

1 DAVID G. SPIVAK (SBN 179684)  
2 [david@spivaklaw.com](mailto:david@spivaklaw.com)  
3 CAROLINE TAHMASSIAN (SBN 285680)  
4 [caroline@spivaklaw.com](mailto:caroline@spivaklaw.com)  
5 THE SPIVAK LAW FIRM  
6 16530 Ventura Blvd, Suite 203  
7 Encino, CA 91436  
8 Telephone (818) 582-3086  
9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,  
11 WILLIAM D. O'GRADY, and all others similarly situated  
12 (Additional Counsel for Plaintiff and Defendants on Following Page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF SAN DIEGO**  
15 **(UNLIMITED JURISDICTION)**

16 WILLIAM D. O'GRADY, on behalf of  
17 himself, and all others similarly situated,

18 *Plaintiff(s),*

19 vs.

20 TEAM CAR CARE, LLC, a Delaware limited  
21 liability company; TEAM CAR CARE WEST,  
22 LLC, a Delaware limited liability company;  
23 HEARTLAND AUTOMOTIVE SERVICES,  
24 INC., a Minnesota corporation; HEARTLAND  
25 AUTOMOTIVE SERVICES II, INC., a  
26 Delaware corporation; HEARTLAND  
27 AUTOMOTIVE SERVICES, an entity of  
28 unknown form; and DOES 1 through 50,  
inclusive,

*Defendant(s).*

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**12/09/2020** at 04:34:00 PM

Clerk of the Superior Court  
By Marc David, Deputy Clerk

Case No.: 37-2020-00035860-CU-OE-CTL

**FIRST AMENDED COMPLAINT FOR  
VIOLATIONS OF THE LABOR CODE  
AND CIVIL PENALTIES UNDER THE  
LABOR CODE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004, LABOR  
CODE §§ 2698, ET SEQ.**



**ADDITIONAL ATTORNEY FOR PLAINTIFF**

WALTER HAINES (SBN 71075)  
whaines@uelglaw.com  
UNITED EMPLOYEES LAW GROUP  
5500 Bolsa Ave, Suite 201  
Huntington Beach, CA 92649  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006



1 Plaintiff WILLIAM D. O'GRADY (hereafter "Plaintiff"), on behalf of himself, the State  
2 of California, and other Aggrieved Employees, complains and alleges as follows:

### 3 **INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the  
5 California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage  
6 Order") and the Business and Professions Code against defendants TEAM CAR CARE, LLC,  
7 TEAM CAR CARE WEST, LLC, HEARTLAND AUTOMOTIVE SERVICES, INC.,  
8 HEARTLAND AUTOMOTIVE SERVICES II, INC., HEARTLAND AUTOMOTIVE  
SERVICES, and Does 1-50, inclusive (collectively "Defendants").

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
10 him, the State of California, and aggrieved current and former employees who worked in  
11 California as non-exempt, hourly employees for unpaid wages and other related relief. These  
12 claims are based on Defendants' alleged failures to (1) provide all rest and meal periods, (2) pay  
13 all wages earned for all hours worked, (3) indemnify for all business expenses, (4) fairly compete,  
14 (5) provide accurate written wage statements, and (6) timely pay final wages upon termination of  
15 employment. Accordingly, Plaintiff now seeks civil penalties and related relief through this  
representative action.

### 16 **PARTIES**

17 3. Defendants first hired Plaintiff in or about August of 2016 to work in California  
18 as a non-exempt, hourly assistant general manager. Three months later, Defendants promoted  
19 Plaintiff to a non-exempt, hourly store manager position. During his employment with  
20 Defendants, Plaintiff worked in several of Defendants' stores, including those located in San  
21 Diego, El Cajon, and Encinitas. Plaintiff resigned from his employment with Defendants in  
22 November of 2019. At all relevant times, Plaintiff was an "employee" within the meaning of Title  
23 8 California Code of Regulations Section 11070 and an "aggrieved employee" within the meaning  
of Labor Code Section 2699(c).

24 4. Plaintiff resides in El Cajon, California.

25 5. Defendant TEAM CAR CARE, LLC is a limited liability company organized  
26 under the laws of Delaware and also a citizen of California based on Plaintiff's information and  
27 belief.

28 6. Defendant TEAM CAR CARE WEST, LLC is a limited liability company



1 organized under the laws of Delaware and also a citizen of California based on Plaintiff's  
2 information and belief.

3 7. Defendant HEARTLAND AUTOMOTIVE SERVICES, INC. is a corporation  
4 organized under the laws of Minnesota and also a citizen of California based on Plaintiff's  
5 information and belief.

6 8. Defendant HEARTLAND AUTOMOTIVE SERVICES II, INC. is a corporation  
7 organized under the laws of Delaware and also a citizen of California based on Plaintiff's  
8 information and belief.

9 9. Defendant HEARTLAND AUTOMOTIVE SERVICES is an entity of unknown  
10 form and also a citizen of California based on Plaintiff's information and belief.

11 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
12 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but  
13 is informed and believes and thereon alleges that said defendants are legally responsible for the  
14 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.  
15 Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants  
16 when ascertained.

17 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
18 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
19 remaining defendants, and in doing the things hereinafter alleged, were acting within the course  
20 and scope of such agency or employment, and with the approval and ratification of each of the  
21 other Defendants.

22 12. At all relevant times, in perpetrating the acts and omissions alleged herein,  
23 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack  
24 of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved Employees in  
25 accordance with applicable California labor laws as alleged herein.

26 13. Plaintiff is informed and believes and thereon alleges that each and every one of  
27 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,  
28 each acting as agents and/or employees, and/or under the direction and control of each of the other  
defendants, and that said acts and failures to act were within the course and scope of said agency,  
employment and/or direction and control.

**THE AGGRIEVED EMPLOYEES**



14. The “Aggrieved Employees” are all individuals Defendants employed in California as non-exempt, hourly employees, including non-exempt, hourly assistant general managers and store managers, and persons in other comparable positions, at any time during the period beginning on September 24, 2019 and ending on the date that final judgment is entered in this action.

**FIRST (AND ONLY) CAUSE OF ACTION**

**CIVIL PENALTIES**

**(Lab. Code §§ 2698, *et seq.*)**

**(By Plaintiff, on behalf of himself and the other Aggrieved Employees,  
against all Defendants)**

15. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16. At all relevant times during the applicable limitations period, Plaintiff and the Aggrieved Employees have been employees of Defendants and entitled to the benefits and protections of California Labor Code and the Wage Order.

**A. FAILURE TO PROVIDE REST BREAKS**

17. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

18. In relevant part, Section 12 of the Wage Order states:  
Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the



employee's regular rate of compensation for each work day that the rest period is not provided.

19. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

20. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

21. Due to their workload, Defendants failed to provide Plaintiff and the Aggrieved Employees with all of the required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all rest breaks required by California law, including but not limited, to the third rest breaks when Plaintiff and the Aggrieved Employees worked more than 10 hours in a workday. Further, Defendants often scheduled only one store manager, assistant manager, or assistant general manager (the "key holders") for each shift which often prevented them from leaving the stores during their rest breaks.

22. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all rest breaks not provided to them as required



by California Labor Code § 226.7.

**B. FAILURE TO PROVIDE MEAL PERIODS**

23. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

24. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

25. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.

...

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the



employee's regular rate of compensation for each workday that the meal period is not provided.

26. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512 and the Wage Order, they were also entitled to a second 30-minute meal period when they worked more than ten (10) hours in a workday.

27. During the relevant time period, Defendants failed to provide Plaintiff and the Aggrieved Employees with timely first meal periods in accordance with California Labor Code § 512 and the Wage Order. Due to their workload, Defendants often provided Plaintiff and the Aggrieved Employees with a meal period after they had already worked more than five (5) hours in a workday. Defendants often scheduled only one store manager, assistant manager, or assistant general manager (the "key holders") for each shift which often prevented them from leaving the stores during their meal periods. Due to their workload, Plaintiff and the Aggrieved Employees also had to clock out for their meal periods and continue working off the clock. Defendants also failed to provide a second meal period to Plaintiff and the Aggrieved Employees when they worked more than 10 hours in a workday.

28. Defendants instructed the store managers to edit and falsify the Aggrieved Employees' time records to show that they took duty-free meal periods before the end of the fifth hour worked. Defendants also authorized their district managers to edit the store managers' time records to show they received timely meal periods. Defendants, on many occasions, reminded Plaintiff and the other store managers to "clean up" the time records "on a daily basis" to make sure meal period violations were not evident the time records. Defendants failed to pay premium wages for all days on which they failed to provide Plaintiff and the Aggrieved Employees with all their timely and uninterrupted meal periods. Defendants paid premium wages only for days that meal period violations were not "cleaned up" by the management.

29. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the Aggrieved Employees with all timely meal periods required by California Labor Code § 512 and the Wage Order.

30. Defendants failed to pay Plaintiff the additional wages required by California



1 Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes  
2 and thereon alleges that, at relevant times within the applicable limitations period, Defendants  
3 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not  
4 providing the Aggrieved Employees with additional wages for all meal periods not provided to  
5 them as required by California Labor Code § 226.7.

6 **C. FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED**  
7 **AT**

8 31. Section 2 of the applicable Wage Order defines “hours worked” as “the time  
9 during which an employee is subject to the control of an employer, and includes all the time the  
10 employee is suffered or permitted to work, whether or not required to do so.”

11 32. Section 4 of the applicable Wage Order requires an employer to pay non-exempt  
12 employees at least the minimum wage set forth therein for all hours worked, which consist of all  
13 hours that an employer has actual or constructive knowledge that employees are working.

14 33. Labor Code § 1194 invalidates any agreement between an employer and an  
15 employee to work for less than the minimum or overtime wages required under the applicable  
16 Wage Order.

17 34. Labor Code § 1197 makes it unlawful for an employer to pay an employee less  
18 than the minimum wage required under the applicable Wage Order for all hours worked during a  
19 payroll period.

20 35. Labor Code § 1198 makes it unlawful for an employer to employ an employee  
21 under conditions that violate the Wage Order.

22 46. In relevant part, Section 3 of the Wage Order states,

23 (A) Daily Overtime - General Provisions

24 (1) The following overtime provisions are applicable to  
25 employees 18 years of age or over and to employees 16 or  
26 17 years of age who are not required by law to attend school and  
27 are not otherwise prohibited by law from engaging in the subject  
28 work. Such employees shall not be employed more than eight  
(8) hours in any workday or more than 40 hours in any  
workweek unless the employee receives one and one-half (1 ½)  
times such employee’s regular rate of pay for all hours worked  
over 40 hours in the workweek. Eight (8) hours of labor  
constitutes a day’s work. Employment beyond eight (8) hours  
in any workday or more than six (6) days in any workweek is



permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

36. In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

37. At all relevant times, Defendants issued Plaintiff and the Aggrieved Employees their wages on a biweekly basis. Defendants compensated Plaintiff and the Aggrieved Employees with an hourly rate of pay.

38. As described above, Defendants required Plaintiff and the Aggrieved Employees to clock out for meal periods even if they were not able to take an uninterrupted, duty-free meal period and failed to compensate them for the work they performed during their clocked-out meal periods. Further, the district managers often contacted Plaintiff and the other store managers on their cellphones on days that they were not scheduled to work and knowingly and intentionally required them to respond to their calls, emails, and text messages off the clock.

39. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all travel time. Defendants required their hourly store managers to attend quarterly meetings. Defendants often scheduled these meetings at a location different from the stores Plaintiff and the Aggrieved Employees were assigned to. These meetings were often eight (8) to 15 miles from Plaintiff and the Aggrieved Employees' assigned stores. Defendants scheduled these meetings to take place in the morning and before Plaintiff and the Aggrieved Employees' scheduled shifts or on their days off. Defendants, however, required Plaintiff and the Aggrieved Employees to travel to these quarterly meetings off the clock and failed to compensate them for such travel time.



1 40. Additionally, Defendants consistently failed to include all applicable forms of  
2 remuneration in calculating the regular rates of pay for Plaintiff and the Aggrieved Employees,  
3 including non-discretionary bonuses. As a result, Defendants failed to pay Plaintiff and the  
4 Aggrieved Employees all wages earned, including all overtime wages at the legal rates of pay.

5 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
6 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'  
7 failure to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct  
8 rates of pay.

9 **D. FAILURE TO INDEMNIFY**

10 42. In pertinent part, California Labor Code § 2802(a) states, "An employer shall  
11 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct  
12 consequence of the discharge of his or her duties."

13 43. At all relevant times during the applicable limitations period, Defendants required  
14 Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of  
15 performing their duties, including mileage expenses and use of a personal mobile telephone.  
16 Defendants required their store managers, assistant managers, or assistant general managers to  
17 use their personal vehicles to travel to banks to make deposits or travel to other Jiffy Lube service  
18 centers or stores such as AutoZone to pick up or purchase products or to perform services.  
19 Defendants also required Plaintiff and their other store managers to use their personal vehicles to  
20 travel for their quarterly meetings. Defendants, however, failed to reimburse them for mileage  
21 expenses that they incurred. Defendants also required Plaintiff and the Aggrieved Employees to  
22 use their personal mobile telephone to communicate with their supervisors, customers, and  
23 management for Defendants. Defendants, however, failed to reimburse them for such expenses.

24 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
25 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'  
26 failure to indemnify the Aggrieved Employees for the reasonable expenses they incurred in the  
27 course of performing their duties.

28 **E. FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

45. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved  
Employees were entitled to receive, semimonthly or at the time of each payment of wages, an  
accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable



hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

46. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

47. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

48. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

49. As alleged herein, Defendants have failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees and other requirements of California Labor Code § 226. Further, Defendants failed to state the earned meal and rest period premium wages and their



business expenses on Plaintiff and the Aggrieved Employees' itemized written wage statements. As a result, Defendants have violated California Labor Code § 226.

50. Defendants' failure to provide Plaintiff and the Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

51. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

**F. UNTIMELY FINAL WAGES**

52. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

53. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

54. By failing to pay earned minimum, overtime, and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202. Defendants failed to timely pay Plaintiff and the Aggrieved Employees their final wages. On November 12, 2019, Plaintiff notified Defendants of his resignation and that his last day worked would be November 26, 2019. Defendants, however, paid Plaintiff his final wages on December 12, 2019, approximately 16 days after his last day worked.

55. Labor Code § 203 provides that the wages of an employee continue on a daily



1 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and  
2 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

3 56. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff  
4 and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at  
5 all relevant times, Defendants have deliberately maintained policies and practices that violate the  
6 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have  
7 had the ability to comply with those legal requirements.

8 **G. UNTIMELY WAGES DURING EMPLOYMENT**

9 57. Labor Code § 204 states

10 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,  
11 or 204.2, earned by any person in any employment are due and payable twice  
12 during each calendar month, on days designated in advance by the employer as the  
13 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any  
14 calendar month shall be paid for between the 16th and the 26th day of the month  
15 during which the labor was performed, and labor performed between the 16th and  
16 the last day, inclusive, of any calendar month, shall be paid for between the 1st  
17 and 10th day of the following month. ...

18 (b) (1) Notwithstanding any other provision of this section, all wages  
19 earned for labor in excess of the normal work period shall be paid no later than the  
20 payday for the next regular payroll period.

21 (2) An employer is in compliance with the requirements of subdivision (a) of  
22 Section 226 relating to total hours worked by the employee, if hours worked in  
23 excess of the normal work period during the current pay period are itemized as  
24 corrections on the paystub for the next regular pay period. Any corrections set out  
25 in a subsequently issued paystub shall state the inclusive dates of the pay period  
26 for which the employer is correcting its initial report of hours worked.

27 (c) However, when employees are covered by a collective bargaining  
28 agreement that provides different pay arrangements, those arrangements shall  
apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment  
of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not  
more than seven calendar days following the close of the payroll period.

58. Defendants paid wages to employees on regular intervals. Defendants, however,  
failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information  
and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such



intervals for all wages earned and all hours worked.

**H. CIVIL PENALTIES SOUGHT**

59. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

60. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

61. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent violations (penalties set by Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay



period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

**I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

62. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 24, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s written notices to the LWDA dated September 24, 2020 is attached as **Exhibit A**. The LWDA has failed to take action in response, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

63. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees, and costs in connection with their claims for civil penalties.

**PRAYER FOR RELIEF**

64. WHEREFORE, Plaintiff, on behalf of himself, the State of California, and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorney’s fees; and
- D. Such other relief as the Court deems just and proper.

65. For clarity, any reference above to liabilities other than PAGA civil penalties is made only to establish liability for PAGA civil penalties. Plaintiff stipulates that this lawsuit seeks only recovery of PAGA civil penalties for Plaintiff, the State of California, and the Aggrieved Employees, costs of suit, and reasonable attorneys’ fees.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 9, 2020

By   
DAVID SPIVAK, Attorney for Plaintiff,  
WILLIAM D. O’GRADY



1 PROOF OF SERVICE

2  
3 State of California,  
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County  
6 of Los Angeles, State of California. I am over the age of 18 years, and not a  
party to the within action. My business address is 16530 Ventura Blvd., Suite  
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for  
8 collection and processing of correspondence for mailing with the United  
9 States Postal Service. It is the practice that correspondence is deposited  
with the United States Postal Service the same day it is submitted for  
mailing.

10 On Wednesday, December 09, 2020, I served the foregoing documents  
11 described as **FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND  
12 CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004,  
13 LABOR CODE §§ 2698, ET SEQ.** on interested parties, addressed as follows:

14 Ernest W. Klatte, III, Esq.  
15 Summer Young-Agriesti, Esq.  
16 Ana Thomas, Esq.  
17 Klatte, Budensiek & Young-Agriesti, LLP  
1111A Quail St.  
Newport Beach, CA 92660  
[ewklatte@kbylaw.com](mailto:ewklatte@kbylaw.com)  
[syoung@kbylaw.com](mailto:syoung@kbylaw.com)  
[athomas@kbylaw.com](mailto:athomas@kbylaw.com)

18 XXXX (BY EMAIL) Based on a court order or an agreement of the parties to  
19 accept electronic service, I caused the documents to be sent to the persons  
20 at the electronic service addresses listed above from my electronic service  
address [shant@spivaklaw.com](mailto:shant@spivaklaw.com).

21 EXECUTED on Wednesday, December 09, 2020, at Pasadena, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State  
23 of California that the above is true and correct.

24 \_\_\_\_ (Federal) I declare that I am employed in the office of a member of the  
bar of this court at whose direction the service was made.

25 

26 SHANT JALTOROSSIAN  
27  
28