

1 Timothy B. Del Castillo (SBN: 277296)

2 tdc@castleemploymentlaw.com

3 Kent L. Bradbury (SBN: 279402)

4 kb@castleemploymentlaw.com

5 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**

6 3200 Douglas Blvd., Suite 300

7 Roseville, CA 95661

8 Telephone: (916) 245-0122

FILED/ENDORSED

AUG 25 2020

By: L. Stewart
Deputy Clerk

9 Attorneys for Plaintiff JUNIOR GARCIA

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 JUNIOR GARCIA,

13 Plaintiff,

14 vs.

15 S.V.M. CORPORATION; DOES 1 to 20,
16 inclusive,

17 Defendants

Case No. 34-2020-00284788

COMPLAINT FOR DAMAGES:

1. **Civil Penalties Pursuant to Private
Attorney General Act, Labor
Code § 2698 et seq.**

1 Plaintiff JUNIOR GARCIA hereby files this Complaint against Defendant S.V.M.
2 CORPORATION; DOES 1 to 20, inclusive, (hereinafter collectively referred to as "Defendant").
3 Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004 ("PAGA"), California Labor Code section 2698, *et seq.* to recover civil penalties and any other
7 available relief on behalf of Plaintiff, the State of California, and other current and former employees
8 who worked for Defendants in California and who suffered at least one violation of the Labor Code
9 as set forth in this complaint, at any time between June 9, 2019 and judgement.

10 2. Plaintiff JUNIOR GARCIA is over the age of eighteen (18) and is a resident of the State
11 of California and a former employee of Defendant.

12 3. Plaintiff is informed and believes, and thereupon alleges, that Defendant S.V.M.
13 CORPORATION is now and/or at all times mentioned in this Complaint a California corporation
14 and the owner and operator of an industry, business and/or facility licensed to do business and
15 actually doing business in the State of California. Defendant owns and operates the automobile
16 dealership Maita Honda.

17 4. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
18 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
19 venturer of the remaining defendants and was acting within the course and scope of that relationship.
20 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
21 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
22 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
23 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
24 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
25 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
26 when they have been determined.
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5. The Sacramento County Superior Court has jurisdiction in this matter under the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

6. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of the wrongful acts and violations of law asserted herein occurred within Sacramento County.

7. On June 9, 2020, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). The LWDA did not respond to Plaintiff’s PAGA notice within 65 days, thus deputizing Plaintiff to represent himself, other aggrieved employees, and the California Labor Commissioner for the purpose of collecting civil penalties for violations of the California Labor Code committed by Defendants.

BACKGROUND

8. Plaintiff and similarly situated employees worked for Defendant as non-exempt employees in California. Plaintiff worked as both a lube tech and as an apprentice mechanic. Defendant and similarly situated employees were paid on hourly basis.

9. During his employment, Plaintiff, and other aggrieved employees, were made to suffer numerous violations of the California Labor Code.

10. Defendant did not allow Plaintiff and similarly situated employees to take their statutorily required meal and rest periods. Defendant failed to provide Plaintiff and other similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour of work as required under the law.

11. Plaintiff and similarly situated employees regularly missed their meal and rest periods and/ or they were provided late. Defendant also failed to provide rest periods to Plaintiff and similarly situated employees for every 4 hours worked or major fraction thereof. Defendant's management staff were aware this was occurring and did not ensure meal and/ or rest periods were provided to Plaintiff and similarly situated employees in compliance with California law.

1 12. In addition, Defendant's policies and procedures were not compliant with California law
2 in the provision of meal and rest periods. Among other things, Defendant's policy was to presume a
3 meal period was provided and would deduct that time from Plaintiff and similarly situated
4 employees' timecard even if they had to work through the meal period.

5 13. Additionally, Plaintiff and similarly situated employees worked four shifts of ten hours
6 each per workweek, without overtime pay. Defendant failed to properly implement a valid
7 alternative workweek schedule according to the requirements of the applicable wage order.

8 14. Moreover, Defendant maintained a policy under which it refused to pay overtime pay,
9 even if it suffered and permitted an employee to work overtime, if the employee did not receive
10 certain approvals. Thus, Defendant failed to pay Plaintiff and similarly situated employees all
11 overtime wages due to them.

12 15. Based on the failure to pay all overtime and minimum wages due, Defendant also failed
13 to provide accurate itemized wage statements to Plaintiff and similarly situated employees.
14 Defendant also failed to pay Plaintiff and similarly situated employees all of their final wages timely.

15 16. Plaintiff is informed and believes that Defendant committed numerous other violations of
16 the California Labor Code, including but not limited to those identified in this letter. Pursuant to
17 *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513
18 (2018), Plaintiff intends to seek civil penalties for all violations of the California Labor Code,
19 whether she experienced them personally or not.

20 17. Upon information and belief, all transactions regarding hiring, terminations, promotions,
21 pay increases, etc. relating to Defendant's California employees were submitted to and processed by
22 Defendant's HR department in its corporate headquarters. Additionally, on information and belief,
23 Defendant's corporate records, in particular HR and pay records pertaining to Defendant's California
24 employees, are also maintained at Defendant's corporate headquarters.

25 18. Upon information and belief, Defendant maintains a central Payroll department at its
26 corporate headquarters which processes payroll for all Defendant's employees, including Plaintiff
27 and similarly situated, aggrieved employees.
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1 19. At all times herein set forth, PAGA provides that any provision of law under the Labor
2 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
3 by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as
4 an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
5 themselves and other current or former employees pursuant to procedures outlined in California
6 Labor Code section 2699.3.

7 20. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who
8 was employed by the alleged violator and against whom one or more of the alleged violations was
9 committed.”

10 21. Plaintiff and all other current and former non-exempt employees of Defendant are
11 aggrieved employees as defined by the Labor Code in that they are all Defendant’s current or former
12 employees and one or more of the alleged violations was committed against them.

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14 **FIRST CAUSE OF ACTION**
15 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

16 22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully
17 set forth herein.

18 23. Plaintiff brings this cause of action as a proxy for the State of California and in this
19 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant’s violations of the
20 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
21 violations identified above.

22 24. On or about June 9, 2020, Plaintiff, through counsel, sent written notice to the LWDA
23 regarding Defendant’s violations of the California Labor Code, pursuant to Labor Code section
24 2698, *et seq.*, PAGA. Plaintiff’s counsel also filed and served an Amended PAGA Notice on June
25 25, 2020. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff
26 whether the LWDA intends to investigate Plaintiff’s PAGA claims. As such, Plaintiff has exhausted
27 his administrative remedies under PAGA and may proceed in this Court.
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1 25. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
2 all aggrieved employees for all violations of the Labor Code from June 9, 2019, through trial on this
3 matter.

4 26. Defendants' conduct, as alleged herein, violated various sections of the California labor
5 Code, including but not limited to, the following:

6 27. Labor Code sections 201–203 require that all wages, including minimum wages and meal
7 and rest period premiums, be paid to employees upon separation and/or termination of employment.
8 Here, for the reasons stated above, Defendants' employees did not receive all final wages due and
9 owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor
10 Code sections 201–203. This is in violation of the Labor Code.

11 28. Labor Code section 1174(d) requires employers to keep “payroll records showing the
12 hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
13 accordance with rules established for this purpose by the commission, but in any case shall be kept
14 on file for not less than three years.” Defendants did not keep accurate information regarding all
15 hours worked by Plaintiff and similarly situated employees, largely by failing to accurately record all
16 time worked on their time records. This is in violation of the Labor Code.

17 29. Labor Code section 226 requires employers to furnish to employees with “an accurate
18 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
19 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
21 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
22 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
23 only the last four digits of his or her social security number or an employee identification number
24 other than a social security number, (8) the name and address of the legal entity that is the employer .
25 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
26 of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants
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1 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
2 violation of the Labor Code.

3 30. Labor Code sections 510 and 1194 require employers to pay employees overtime for any
4 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any
5 one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
6 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
7 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
8 hours on the seventh day of work in any one workweek. As stated above, Plaintiff and similarly
9 situated employees worked over eight (8) hours per day and forty (40) hours per week and were not
10 paid overtime wages. This is in violation of the Labor Code.

11 31. During the period Plaintiff and similarly situated employees were employed by
12 Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that
13 they worked. *See, e.g.*, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001,
14 section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay
15 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
16 Plaintiff and similarly situated employees were not paid at least the applicable state minimum wage
17 for all hours worked in violation of the Labor Code. This is in violation of the Labor Code.

18 32. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
19 employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For
20 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
21 permitted to take legally compliant meal periods pursuant to California law. Defendants also failed
22 to pay any meal period premiums for its failure to provide meal periods. This is in violation of the
23 Labor Code.

24 33. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require
25 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
26 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
27 employees were not authorized and permitted to take legally compliant rest periods pursuant to
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1 California law in violation of the Labor Code. Defendants also failed to pay any rest period
2 premiums for their failure to provide rest periods. This is in violation of the Labor Code.

3 34. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
4 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
5 aggrieved employees for all violations of the California Labor Code, whether he experienced them
6 personally or not.

7 **DAMAGES**

8 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 9 1. For civil penalties under the California Labor Code according to proof allowed by law;
10 2. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
11 fees;
12 3. For injunctive relief;
13 4. For an award of prejudgment and post-judgment interest; and
14 5. For an award to Plaintiff of such other and further relief as the Court deems just and
15 proper.
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17 Dated: August 25, 2020

Castle Law: California Employment Counsel, PC

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19 By: 

20 Timothy B. Del Castillo

21 Kent L. Bradbury

22 Attorneys for Plaintiff

23 JUNIOR GARCIA
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