

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Randolph Hammock

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DION HERNDON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ATV, INC. dba AMERICAN TIRE DEPOT, a
California Corporation; AMERICAN TIRE
DEPOT, Inc., a California corporation; and
DOES 1 through 100,

Case No.: 20STCV25013

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Dion Herndon (“Plaintiff”), on behalf of himself, all other aggrieved employees,
2 and the State of California, hereby brings this representative action complaint against ATV, Inc.
3 dba American Tire Depot, a California corporation; American Tire Depot, Inc., a California
4 corporation, and DOES 1 to 100, inclusive (collectively, “Defendants”), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself, other aggrieved employees, and the State of
8 California, hereby brings this action for recovery of civil penalties under the California Labor
9 Code Private Attorneys General Act (“PAGA”), Labor Code §§ 2698, *et seq.* This Court has
10 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
11 controversy exceeds this Court’s jurisdictional minimum.

12 **VENUE**

13 2. Venue is proper in this judicial district pursuant to California Code of Civil
14 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
15 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
16 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
17 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was and currently is, a California resident. During the one year immediately preceding
21 Plaintiff’s giving of the required notice under the PAGA, and within the statute of limitations
22 periods applicable to each cause of action pled herein, Plaintiff was (and currently is) employed
23 by Defendants as a non-exempt employee, and was and is, a victim of the Labor Code violations
24 complained of herein.

25 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and continue to do) business by selling commercial tires and providing
28 various commercial tire services, and employed Plaintiff and other aggrieved employees within

Los Angeles County and State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this action when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and other aggrieved employees.

REPRESENTATIVE ACTION ALLEGATIONS

9. Plaintiff, a current non-exempt employee of Defendants, began working for Defendants as a Tire Technician in approximately 2018.

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10. During Plaintiff's employment with Defendants, Plaintiff has received non-discretionary incentive pay, including commissions and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay") in the same pay period. Despite Defendant's payment of Incentive Pay to Plaintiff, Defendants failed to incorporate these payments into Plaintiff's "regular rate" of compensation for purposes of paying meal period premiums, thereby causing Plaintiff to be underpaid for his required meal period premium wages under Labor Code § 226.7(c) (requiring employers to pay meal period premiums of one hour of pay at the employee's "regular rate of compensation").

11. During Plaintiff's employment with Defendants, Defendants have also issued facially noncompliant wage statements to Plaintiff and other aggrieved employees because, among other things, the wage statements have failed to list the applicable hourly rates for "Commission OT" in effect during the pay period and the corresponding number of hours worked at the "Commission OT" rate, in violation of Labor Code Section 226(a)(9).

12. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein. For purposes of this Complaint, “aggrieved employees” refers to all of Defendants’ non-exempt employees in California from the one-year preceding Plaintiff’s providing notice under the PAGA to the LWDA through the present.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

13. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

14. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code §§ 2698 *et seq.*, and acting on behalf of himself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due

1 to Plaintiff and other aggrieved employees against whom one or more of the violations has been
2 committed, and the State of California according to proof, pursuant to Labor Code § 2699,
3 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
4 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
5 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
6 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
7 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
8 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
9 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
10 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
11 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
12 those violations of the Labor Code for which no civil penalty is specifically provided pursuant to
13 Labor Code § 2699(f), based on the following Labor Code violations:

- 14 a. Failing to provide all legally required meal periods, and failing to pay meal period
15 premium pay, to Plaintiff and other aggrieved employees at their regular rate of
16 compensation in violation of Labor Code §§ 226.7, 512, and 558;
- 17 b. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
18 itemized wage statements in violation of Labor Code § 226;
- 19 c. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
20 twice during each calendar month in violation of Labor Code § 204; and
- 21 d. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
22 employees in violation of Labor Code § 1174 and 1198.

23 15. On April 24, 2020, Plaintiff notified Defendant ATV, Inc. dba American Tire
24 Depot and Defendant American Tire Depot, Inc., via certified mail, and the California Labor and
25 Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the
26 California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under PAGA with
27 respect to violations of the California Labor Code identified in Paragraph 14 (a)-(d) above. Now
28 that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these

violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the
PAGA with respect to these violations.

16. Plaintiff was compelled to retain the services of counsel to file this court action to
protect his interests and the interests of other aggrieved employees, and to assess and collect the
civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
employees, and the State of California according to proof pursuant to Labor Code § 2699,
including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
\$250.00 for each initial violation of Labor Code § 266 and \$1,000.00 for each subsequent
violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
each initial violation and \$200.00 for each subsequent violation per employee per pay period for
those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
Labor Code § 2699(f);

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
2699(g) and Code of Civil Procedure § 1021.5; and

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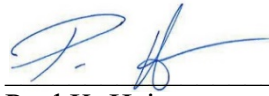
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3. For such other and further relief the Court may deem just and proper.

Dated: July 2, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff