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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

AMELIA SALAS GURROLA, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

ELLIOTT AUTO SUPPLY CO., INC., a
Minnesota Corporation; and DOES 1 through
100,

Defendants.

Case No.: **37-2020-00020439-CU-OE-CTL**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Amelia Salas Gurrola (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, and the State of California, hereby brings this Representative Action Complaint
3 (“Complaint”) against Defendant Elliott Auto Supply Co., Inc., a Minnesota Corporation; and
4 DOES 1 to 100, inclusive (collectively, “Defendants”), and on information and belief allege as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself, all other aggrieved employees, and the State of
8 California, hereby brings this Complaint for recovery of civil penalties under the Private
9 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare
10 Commission Wage Order 7 (“Wage Order 7”) The monetary damages that Plaintiff seeks exceed
11 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 San Diego County. Defendants own, maintain offices, transact business, have an agent
16 or agents within San Diego County, and/or otherwise are found within San Diego County, and
17 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 employed by Defendants as
23 a non-exempt employee. Plaintiff is a victim of Defendants’ policies and/or practices complained
24 of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor
25 Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and
26 Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 7,
27 which sets employment standards for the mercantile industry, including wholesalers and
28 distributors.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
2 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the
3 present, Defendants did (and continue to do) business by distributing aftermarket products
4 including automotive parts, garden parts, marine parts, lawn and garden parts, and other products,
5 and employed Plaintiff and other, similarly-situated non-exempt employees within San Diego
6 County and the state of California and, therefore, were (and are) doing business in San Diego
7 County and the State of California.

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

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

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

25 8. At all relevant times, Defendants, and each of them, were members of and engaged
26 in a joint venture, partnership, and common enterprise, and acted within the course and scope of
27 and in pursuance of said joint venture, partnership, and common enterprise. Further, all
28 Defendants were joint employers for all purposes of Plaintiff and other aggrieved employees.

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10. During Plaintiff's employment with Defendants, Plaintiff worked in excess of 8.0 hours per workday and/or in excess of 40.0 hours per workweek, but did not receive overtime compensation at one and one-half times her regular rate of pay for working overtime hours. Specifically, Plaintiff received non-discretionary incentive pay, including safety bonuses and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (the aforementioned forms of pay are collectively referred to herein as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff, Defendants failed to properly calculate Plaintiff's "regular rate" of pay, thereby causing Plaintiff to be underpaid for her required overtime wages.

12. Plaintiff was not authorized and permitted to take all required and legally-compliant rest periods due to Defendants' rest period policies/practices. Specifically, Plaintiff was not always authorized and permitted to take all legally compliant rest periods of at least a net

ten minutes for each four hours worked or major fraction thereof, due to the nature of her work. Specifically, Plaintiff was often required to make numerous deliveries during a workday in a back-to-back fashion, and as a result had to work periods greater than 4 hours without a paid break of at least a net 10 minutes. On those occasions when Plaintiff was not provided with all legally-required and compliant rest periods to which she was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

13. During Plaintiff's employment, Plaintiff and other non-exempt employees were not provided all legally required meal periods due to Defendants' meal period policies/practices. Upon information and belief, Defendants often failed to provide a legally compliant meal period of at least 30-minutes commencing before the conclusion of the fifth hour of work as a result of the workload and pressure on Plaintiff and other non-exempt employees to get the job done. As a result, Plaintiff's meal periods were often late, short, or missed. In addition, on information and belief, Defendants falsely altered Plaintiff's time cards to indicate Plaintiff had clocked out for 30-minute meal periods commencing before the end of the fifth hour of work on some shifts. On those occasions Plaintiff was not provided with all legally-required meal periods to which she was entitled, Defendants failed to compensate Plaintiff the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

14. Throughout Plaintiff's employment with Defendants, Defendants failed to issue any wage statements whatsoever to Plaintiff in violation of Labor Code § 226. Moreover, as a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, the information provided on her wage statements, to the extent it was even available to Plaintiff, was inaccurate with respect to, *inter alia*, total wages earned, net wages earned, total hours worked, and hours worked at each hourly rate.

15. As a result of the aforementioned violations, Defendants also failed to timely pay Plaintiff and other non-exempt former employees all wages owed at the time of their respective separations from employment.

16. Based on the foregoing, Plaintiff seeks to represent herself 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)

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

18. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of the PAGA and acting on behalf of herself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other aggrieved employees against whom one or more of the violations has been committed, 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 § 226 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), based on the following Labor Code violations:

- a. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff, and other aggrieved employees at the time of separation of employment in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

19. On or about April 08, 2020, Plaintiff notified Defendant Elliot Auto Supply, Inc. via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under PAGA with respect to violations of the California Labor Code identified in Paragraph 18 (a)-(h) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the PAGA with respect to these violations.

20. Plaintiff was compelled to retain the services of counsel to file this court action to protect her 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 she is entitled to recover under California Labor Code § 2699(g).

P R A Y E R

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

21. 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 § 226 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);

22. 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

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

Dated: June 16, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:

Paul K. Haines
Attorneys for Plaintiff