

ON 5/4/2020

By /s/ Mia Marlowe
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN MATEO

11 UNLIMITED JURISDICTION
12

13 SHERELLE MARTIN, on behalf of herself,
14 all others similarly situated, and the general
public,

15 *Plaintiff,*

16 vs.

17 APTIVE ENVIRONMENTAL, INC., a Utah
18 corporation; and DOES 1 through 50,
inclusive,

19 *Defendants.*
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Case No. 20-CIV-01857

REPRESENTATIVE ACTION

COMPLAINT

Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

COMES NOW, Plaintiff SHERELLE MARTIN ("Plaintiff"), on behalf of herself, all others similarly situated, and the general public, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this representative action against Defendant APTIVE ENVIRONMENTAL, INC., a Utah corporation; and DOES 1 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- (1) failed to provide her and all other aggrieved employees with meal periods;
- (2) failed to provide them with rest periods;
- (3) failed to pay them premium wages for missed meal and/or rest periods;
- (4) failed to pay them at least minimum wage for all hours worked;
- (5) failed to pay them overtime wages at the correct rate;
- (6) failed to pay them double time wages at the correct rate;
- (7) failed to provide them with accurate written wage statements; and
- (8) failed to pay them all of their final wages following separation of employment.

Based on these alleged Labor Code violations, Plaintiff now brings this representative action to recover unpaid wages, restitution and related relief on behalf of herself, all others similarly situated, and the general public.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because the monetary damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction of the Superior Court of the State of California.

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

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1 **PARTIES**

2 4. Plaintiff SHERELLE MARTIN is, and at all relevant times mentioned herein, an
3 individual residing in the State of California.

4 5. Plaintiff is informed and believes, and thereupon alleges that Defendant APTIVE
5 ENVIRONMENTAL, INC., is, and at all relevant times mentioned herein, a Utah corporation doing
6 business in the State of California.

7 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
8 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
9 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
10 when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the
11 fictitiously named defendants are responsible in some manner for the occurrences, acts and
12 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
13 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
14 capacities of the DOE defendants when ascertained.

15 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
16 mentioned herein, some or all of the defendants were the representatives, agents, employees,
17 partners, directors, associates, joint venturers, principals or co-participants of some or all of the
18 other defendants, and in doing the things alleged herein, were acting within the course and scope of
19 such relationship and with the full knowledge, consent and ratification by such other defendants.

20 8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
21 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert
22 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
23 acts and omissions alleged herein.

24 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 9. Plaintiff worked for Defendants as a non-exempt, hourly employee from
26 approximately May 8, 2019 through July 24, 2019.

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Off-the-Clock Work

10. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants directed, permitted or otherwise encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

11. Specifically, Plaintiff and the aggrieved employees were trained to clock in at 8am and clock out at 4pm. However, after Plaintiff and the aggrieved employees would clock out for the day, they would not be released to go home until the entire office area was clean. Defendants encouraged and directed Plaintiff and the aggrieved employees to engage in this off-the-clock work and made it a necessary requirement of the job. After Plaintiff and the aggrieved employees would clock out for the day at 4pm, they would be made to spend at least 10-15 minutes per day cleaning up the office space, all time which was unpaid by Defendants.

12. Plaintiff and the aggrieved employees had no choice but to comply with Defendants requirements that they stay on premises working off-the-clock as failure to do so was threatened with adverse employment actions up to termination.

13. Defendants knew or should have known that Plaintiff and the aggrieved employees were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the aggrieved employees for these hours.

14. As a result of performing off-the-clock work that was directed, permitted or otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the time they were clocked in for their shifts and did not pay Plaintiff and the aggrieved employees for any of the time spent working off-the-clock.

Missed Meal Periods

15. Plaintiff and the aggrieved employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) Defendants policy that field service technicians adhere to a predetermined schedule to attend to clients needs leaving no time for meal periods to be properly taken; (3) imposing so much work on each employee such that it made it

1 unlikely that an employee would be able to take their breaks if they wanted to finish their work on
2 time; and (4) no formal written meal and rest period policy that encouraged employees to take their
3 meal and rest periods.

4 16. Specifically, although Plaintiff did not experience any issues with her meal periods,
5 upon information and belief, the field service technicians frequently did not take compliant meal
6 periods in accordance with California law. The aggrieved employees would be out on the field
7 every day attending to the needs of clients and would frequently be overloaded with work leaving
8 no time for a meal break without upsetting the customers and their supervisors. Defendants
9 required that the aggrieved employees log that they took a meal period so as to avoid paying them
10 overtime even in the frequent event that they were unable to properly do so. As a result, the
11 aggrieved employees regularly performed off-the-clock work and did not take compliant meal
12 periods due to their compliance with Defendants productivity requirements and policies against
13 paying employees overtime.

14 **Missed Rest Periods**

15 17. Plaintiff and the aggrieved employees were not provided with rest periods of at least
16 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
17 Defendants' policy of allowing employees only to take rest breaks during predetermined time
18 frames; (2) chronically understaffing each work shift with not enough workers; (3) imposing so
19 much work on each employee such that it made it unlikely that an employee would be able to take
20 their breaks if they wanted to finish their work on time; (4) Defendants policy that employees were
21 not allowed to take their rest breaks if they did not take them during the predetermined windows;
22 and (5) Defendants policy that employees must finish whatever tasks they are dealing with at the
23 time before leaving for their rest breaks.

24 18. Specifically, Plaintiff and aggrieved employees were told that they were to clock
25 out for their predetermined rest periods in time frames set by Defendants. However, Defendants
26 also maintained a policy that Plaintiff and the aggrieved employees were to ensure that their work
27 was being attended to at all times and that they were not under any circumstances to stop what they
28 were doing at a given time in order to take their rest periods. As Plaintiff worked in the call center

1 as a customer loyalty specialist, if she was on the phone with a customer at the time that her rest
2 period was scheduled to start, she was not allowed to hang up and take her rest period. Instead,
3 Plaintiff and the aggrieved employees were instructed to first finish whatever tasks they were
4 attending to at the time and to then finish up however much time remained on their rest breaks after
5 they had concluded their tasks. In practice, this policy functionally resulted in Plaintiff and the
6 aggrieved employees missing at least one of their breaks and sometimes both of their breaks at
7 least 1-2 times per week. Plaintiff and the aggrieved employees were never in any fashion
8 compensated for their missed rest periods by Defendants.

9 19. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
10 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
11 hours worked due to complying with Defendants' productivity requirements that required Plaintiff
12 and the aggrieved employees to work through their rest periods in order to complete their
13 assignments on time.

14 **Wage Statements**

15 20. Plaintiff and the aggrieved employees were not provided with accurate wage
16 statements as mandated by law pursuant to Labor Code section 226.

17 21. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
18 earned" were not accurately reflected in that:

- 19 a. all hours worked, including overtime, were not included;
- 20 b. any and all meal and/or rest period premium wages were not included.

21 22. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
22 worked by the employee" were not accurately reflected in that:

- 23 a. all hours worked, including overtime, were not included.

24 23. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages
25 earned" were not accurately reflected in that:

- 26 a. all hours worked, including overtime, were not included.
- 27 b. any and all meal and/or rest period premium wages were not included.

28 24. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee” were not accurately reflected in that:

3 a. all hours worked, including overtime, were not included.

4 **Vacation Pay**

5 1. Plaintiff and the aggrieved employees accrued vacation wages during their
6 employment with Defendants.

7 2. Under California law, vacation wages are considered a form of wages under Labor
8 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on
9 labor performed are considered wages that cannot be subject to forfeiture without compensation for
10 forfeited days at the applicable rates required by law.

11 3. At all relevant times, Defendants maintained policies that provide for the unlawful
12 forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic*
13 *Dress-Up Co.*, (1982) 31 Cal. 3d 774.

14 4. Plaintiff and the aggrieved employees are entitled to vacation accrued during their
15 employment with Defendants. Upon termination, Plaintiff and the aggrieved employees were not
16 paid out all accrued vacation pay.

17 **FIRST CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code §§ 2698, *et seq.*)**

20 5. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 6. During the applicable limitations period, Defendants have violated Labor Code §§
23 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, and 1198.

24 7. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of
25 himself and other current and former employees, to bring a representative civil action to recover
26 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need
27 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

28 8. Plaintiff, as a former employee against whom Defendants committed one or more of

1 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
2 employee within the meaning of Labor Code section 2699(c).

3 9. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
4 section 2699.3.

5 10. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
6 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
7 227.3, 510, 512, 1194, 1197, and 1198:

- 8 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 227.3 1194,
9 and 1198, \$100 for each employee per pay period for each initial violation
10 and \$200 for each employee per pay period for each subsequent violation
11 (penalties set by Labor Code section 2699(f)(2));
- 12 B. For violations of Labor Code section 203, a penalty in an amount not
13 exceeding 30 days pay as waiting time (penalties set by Labor Code section
14 256).
- 15 C. For violations of Labor Code section 204, \$100 for each employee for each
16 initial violation that was neither willful nor intentional, \$200 for each
17 employee, plus 25% of the amount unlawfully withheld from each employee,
18 for each initial violation that was either willful or intentional, and \$200 for
19 each employee, plus 25% of the amount unlawfully withheld from each
20 employee, for each subsequent violation, regardless of whether the
21 subsequent violation was either willful or intentional (penalties set by Labor
22 Code section 210);
- 23 D. For violations of Labor Code section 223, \$100 for each employee for each
24 initial violation that was neither willful nor intentional, \$200 for each
25 employee, plus 25% of the amount unlawfully withheld from each employee,
26 for each initial violation that was either willful or intentional, and \$200 for
27 each employee, plus 25% of the amount unlawfully withheld from each
28 employee, for each subsequent violation, regardless of whether the

subsequent violation was either willful or intentional (penalties set by Labor Code section 225.5);

E. For violations of Labor Code section 226(a), if this action is deemed to be an initial citation, \$250 for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, \$1,000 for each employee for each violation (penalties set by Labor Code section 226.3);

F. For violations of Labor Code sections 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code section 558); and

G. For violations of Labor Code section 1197, \$100 for each aggrieved employee for each initial violation of Labor Code section 1197 that was intentional, and \$250 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code section 1197.1).

11. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs and attorneys' fees in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- A. Pre-judgment interest;
- B. Statutory penalties;
- C. Civil penalties;
- D. Costs of suit;
- E. Reasonable attorneys' fees; and
- F. Such other relief as the Court deems just and proper.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of herself, all others similarly situated, and the general public, hereby
3 demands a jury trial on all issues so triable.

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5 DATED: May 2, 2020

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13 SHERELLE MARTIN
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