

KENNETH S. GAINES, ESQ. SBN 049045
ken@gaineslawfirm.com
DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
SEPIDEH ARDESTANI, ESQ. SBN 274259
sepideh@gaineslawfirm.com
GAINES & GAINES, APLC
27200 Agoura Rd., Suite 101
Calabasas, CA 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Electronically Filed
7/29/2020 12:57 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Narely Garcia, Deputy

Attorneys for Plaintiff George Padilla, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

GEORGE PADILLA, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

SMITH CHEVROLET CO., INC. dba SMITH
COLLISION CENTER, a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CV-20-002683

*Assigned to the Hon. Sonny S. Sandhu, Dept.
24*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 512, 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

Complaint Filed: June 17, 2020

1 Plaintiff GEORGE PADILLA (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of SMITH
3 CHEVROLET CO., INC. dba SMITH COLLISION CENTER, a California corporation, and/or any
4 subsidiaries or affiliated companies (hereinafter referred to as “Defendant”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
8 Plaintiff and other California employees who currently work or formerly worked for Defendant
9 (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 et seq., and continuing to the present (the “liability period”), Defendant has had
13 consistent policies of:

14 a. Failing to pay premium wages to Plaintiff and non-exempt Aggrieved Employees
15 who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC
16 Wage Order 4-2001. Plaintiff and non-exempt Aggrieved Employees were routinely denied, and
17 not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift
18 worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period
19 for every shift worked that exceeded ten hours, but were not paid premium wages of one hour’s pay
20 for each missed first or second meal period. When they were able to take a meal period, they were
21 cut short, late, or on-duty, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order
22 4-2001.

23 b. Failing to pay premium wages to Plaintiff and other non-exempt Aggrieved
24 Employees who were denied rest periods, in violation of Labor Code §§ 226.7, 558 and IWC Wage
25 Order No. 4-2001. Plaintiff and non-exempt Aggrieved Employees were routinely unable to take a
26 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid
27 premium wages of one hour’s pay for each missed rest period. When they were able to take a rest
28

1 period, they were oftentimes late, cut short or on-duty, in violation of Labor Code §§ 226.7, 558 and
2 IWC Wage Order No. 4-2001.

3 c. Failing to reimburse all business-related expenses to Plaintiff and other Aggrieved
4 Employees, in violation of Labor Code § 2802. Plaintiff and Aggrieved Employees were required
5 to use their personal cellular phones and pay for tools to perform their work tasks for Defendant but
6 were not fully reimbursed by Defendant for these expenses. This practice violates Labor Code §
7 2802.

8 d. Failing to provide Plaintiff and all other non-exempt Aggrieved Employees with
9 wage statements that fully and accurately itemized the requirements set forth in Labor Code §
10 226(a). Plaintiff and other non-exempt Aggrieved Employees were not paid all premium wages
11 due, as stated above. As such, the wage statements provided by Defendant failed to accurately state
12 all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in
13 violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§
14 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
16 Code §§ 226(a)(9) and 226.3. Separately, the wage statements fail to list the overtime rate, in
17 violation of Labor Code §§ 226(a)(9) and 226.3.

18 e. Failing to pay Plaintiff and certain other Aggrieved Employees all wages due at the
19 separation of their employment based on the time frames required by Labor Code §§ 201 and 202.
20 As stated above, Plaintiff and other non-exempt Aggrieved Employees were not paid all premium
21 wages due during the course of their employment and, as a result of this failure, they were not
22 timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-
23 202.

24 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code
25 § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.
26
27
28

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants' herein arose in Stanislaus County, California.

II.

PARTIES

A. Plaintiff

5. Plaintiff GEORGE PADILLA was employed by Defendants from 2015 through November 2019 as a non-exempt employee in Stanislaus County, California.

B. Defendant

6. Defendant SMITH CHEVROLET CO, INC. dba SMITH COLLISION CENTER is a California corporation. Defendant employed Plaintiff and Aggrieved Employees throughout the State of California, including Stanislaus County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

///

///

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

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 512, 2802 AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 512, 2802; and
- b. Pursuant to Labor Code § 2699(f), the civil penalties as authorized by Labor Code §§ 226.3 and 558, excluding the recovery of any and all underpaid or unpaid wages. (ZB, N.A. v. Superior Court of San Diego County (Lawson) (2019) 8 Cal.5th 175 [“We agree with the Court of Appeal that section 558 has no private right of action. Nor can employees recover unpaid wages described in section 558 in a PAGA claim”].)

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On April 10, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-

1 five (65) calendar days of April 10, 2020. Plaintiff may therefore commence this action to seek
2 civil penalties pursuant to Labor Code § 2698 *et seq.*

3 Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as
4 described below.

5 **IV.**

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

8 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
9 Aggrieved Employees;

10 2. An award providing for payment of costs of suit pursuant to Labor Code §
11 2699(g)(1) and other applicable law;

12 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other
13 applicable law; and

14 4. Such other and further relief as this Court may deem just and proper.

15 Dated: July 29, 2020

Respectfully submitted,

17 GAINES & GAINES
A Professional Law Corporation

18
19 By: Daniel F. Gaines
20 DANIEL F. GAINES
21 SEPIDEH ARDESTANI
22 Attorneys for Plaintiff
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

_____ (For messenger) my business address is:

**Kevin Holloway, Esq.
Fine, Boggs & Perkins LLP
Landmark Square
111 West Ocean Blvd., Suite 2400
Long Beach, California 90802**

X (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY FACSIMILE TRANSMISSION) On July 29, 2020, at ____ a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

_____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on July 29, 2020, at Calabasas, California.

Beatriz Franco
BEATRIZ FRANCO