reference above to liabilities other than PAGA civil penalties is
2 made only to establish liability for PAGA civil penalties.

3 Respectfully submitted,

4 THE SPIVAK LAW FIRM

5 Dated: April 1, 2020

6 By David Spivak
7 DAVID SPIVAK, Attorney for Plaintiff, NOEL
8 BUCKHANON
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com