

1 **HUNTER PYLE, SBN 191125**
2 **JOHN J. DARIN, SBN 323730**
3 HUNTER PYLE LAW
4 428 Thirteenth Street, 11th Floor
5 Oakland, California 94612
6 Telephone: (510) 444-4400
7 Facsimile: (510) 444-4410
8 Email: hunter@hunterpylelaw.com
9 jdarin@hunterpylelaw.com

10 *Attorneys for Plaintiff and other aggrieved employees*

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Superior Court of California
County of Fresno
By: J Nelson, Deputy

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF FRESNO**

13 DEREK DUKES, on behalf of himself and all
14 others similarly situated;

15 Plaintiff,

16 v.

17 K.W.P.H. ENTERPRISES D/B/A AMERICAN
18 AMBULANCE, and DOES 1 through 10,
19 inclusive,

20 Defendants.

Case No.: 21CECG00216

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (Labor Code § 2698,
et seq.)**

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I. INTRODUCTION

1. Plaintiff Derek Dukes (“Plaintiff”) brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*, on a representative basis on behalf of all current and former paramedics and Emergency Medical Technicians (“EMT”) employed by defendant K.W.P.H. ENTERPRISES d/b/a AMERICAN AMBULANCE (“AMERICAN AMBULANCE”) to staff its ambulances in the State of California during the period from November 19, 2019 to the present (the “PAGA Period”) (“aggrieved employees”).

2. AMERICAN AMBULANCE is the sole 9-1-1 provider for Fresno and Kings Counties in Central California. AMERICAN AMBULANCE employed Plaintiff and aggrieved employees and paid Plaintiff and other aggrieved employees on an hourly basis.

3. However, AMERICAN AMBULANCE failed to pay overtime wages to Plaintiff and aggrieved employees in the amount of one-and-a-half times the regular rate of pay for all hours worked in excess of 8 hours in a workday up to 12 hours, and double the regular rate of pay for all hours worked in excess of 12 hours in a workday.

4. AMERICAN AMBULANCE also failed to provide the following information on Plaintiff’s and aggrieved employees’ wage statements: (1) all applicable hourly rates in effect during the pay period; and (2) the corresponding number of hours worked at each hourly rate.

5. By failing to properly compensate Plaintiff and aggrieved employees, AMERICAN AMBULANCE has sought to avoid various duties and obligations owed to employees under California’s Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 9, including but not limited to: the duties to pay at least one-and-a-half times the regular rate of pay for all hours worked in excess of 8 hours in a workday up to 12 hours, and double the regular rate of pay for all hours worked in excess of 12 hours in a workday (Labor Code §§ 510, 1194; IWC Wage Order No. 9-2001 (8 Cal. Code Regs. § 11090) (“Wage Order No. 9”), § 3); and other related legal obligations.

6. Plaintiff therefore brings a claim seeking penalties under the Private Attorneys General Act, Labor Code sections 2698 *et seq.* on behalf of himself and all other aggrieved employees on a representative basis.

II. JURISDICTION

7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395(a), for the following reasons:

a. AMERICAN AMBULANCE is a California corporation with its principal executive office at 2911 East Tulare Street, Fresno, California 93721.

b. AMERICAN AMBULANCE regularly transacts business in Fresno, California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff and those similarly situated within the State of California and Fresno County.

8. A federal district court does not have federal diversity jurisdiction over this case because Plaintiff and AMERICAN AMBULANCE are California citizens.

III. PARTIES

A. PLAINTIFF

9. Plaintiff and all aggrieved employees are current or former paramedics and EMTs who staffed ambulances for AMERICAN AMBULANCE in California at some time during the PAGA Period.

10. Plaintiff Derek Dukes is a resident of Fresno, California and has worked for AMERICAN AMBULANCE as a paramedic and ambulance driver in Fresno County during the PAGA Period.

B. DEFENDANTS

11. AMERICAN AMBULANCE is a California corporation with its principal executive office at 2911 East Tulare Street, Fresno, California, 93721. AMERICAN AMBULANCE conducts business in the State of California and Fresno County.

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

9 13. Plaintiff is informed and believes, and based thereon alleges, that each of the
10 defendants is liable to Plaintiff and the aggrieved employees as an employer. As employers of
11 Plaintiff and the aggrieved employees throughout the relevant time period hereto, defendants, and
12 each of them, are either solely or jointly and severally liable for the economic damages, including
13 statutory penalties, owed to Plaintiff under common law and by statute.

14 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 14. On November 19, 2020, Plaintiff gave electronic and written notice by certified
16 mail of AMERICAN AMBULANCE's violations of various provisions of the California Labor
17 Code as alleged in this complaint to the LWDA and AMERICAN AMBULANCE.

18 15. The LWDA has not provided notice pursuant to Labor Code section
19 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of Plaintiff's LWDA
20 notice. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section
21 2699.

22 **V. STATEMENT OF FACTS**

23 16. AMERICAN AMBULANCE is the sole 9-1-1 provider for Fresno and Kings
24 Counties in Central California.

1 17. Plaintiff is informed and believes, and thereon alleges, that throughout the relevant
2 time period of this action, at least seven hundred (700) aggrieved employees have been employed
3 by AMERICAN AMBULANCE.

4 18. At all times relevant hereto, the California Labor Code and Wage Order No. 9 have
5 applied to Plaintiff and to all aggrieved employees.

6 19. Plaintiff is informed and believes, and thereon alleges, that through common
7 practices, policies and/or schemes, AMERICAN AMBULANCE failed to pay wages owed to
8 Plaintiff and aggrieved employees in order to systematically deprive them of the benefits and
9 protections applicable to employees under California law.

10 20. Aggrieved employees' primary job duty is to staff ambulances owned and operated
11 by AMERICAN AMBULANCE as paramedics and EMTs. AMERICAN AMBULANCE supplies
12 its paramedics and EMTs with the products, equipment and physical locations to perform their job.

13 21. Staffing ambulances is within the usual course of AMERICAN AMBULANCE's
14 business.

15 22. AMERICAN AMBULANCE controls all work details, including paramedics' and
16 EMTs' schedules and work locations, the specific work duties to be performed, and the manner in
17 which the work duties are performed.

18 23. Based on the foregoing and other relevant factors, Plaintiff and other aggrieved
19 employees are and were employees of AMERICAN AMBULANCE.

20 24. Plaintiff and other aggrieved employees are and were not paid one-and-a-half times
21 the regular rate of pay for all hours worked in excess of 8 hours in a workday up to 12 hours, and
22 double the regular rate of pay for all hours worked in excess of 12 hours in a workday.

23 25. The wage statements provided by AMERICAN AMBULANCE to Plaintiff and
24 aggrieved employees fail to accurately state all applicable hourly rates in effect during the pay
25 period and the corresponding number of hours worked at each hourly rate.

26. Aggrieved employees were not timely paid all wages due at the time of their termination.

VI. CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)

27. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference. Plaintiff alleges as follows a representative cause of action on behalf of himself and all other aggrieved employees.

28. Labor Code section 2699(f) provides, in pertinent part: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

29. Labor Code section 2699(g)(1) provides, in pertinent part: “[A]n aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

30. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

31. Plaintiff's cause of action under Labor Code section 2698 *et seq.* is based on the following allegations:

a. Violations of Labor Code section 558 for failing to pay wages due.

Specifically, Defendant does not pay wages due to Plaintiff and other aggrieved employees for all hours worked before the beginning of their shifts, as required by Labor Code sections 1182.1-1182.3, 1194, 1194.2, 1197 and 1198.

- b. Violations of Labor Code sections 558, 510 and 1194 for failing to pay overtime wages. Specifically, AMERICAN AMBULANCE failed to pay Plaintiff and other aggrieved employees at one-and-a-half times the regular rate of pay for all hours worked in excess of 8 hours in a workday up to 12 hours, and double the regular rate of pay for all hours worked in excess of 12 hours in a workday, as required by Labor Code sections 510 and 1194.
- c. Violations of Labor Code section 226 and 226.3 for failing to provide accurate itemized wage statements. Specifically, Defendant has failed to provide Plaintiff and other aggrieved employees with itemized wage statements that include, among other things, all applicable hourly rates and the number of hours worked at each applicable rate.
- d. Violations of Labor Code sections 201 through 203, requiring the timely payment of wages upon separation from employment. Defendant has not timely paid aggrieved employees who are no longer employed all wages due upon their separation from employment.
- e. Violations of Labor Code sections 204 and 210, based on Defendant's failure to pay Plaintiff and other aggrieved employees all wages due on their regular paydays.

32. As a direct and proximate result of Defendant's unlawful practices and policies, Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

33. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil penalties against Defendant for violations of the Labor Code, as provided under Labor Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section 2699(g)(1), in amounts to be proved at trial.

WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees, prays for judgment against Defendant as set forth below.

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff on behalf of himself and the aggrieved employees, requests relief
3 as follows:

- 4 a. An award of civil penalties pursuant to PAGA;
5 b. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
6 section 2699(g) and/or other applicable law; and
7 c. Such other and further relief as this Court deems just and proper.
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9 DATED: January 25, 2021

HUNTER PYLE LAW

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11 By:  _____

12 Hunter Pyle
John J. Darin

13 Attorneys for Plaintiff and other aggrieved employees
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