

SUMMONS on First Amended Complaint (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: CUMMINGS VACUUM SERVICE, INC., a
(**AVISO AL DEMANDADO**): California corporation, UNIVERSAL
STAFFING SOLUTIONS, INC., a California corporation, and
DOES 1 through 10, inclusive

ELECTRONICALLY FILED
5/7/2021
Kern County Superior Court
By Vanesa Jackson, Deputy

YOU ARE BEING SUED BY PLAINTIFF: JASON MCLELLAND, on behalf
(**LO ESTÁ DEMANDANDO EL DEMANDANTE**): of himself and all
"aggrieved employees" pursuant to Labor Code § 2698 et
seq.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Kern
1415 Truxtun Avenue
Bakersfield, California 93301

CASE NUMBER: BCV-21-100238
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofksy, Esq.

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC

27200 Agoura Road, Suite 101, Calabasas, CA 91301

818-703-8985

DATE: 5/7/2021
(Fecha)

TAMARAH HARBER-PICKENS

Clerk, by
(Secretario)

Vanesa Jackson

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

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
5/7/2021 11:02 AM
Kern County Superior Court
By Vanesa Jackson, Deputy

Attorneys for Plaintiff Jason McLelland, 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 KERN

JASON MCLELLAND, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

CUMMINGS VACUUM SERVICE, INC., a
California corporation, UNIVERSAL
STAFFING SOLUTIONS, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: BCV-21-100238

Before the Hon. Thomas S. Clark, Dept. 17

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, 1174,
1194, AND 1198 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

Complaint Filed: February 3, 2021

1 Plaintiff JASON MCLELLAND ("Plaintiff"), on behalf of himself and others as an
2 "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of
3 CUMMINGS VACUUM SERVICE, INC., a California corporation, UNIVERSAL STAFFING
4 SOLUTIONS, INC., a California corporation, and/or any subsidiaries or affiliated companies
5 (hereinafter collectively referred to as "Defendants"), as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiff and other non-exempt California employees who currently work or formerly worked for
10 Defendants ("Aggrieved Employees").

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

15 a. Failing to pay all minimum and overtime wages earned during the course of
16 employment, in violation of Labor Code §§ 510, 558, and 1194 when it rounded down the hours
17 reflected on Plaintiff's and other Aggrieved Employees' time records to pay fewer hours than were
18 actually worked. On a weekly basis, this rounding deprived Plaintiff and other Aggrieved Employees
19 of significant hours worked. These failures to pay all minimum and overtime wages due constitute
20 violations of Labor Code §§ 510, 558, and 1194;

21 b. Failing to pay Plaintiff and other Aggrieved Employees all wages due, in
22 violation of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 9-2001, when it required
23 Plaintiff and other Aggrieved Employees to be on-call every day of the week and to remain tethered
24 to the Bakersfield, California area to await instructions. If they were not called in to work, Defendants
25 would not compensate them for any time worked that day. An employer is obligated to pay the wages
26 of an hourly employee for all time that the employee is under the control of the employer, and this
27 includes all the time the employee is suffered or permitted to work, whether or not required to do so.
28 When Plaintiff and other Aggrieved Employees were on-call, they were under the control of

1 Defendants and required to be compensated for all hours worked. Defendants, however, failed to do
2 so, in violation of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 9-2001, section 5;

3 c. Requiring Plaintiff and other Aggrieved Employees to report to work only to
4 be told they were no longer needed and be sent home within 2 hours of reporting to work. Defendants,
5 however, failed to pay the required “half the usual or scheduled day’s work, but in no event . . . less
6 than two (2) hours . . . at the employee’s regular rate of pay, which shall not be less than the minimum
7 wage.” This violates Labor Code §§ 510, 558, and 1194 and IWC Wage Order 9-2001;

8 d. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
9 denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 9-2001.
10 Plaintiff and all other Aggrieved Employees were routinely not authorized and unable to take an off-
11 duty 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
12 paid premium wages of one hour’s pay for each missed rest period. During their employment with
13 Defendants, Plaintiff and Aggrieved Employees rarely if ever received a rest period despite routinely
14 working in excess of twelve hours in a workday. This violates Labor Code §§ 226.7 and 558 and IWC
15 Wage Order 9-2001;

16 e. Failing to pay Plaintiff and all other Aggrieved Employees premium wages
17 for missed meal periods, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 9-
18 2001. Plaintiff and other Aggrieved Employees were routinely denied, and not authorized to take, an
19 uninterrupted, 30-minute meal period for every shift worked over five hours in duration, and a second
20 30-minute meal period for every shift worked over ten hours in duration, but were not paid premium
21 wages of one hour’s pay for each missed meal period. When Plaintiff and Aggrieved Employees did
22 receive a meal period, they would typically be required to work through it, also depriving them of all
23 wages due. Defendants also failed to maintain meal period records, which show the time that meal
24 periods were taken. This violates Labor Code §§ 226.7, 510, 512, 558, 1171, 1194, and 1198 and
25 IWC Wage Order 9-2001;

26 f. Failing to provide Plaintiff and non-exempt Aggrieved Employees with wage
27 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
28 226.3. Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above. As

1 such, the wage statements provided by Defendants failed to accurately state all gross wages earned,
2 in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2),
3 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked, in violation of Labor Code §
5 226(a)(9). Separately the wage statements issued to Plaintiff and all other Aggrieved Employees also
6 failed to set forth all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked, in violation of Labor Code § 226(a)(9), as the wage statements failed to set
8 forth the applicable overtime rate when overtime hours were worked; and

9 g. Failing to timely pay Plaintiff and Aggrieved Employees all wages due at the
10 separation of their employment based on the time frames required by Labor Code §§ 201 and 202.
11 As stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the
12 course of their employment and, as a result of this failure, they were not timely paid all wages due at
13 the separation of their employment. Furthermore, when Plaintiff was terminated, he did not receive
14 his final paycheck at the time of his termination; instead, it was issued to him well after his last day
15 of employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain
16 Aggrieved Employees who have left their employment with Defendants.

17 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
18 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

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

21 II.

22 PARTIES

23 A. Plaintiff

24 5. Plaintiff JASON MCLELLAND was employed by Defendants from March 2019
25 through August 2020 as a non-exempt employee in Kern County, California.

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1 **B. Defendant**

2 6. Defendant CUMMINGS VACUUM SERVICE, INC. is a California corporation.
3 Defendant CUMMINGS VACUUM SERVICE, INC. employed Plaintiff and Aggrieved Employees
4 throughout the State of California, including Kern County, California.

5 7. Defendant UNIVERSAL STAFFING SOLUTIONS, INC. is a California corporation.
6 Defendant UNIVERSAL STAFFING SOLUTIONS, INC. employed Plaintiff and Aggrieved
7 Employees throughout the State of California, including Kern County, California.

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

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

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

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1194, AND 1198 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

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

12. 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.*

13. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial 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, 510, 512, 1174, 1194, and 1198; and

b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 226.3 and 558.

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

15. On November 23, 2020 and March 2, 2021, Plaintiff sent letters, 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-five (65) calendar days of November 23, 2020 and March 2, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

1 IV.

2 **RELIEF REQUESTED**

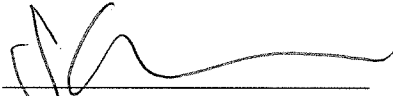
3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
5 Aggrieved Employees;
- 6 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
7 and other applicable law;
- 8 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
9 law; and
- 10 4. Such other and further relief as this Court may deem just and proper.

11 Dated: May 7, 2021

Respectfully submitted,

12 GAINES & GAINES
13 A Professional Law Corporation

14 By: 

15 DANIEL F. GAINES
16 SEPIDEH ARDESTANI
17 Attorneys for Plaintiff
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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to
3 the within action. My business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301.

4 _____ (For messenger) my business address is:

5 On May 7, 2021, I served the foregoing document described as **SUMMONS ON FIRST AMENDED**
6 **COMPLAINT AND FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy
7 thereof enclosed in sealed envelopes addressed as follows:

8 **Daniel K. Klingenberg, Esq.**
9 **Mathew M. Brady, Esq.**
10 **LEBEAU THELEN, LLP**
11 **5001 East Commerceneter Drive, Suite 300**
12 **Bakersfield, CA 93389**

13 On the above date:

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

19 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
20 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
21 carrier or driver authorized by the express carrier to receive documents.

22 _____ (BY FACSIMILE TRANSMISSION) On May 7, 2021, at _____ a.m./p.m., at Calabasas, California, I served
23 the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the
24 California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the
25 telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly
26 issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of
27 the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

28 _____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

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

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 7, 2021 at Calabasas, California.

Beatriz Franco

BEATRIZ FRANCO