

EL DORADO CO. SUPERIOR CT.

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12 as Private Attorney General

13 **SUPERIOR COURT OF CALIFORNIA**

14 **FOR THE COUNTY OF EL DORADO**

15 AMANDA ARTERO, as an aggrieved
16 employee pursuant to the Private
17 Attorneys General Act (PAGA),

18 Plaintiff,

19 vs.

20
21 SHINGLE SPRINGS IMPORTS, INC., a
22 California Corporation; DAVID
23 WARDLAW, an individual; GARY
24 WARDLAW, an individual; DOES 1 to
25 20, inclusive,

26 Defendants

Case No. PC20210054

FIRST AMENDED COMPLAINT

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

BY FAX

N-Court Fax Filing

1 Plaintiff AMANDA ARTERO hereby files this Complaint against Defendants SHINGLE
2 SPRINGS IMPORTS, INC., a California Corporation; DAVID WARDLAW, an individual;
3 GARY WARDLAW, an individual; and DOES 1 to 20, inclusive, (hereinafter collectively
4 referred to as "Defendants"). Plaintiff alleges the following:

5 **PARTIES AND JURISDICTION**

6 1. AMANDA ARTERO ("Plaintiff") was an employee of Defendants, where she worked as
7 a Salesperson in El Dorado County.

8 2. Plaintiff is informed and believes, and thereon alleges, that Defendant SHINGLE
9 SPRINGS IMPORTS, INC. is a California Corporation with its principal place of business in El
10 Dorado County, California, and that it is engaged in the business of transportation.

11 3. Plaintiff is further informed and believes, and thereon allege, that Defendant DAVID
12 WARDLAW is an owner and/or operator of Defendant SHINGLE SPRINGS IMPORTS, INC. and
13 can be found personally liable for wage and hour violations pursuant to Labor Code section 558.1.

14 4. Plaintiff is further informed and believes, and thereon allege, that Defendant GARY
15 WARDLAW is an owner and/or operator of Defendant SHINGLE SPRINGS IMPORTS, INC. and
16 can be found personally liable for wage and hour violations pursuant to Labor Code section 558.1.

17 5. 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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6. The El Dorado County Superior Court has jurisdiction in this matter due to alleged violations of California Labor Code §§ 201, 203, 226, 226.7, 510, 512, 1194, 2802, 2698 *et seq.*, Business and Professions Code § 17200 *et seq.*, and the applicable Wage Order.

7. 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 El Dorado County.

8. On November 24, 2020, Plaintiff filed her Labor Code § 2699.3 Private Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”), which was served on Defendants in accordance with the requirements of the statute. *See Exhibit A.* The LWDA did not respond within 65 days of filing of the PAGA notice, nor did Defendants attempt any cure, thus Plaintiff has been deputized by the State of California for the purposes of collecting civil penalties for all violations of the California Labor Code that occurred in the relevant time period.

BACKGROUND

9. Plaintiff has been employed at SHINGLE SPRINGS IMPORTS, INC. (DBA Shingle Springs Honda) since 2007, working in various positions including her current position of Sales Manager. Plaintiff and similarly situated employees worked for Defendants as sales employees in California. Plaintiff and similarly situated employees were paid on salary plus commission basis.

10. Plaintiff and similarly situated employees were not paid for all hours worked, apparently because Defendants believed they were exempt from the applicable wage order. However, Plaintiff and similarly situated employees could not have been classified as exempt under the administrative, executive, or professional exemption because they were not paid the minimum guaranteed base salary to qualify for any of those exemptions. Plaintiff and similarly situated employees could not qualify for the inside sale exemption because they were only paid commissions (or bonuses) based on sales on a *monthly* basis and their base wage was not at least 1.5 the state minimum wage for every hour worked. By way of example only, in the pay period of July 16, 2020 to July 31, 2020, Plaintiff worked 97.71 total hours, but was paid only \$1,850 in base wages for that pay period, for an

1 effective hourly rate of \$18.93 (which is less than 1.5 times the applicable minimum wage of \$13.00
2 (\$19.50)).

3 11. Plaintiff and similarly situated employees were not paid overtime for all hours over 8 in a
4 day and over 40 in a week. Defendants also failed to include all non-discretionary forms of
5 remuneration, such as commissions and bonuses in the regular rate of pay when they did (or should
6 have) paid overtime wages. Plaintiff has also never provided with any documentation or proof of
7 her commission wages and has been left largely in the dark concerning how Defendants calculated
8 her commission pay.

9 12. Although Defendants kept time records for Plaintiff and similarly situated employees,
10 they did not accurately record all time worked because Plaintiff and similarly situated employees
11 would be required to work from home by responding to phone calls and text messages. Plaintiff and
12 similarly situated employees were also not paid for all hours worked because they were only paid a
13 base salary plus commission, but did not always qualify for an exemption, thus Defendants failed to
14 pay at least minimum wages for all time worked.

15 13. Defendants also failed to provide Plaintiff and similarly situated employees with all meal
16 breaks, which is reflected in the time records of Plaintiff and similarly situated employees. But
17 Defendants never paid a meal break penalty, and even if it had, it would still be a violation of the
18 California Labor Code.

19 14. Additionally, Plaintiff and similarly situated employees were not provided with the
20 opportunity to take all rest breaks as provided for by law.

21 15. Even if Plaintiff and similarly situated employees had been properly classified as inside
22 salespersons, which they were not, they were still entitled to meal and rest breaks and were not
23 provided with them.

24 16. As result of these violations, Defendants also regularly failed to timely pay the final pay
25 of employees who were terminated or who resigned.

26 17. Additionally, Plaintiff and similarly situated employees were required to use their
27 personal cell phones for business reasons but were never reimbursed. In fact, Plaintiff complained
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1 about this at one point and was told that she would not be reimbursed but should "write it off" as a
2 business expense herself. This is a violation of the Labor Code.

3 18. not paid.").

4 19. Plaintiff and similarly situated employees were not exempt from the State's Wage Orders
5 as an employee.

6 20. In addition, California Labor Code section 558.1, subsection (a), provides that "Any
7 employer or other person acting on behalf of an employer, who violates, or cause to be violated, any
8 provision regulating minimum wages or hours and days of work in any order of the Industrial
9 Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
10 2802, may be held liable as the employer for such violation."

11 21. California Labor Code section 558.1, subsection (b), further provides that the term "other
12 person acting on behalf of any employer" means "a natural person who is an owner, director, officer,
13 or managing agent of the employer."

14 22. Provisions regulating minimum wages or hours and days of work in any order of the
15 Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor Code
16 section 1194 have been violated by, or were caused to be violated by, Defendants GARY
17 WARDLAW and DAVID WARDLAW. Plaintiff is informed and thereon believes that Defendants
18 GARY WARDLAW and DAVID WARDLAW were persons acting on behalf of Defendants,
19 including as an owners, officers, directors, and/ or managing agents of Defendants, within the
20 meaning of California Labor Code section 558.1. Therefore, Defendants GARY WARDLAW and
21 DAVID WARDLAW may be held liable as the employer for the violations of provisions regulating
22 minimum wages or hours and days of work in any order of the Industrial Welfare Commission,
23 including IWC Wage Order No. 16-2001, and California Labor Code section 1194.

24 23. Defendants' conduct described herein violates multiple provisions of the California Labor
25 Code and Wage Orders as described in Plaintiff's PAGA letter. As a proximate result of
26 Defendants' conduct, Plaintiff and other aggrieved employees have been damaged and deprived of
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1 minimum wages, in an amount to be established at trial. Plaintiff now seeks civil penalties and
2 attorney's fees and costs pursuant to PAGA.

3
4 **FIRST CAUSE OF ACTION**
CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.
5 **(As to All Defendants)**

6 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
7 set forth herein.

8 25. Plaintiff brings this cause of action as a proxy for the State of California, and in this
9 capacity, seeks civil penalties on behalf of all Aggrieved Employees for Defendants' violations of
10 the California Labor Code, including but not necessarily limited to, those Labor Code violations
11 identified above.

12 26. On or about November 24, 2020, Plaintiff sent written notice to the LWDA regarding
13 Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
14 PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether
15 the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted her
16 administrative remedies under PAGA and may proceed in this Court.

17 27. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
18 all Aggrieved Employees for all violations of the Labor Code from November 24, 2018, through trial
19 on this matter.

20 **DAMAGES**

21 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 22 1. For civil penalties under the California Labor Code according to proof allowed by law;
23 2. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
24 fees;
25 3. For an award of prejudgment and post-judgment interest; and
26 4. For an award to Plaintiff of such other and further relief as the Court deems just and
27 proper pursuant to the PAGA.
28

1 Dated: April 21, 2021

Castle Law: California Employment Counsel, PC

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4 By: _____



Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff
AMANDA ARTERO