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**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 17 2021

Sherri H. [Signature], Executive Office/Clerk
By: [Signature], Deputy
Maisha Fryer

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EMILY ROLON-BASTIDAS, an individual,
on behalf of herself and others similarly
situated,

Plaintiff,

vs.

SALTON CITY PETROLEUM, INC.; and
DOES 1 to 50, inclusive,

Defendants.

Case No.: 21STCV11677

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

RECEIVED
JUN 17 2021

Plaintiff EMILY ROLON-BASTIDAS, an individual, on behalf of herself, all others similarly situated, complains of Defendant SALTON CITY PETROLEUM, INC. ("Defendant") and each of them, as follows:

I

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of

1 Plaintiff and a Proposed Class defined as:

2 All persons who are employed or have been employed as an
3 hourly employee by SALTON CITY PETROLEUM, INC. in
4 the State of California since four (4) years prior to the filing of
this action to the present.

5 2. From at least four (4) years prior to the filing of this action continuing to the
6 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
7 hourly employees for all work perform at the proper rate of compensation. Defendant required
8 Plaintiff and the Proposed Class to work “off the clock” at the end of their shifts without
9 compensation. In addition, Defendant paid Plaintiff and the Proposed Class based on rounded
10 time instead of actual time worked. This resulted in underpayment of wages and/or overtime.
11 As a result of Defendant’s unlawful policies, Plaintiff and the Proposed Class were paid at a
12 regular rate less than the rate required under California law.

13 3. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendant has had a consistent policy of failing to inform employees of their right to
15 take meal periods and requiring employees within the State of California, including Plaintiff, to
16 work at least five (5) hours without a meal period and failing to pay such employees one (1)
17 hour of pay at the employees’ regular rate of compensation for each workday that the meal
18 period is not provided or provided after five (5) hours, as required by California state wage and
19 hour laws.

20 4. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to inform employees of their right to
22 take rest periods and of failing to provide employees within the State of California, including
23 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
24 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
25 compensation for each workday that the rest period was not provided, as required by California
26 state wage and hour laws.

27 5. For at least four (4) year prior to the filing of this action continuing to the
28 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include

1 necessary and required information on wage statements provided to Plaintiff and the Proposed
2 Class. Defendant failed to include the total hours worked, all applicable hourly rates in effect
3 during the pay period, and the corresponding number of hours worked at each hourly rate by the
4 employee.

5 6. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendant has not reimbursed Plaintiff and the Proposed Class the cost and
7 maintenance of their personal cell phones and uniforms necessary to perform their job duties
8 during the relevant time period in violation of Labor Code § 2802.

9 7. Based on the allegations alleged above, from at least four (4) years prior to the
10 filing of this action continuing to the present, Defendant has failed to pay all wages due at the
11 time of termination or resignation to Plaintiff and the Proposed Class.

12 8. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
13 pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, 2802; Wage Order
14 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages
15 and/or overtime, meal break premiums, rest break premiums, penalties for accurate itemized
16 wage statements, reimbursement of expenses, wages upon termination or resignation, other
17 penalties, injunctive and other equitable relief, and reasonable attorney's fees and costs.

18 9. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to
19 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
20 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

21 10. Plaintiff, on behalf of herself and all members of the Proposed Class, brings this
22 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
23 violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and
24 2802.

25 II

26 **JURISDICTION AND VENUE**

27 11. This Court has subject matter jurisdiction over all causes of action asserted
28 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil

1 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
2 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
3 arises under the laws of the State of California or is subject to adjudication in the courts of the
4 State of California.

5 12. This Court has personal jurisdiction over Defendant because Defendant has
6 caused injuries in the County of Los Angeles and the State of California through their acts, and
7 by their violation of the California Labor Code, California state common law, and California
8 Business & Professions Code § 17200, *et seq.*

9 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
10 Civil Procedure § 395. Defendant operates within California and does business within the
11 County of Los Angeles. The unlawful acts alleged herein have a direct effect on Plaintiff and
12 all Proposed Class Members within the State of California and the County of Los Angeles.

13 14. This case should be classified as complex according to Rule 3.400 of the
14 California Rules of Court, and assigned to a complex litigation judge and department, as it will
15 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
16 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
17 and would require substantial post judgment judicial supervision.

18 III

19 PARTIES

20 A. PLAINTIFF

21 15. Plaintiff EMILY ROLON-BASTIDAS is a resident of California.

22 16. Plaintiff and the Proposed Class Members were regularly required to:

- 23 a. Work without being paid for all hours worked at the proper rate;
- 24 b. Work without being provided their meal periods;
- 25 c. Work without being provided their rest periods;
- 26 d. Work without Defendant maintaining accurate time records showing
27 when the employee begins and ends each work period, meal periods, and total daily hours
28 worked and work without being provided an accurate itemized wage statement that reflects all

1 deductions from payment of wages and accurately report total hours worked, including when the
2 employee begins and ends each work period, meal periods, and total daily hours worked, and
3 the applicable rates of pay by Plaintiff and Proposed Class Members; and

4 e. Work without being reimbursed for expenses as a condition of
5 employment.

6 17. Defendant willfully failed to compensate Plaintiff and all Proposed Class
7 Members for wages at the termination of their employment with Defendant.

8 18. As a result of this conduct, Defendant has engaged in unfair competition and
9 unlawful business practices.

10 19. Plaintiff, on behalf of herself and all members of the Proposed Class, brings this
11 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
12 violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and
13 2802.

14 **B. DEFENDANTS**

15 20. Defendant SALTON CITY PETROLEUM, INC. is believed to be a California
16 corporation operating within the State of California. Defendant's corporate address is believed
17 to be 21550 Oxnard Street Suite #655, Woodland Hills, CA 91367. Upon information and
18 belief, Defendant employed Plaintiff and similarly situated persons as employees within
19 California. Defendant has done and does business throughout the State of California.

20 21. The true names and capacities, whether individual, corporate, associate, or
21 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
22 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
23 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
24 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
25 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
26 and capacities of the Defendants designated hereinafter as DOES when such identities become
27 known.

28 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant

acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

IV

FACTUAL BACKGROUND

23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as employees by Defendant.

24. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

25. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid at the proper rate of compensation. Defendant required Plaintiff and the Proposed Class to work “off the clock” at the end of their shifts without compensation. In addition, Defendant paid Plaintiff and the Proposed Class based on rounded time instead of actual time worked. This resulted in underpayment of wages and/or overtime. As a result of Defendant’s unlawful policies, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required under California law.

26. Plaintiff and the Proposed Class Members have been forced by Defendant to work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take meal periods by way of a lawful policy.

27. Plaintiff and the Proposed Class have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest

1 period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
2 to take rest periods by way of a lawful policy.

3 28. Defendant has failed to provide accurate itemized wage statements in compliance
4 with Labor Code § 226(a) by failing to maintain time records showing when the employee
5 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
6 statements all deductions from payment of wages, accurately reporting total hours and
7 applicable rates of pay for Plaintiff and the Proposed Class.

8 29. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
9 properly reimbursed expenses associated with the cost and maintenance of their personal cell
10 phones and uniforms necessary to perform their job duties as a condition of employment.

11 30. Defendant willfully failed to pay wages and compensation, when Plaintiff and
12 Proposed Class Members quit or were discharged. Defendant failed to pay the wages described
13 above at the time of termination or resignation. This failure was willful, without legal
14 justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

15 31. As a result of the facts alleged above, Defendant has engaged in unfair
16 competition and unlawful business practices.

17 32. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et*
18 *seq.*

19 **V**

20 **CLASS ACTION ALLEGATIONS**

21 33. Plaintiff brings this action on behalf of herself and all others similarly situated as
22 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent
23 proposed class composed of and defined as follows:

24 All persons who are employed or have been employed as a non-
25 exempt employee by SALTON CITY PETROLEUM, INC. in the
26 State of California since four (4) years prior to the filing of this
action to the present.

27 34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court
28 to amend or modify the class description with greater specificity, by division into subclasses, or

1 by limitation to particular issues.

2 35. This action has been brought and may properly be maintained as a class action
3 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
4 community of interest in the litigation and the Proposed Class is easily ascertainable.

5 **A. Numerosity**

6 36. The potential members of the Proposed Class as defined are so numerous that
7 joinder of all the members of the Proposed Class is impracticable. While the precise number of
8 Proposed Class Members has not been determined at this time, Plaintiff is informed and believes
9 that Defendant currently employ, and during the relevant time periods employed 50 to 99
10 members of the Proposed Class at any given time.

11 37. Plaintiff alleges that Defendant's employment records would provide information
12 as to the number and location of all Proposed Class Members. Joinder of all members of the
13 Proposed Class is not practicable.

14 **B. Commonality**

15 38. There are questions of law and fact common to the Proposed Class that
16 predominate over any questions affecting only individual Proposed Class Members. These
17 common questions of law and fact include, without limitation:

18 a. Whether Defendant failed to pay wages to Plaintiff and the Proposed
19 Class as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1197,
20 and 1199;

21 b. Whether Defendant failed to provide all lawful meal periods or pay one
22 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

23 c. Whether Defendant failed to provide all lawful rest periods or pay one
24 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

25 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-
26 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
27 failing to issue accurate and complete itemized wage statements;

28 e. Whether Defendant violated Labor Code § 2802 and/or Wage Order 4-

2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost and maintenance of their personal cell phones and uniforms necessary to perform their job duties;

f. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;

g. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged;

h. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. Typicality

39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

40. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

41. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay wages for all hours worked, failing to provide meal

1 periods, failing to provide rest periods, failing to provide accurate itemized wage statements,
2 failing to provide reimbursement of expenses, and failing to pay all wages upon resignation or
3 termination.

4 42. Class action treatment will allow those similarly situated persons to litigate their
5 claims in the manner that is most efficient and economical for the parties and the judicial
6 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
7 management of this action that would preclude its maintenance as a class action.

8 VI

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES/OVERTIME**

11 **VIOLATION OF LABOR CODE §§ 510, 1194, 1197, AND 1199**

12 43. Plaintiff incorporates each and every allegation set forth in all of the foregoing
13 paragraphs as if fully set forth herein.

14 44. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
15 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
16 one workweek must be compensated at the rate of no less than one and one-half times the
17 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay
18 its employees the legal minimum wage and the legal overtime compensation applicable.
19 California law also requires that any compensation, including a bonus, must be included in the
20 regular rate of pay.

21 45. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
22 at the proper rate of compensation. Defendant required Plaintiff and the Proposed Class to work
23 "off the clock" at the end of their shifts without compensation. In addition, Defendant paid
24 Plaintiff and the Proposed Class based on rounded time instead of actual time worked. This
25 resulted in underpayment of wages and/or overtime. As a result of Defendant's unlawful
26 policies, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required
27 under California law.

28 46. Plaintiff and the Proposed Class were forced to work on a regular and consistent

1 basis without receiving compensation for all hours worked at the proper rate. Specifically,
2 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were
3 working more than eight (8) hours in one day or forty (40) hours in one week.

4 47. By their policy of requiring Plaintiff and the Proposed Class to work in excess of
5 eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them
6 at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
7 provisions of Labor Code §§ 510, 1194 and 1199.

8 48. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
9 have been deprived of wages and overtime in amounts to be determined at trial, and are entitled
10 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

11 VII

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7**

14 **AND LABOR CODE § 512**

15 49. Plaintiff incorporates each and every allegation set forth in all of the foregoing
16 paragraphs as if fully set forth herein.

17 50. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
18 compensation for each meal period the employer fails to provide. Employees are entitled to a
19 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided
20 within the first five (5) hours of the shift. Defendant failed to maintain a policy informing
21 Plaintiff and the Proposed Class of these rights.

22 51. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

23 52. Defendant failed to provide Plaintiff and the Proposed Class with proper meal
24 periods of not less than thirty (30) minutes as required by the Labor Code during the relevant
25 time period. When Defendant provided these meal periods, they were often less than thirty (30)
26 minutes in length.

27 53. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
28 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum

1 to be proven at trial.

2 **VIII**

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7**

5 54. Plaintiff incorporates each and every allegation set forth in all of the foregoing
6 paragraphs as if fully set forth herein.

7 55. Labor Code § 226.7 require an employer to pay an additional hour (1) of
8 compensation for each rest period the employer fails to provide. Employees are entitled to a
9 paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).
10 Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

11 56. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or
12 with only some of their required rest breaks, and Defendant failed to maintain an accurate policy
13 advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and
14 the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor
15 Code during the relevant time period.

16 57. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
17 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
18 proven at trial.

19 **IX**

20 **FOURTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

22 58. Plaintiff incorporates each and every allegation set forth in all of the foregoing
23 paragraphs as if fully set forth herein.

24 59. California Labor Code § 226(a) requires employers to itemize in wage statements
25 all deductions from payment of wages, the appropriate rates of pay, and to accurately report
26 total hours worked by Plaintiff and the Proposed Class.

27 60. Labor Code § 226(a)(2) requires that the itemized wage statement properly state
28 the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage

1 statements that do not state the total hours worked during the pay period.

2 61. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
3 time of each payment of wages, furnish each of his or her employees, an accurate itemized
4 statement in writing showing all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the
6 Proposed Class are issued wage statements that do not include all applicable hourly rates in
7 effect during the pay period and the corresponding number of hours worked at each hourly rate
8 by the employee.

9 62. Defendant's failure to provide accurate itemized wages statements according to
10 Labor Code § 226(a) was all done on a regular and consistent basis.

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

17 **X**

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802**

20 64. Plaintiff incorporates each and every allegation set forth in all of the foregoing
21 paragraphs as if fully set forth herein.

22 65. Labor Code § 2802 requires employers to indemnify employees for all necessary
23 expenditures incurred by employees in the discharge of their duties.

24 66. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost and
25 maintenance of their personal cell phones and uniforms necessary to perform their job duties
26 during the relevant time period.

27 67. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
28 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled

1 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

2 **XI**

3 **SIXTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 68. Plaintiff incorporates each and every allegation set forth in all of the foregoing
6 paragraphs as if fully set forth herein.

7 69. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 70. Defendant's failure to pay wages, as alleged above was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 71. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
15 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff
16 and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed
17 Class Members' daily wage multiplied by thirty (30) days.

18 **XII**

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION PURSUANT TO**

21 **BUSINESS & PROFESSIONS CODE § 17200**

22 72. Plaintiff incorporates each and every allegation set forth in all of the foregoing
23 paragraphs as if fully set forth herein.

24 73. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
25 herself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim
26 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
27 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
28 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the

1 public interest within the meaning of Code of Civil Procedure § 1021.5.

2 74. Plaintiff is a “person” within the meaning of Business & Professions Code
3 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
4 and other appropriate equitable relief.

5 75. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
6 business practices.

7 76. California’s wage and hour laws express fundamental public policies. Providing
8 employees with proper wages and compensation are fundamental public policies of this State
9 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
10 enforce vigorously minimum labor standards, to ensure that employees are not required or
11 permitted to work under substandard and unlawful conditions, and to protect law-abiding
12 employers and their employees from competitors who lower their costs by failing to comply
13 with minimum labor standards.

14 77. Defendant has violated statutes and public policies as alleged herein. Through
15 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
16 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
17 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
18 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
19 privileges guaranteed to all employees under law.

20 78. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of § 17200, *et seq.* of the Business & Professions Code.

22 79. Defendant, by engaging in the conduct herein alleged, either knew or in the
23 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
24 violation of § 17200, *et seq.* of the Business & Professions Code.

25 80. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
26 others similarly situated have been damaged in a sum as may be proven.

27 81. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such

orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and the Proposed Class the money Defendant has unlawfully failed to pay.

XIII

EIGHTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.

82. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

83. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and 2802, which call for civil penalties.

84. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

85. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

86. On March 25, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant ("Notice Letter", see Exhibit "1") and paid the filing fee. Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the address listed on the California's Secretary of State's website as the entity address for Defendant SALTON CITY PETROLEUM, INC., 21550 Oxnard Street Suite #655, Woodland Hills, CA 91367. (See Exhibit "2").

87. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of

1 March 25, 2021. Therefore, Plaintiff is entitled to commence a civil action as though the
2 LWDA has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-
3 stamped copy of the First Amended Complaint immediately.

4 **RELIEF REQUESTED**

5 **WHEREFORE**, Plaintiff prays for the following relief:

6 1. For compensatory damages in the amount of unpaid wages and/or overtime not
7 paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing
8 of this action to the present as may be proven;

9 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
10 Members' hourly wage for each meal period missed or taken late from at least four (4) years
11 prior to the filing of this action to the present as may be proven;

12 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
13 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
14 to the filing of this action to the present as may be proven;

15 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
16 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
17 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
18 exceeding an aggregate penalty of four thousand dollars (\$4,000);

19 5. For compensatory damages in the amount of Plaintiff's and each Proposed Class
20 Members' out of pocket expenses as a requirement of employment;

21 6. For penalties pursuant to Labor Code § 203 for all employees who were
22 terminated or resigned equal to their daily wage times thirty (30) days;

23 7. An award of prejudgment and post judgment interest;

24 8. An order enjoining Defendant and its agents, servants, and employees, and all
25 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
26 with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage
27 statements, reimbursement of expenses, and wages upon termination/resignation pursuant to
28 Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, 2802, and IWC 4-2001;

9. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

10. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

11. An award providing for payment of costs of suit;

12. An award of attorney's fees; and

13. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

DATED: June 15, 2021

KINGSLEY & KINGSLEY, APC

By: Kane Cohen

DARREN M. COHEN

Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, March 25, 2021 1:48:15 PM

3/25/2021

LWDA Case No. LWDA-CM-827008-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Emily Rolon-Bastidas
Employer: Salton City Petroleum, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

KINGSLEY & KINGSLEY

| L A W Y E R S |

March 25, 2021

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/308>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

SALTON CITY PETROLEUM, INC.
21550 Oxnard Street Suite #655
Woodland Hills, CA 91367
Certified Mailing: # 7018 1130 0001 5815 0157

Re: EMILY ROLON-BASTIDAS V. SALTON CITY PETROLEUM, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Emily Rolon-Bastidas (“Plaintiff”) for the violations of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and 2802. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Salton City Petroleum, Inc. (“Defendant”) engaged in with respect to our client and all of their California employees.

Specifically, Defendant has violated Labor Code §§ 510, 1194, 1197, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. On a regular and consistent basis, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. Defendant required Plaintiff and the aggrieved employees to work “off the clock” at the end of their shifts without compensation. In addition, Defendant paid Plaintiff and the aggrieved employees based on rounded time instead of actual time worked. This resulted in underpayment of wages and/or overtime. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law.

Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the

employee with a meal period of not less than thirty (30) minutes. Additionally, 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 thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. In addition, Defendant required Plaintiff and the aggrieved employees to remain on the premises during their meal period. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Specifically, Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

In addition, Labor Code § 2802 and Wage Order 4-2001 require employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to properly reimburse Plaintiff and aggrieved employees the cost of using and maintaining their own personal cell phones and uniforms. These expenses were incurred as a necessary part of the

LABOR & WORKFORCE DEVELOPMENT AGENCY

SALTON CITY PETROLEUM, INC.

California Labor Code § 2699 Penalties

March 25, 2021

Page 3 of 3

performance of Plaintiff's and the aggrieved employees' job duties. As such, Defendant violated Labor Code § 2802.

Lastly, Defendant failed to pay Plaintiff and the aggrieved employees all wages at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

Defendant's failure to provide wages and/or overtime, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, failure to reimburse expenses, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/mt

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

SALTON CITY PETROLEUM, INC. # 7018 1130 0001 5815 0157

EXHIBIT 2

USPS TRACKING#

SANTA CLARITA CA 913

29 MAR 2021 PM 3 L

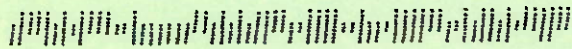
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 3895 8060 7092 45

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Kingsley & Kingsley, APC
16133 Ventura Blvd, Suite 1200
Encino, CA 91436



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Saltion City Petroleum, Inc.
21550 Oxford Street
Suite #635
Woodland Hills, CA 91367



9590 9402 6094 0125 0615 41

2. Article Number (Transfer from service label)

7018 1130 0001 5815 0157

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *GP FARMS (GROWER)* ☐ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/29/21

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County 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 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On June 17, 2021, I served all interested parties in this action the following documents described as **FIRST AMENDED CLASS ACTION COMPLAINT; SUMMONS ON FIRST AMENDED CLASS ACTION COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

LAW OFFICE OF MANDEEP S. RUPAL

MANDEEP S. RUPAL
ALEXANDER W. RICHTER
4740 Green River Road, Suite 207
Corona, CA 92878
mrupal@rupullaw.com
alex@rupallaw.com

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC MAIL THROUGH CASE ANYWHERE:** On interested parties set forth on the attached service list.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 17, 2021, at Woodland Hills, California.



Michelle Tanzer