

MATERN LAW GROUP, P.C.
Matthew J. Matern (SBN 159798)
Mikael H. Stahle (SBN 182599)
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, CA 90206
Telephone: (310) 531-1900
Facsimile: (310) 531-1901
Email: mmatern@maternlawgroup.com
Email: mstahle@maternlawgroup.com

THE SWEENEY LAW FIRM
Brandon J. Sweeney (SBN 278532)
15233 Ventura Blvd., Suite 500
Sherman Oaks, CA 91403
Telephone: (323) 486-2508
Facsimile: (747) 998-1201
Email: bsweeney@thesweeneylawfirm.com

Attorneys for PLAINTIFFS ESPRANZA SOLIS
and SHAMU MAUGA, individually and on
behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ESPERANZA SOLIS, individually and on
behalf of all other aggrieved employees,

PLAINTIFF,

vs.

TIRECO, INC., a California corporation;
TIRE DISTRIBUTOR XPERTS, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2121647

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

[California Labor Code §2698, *et seq.*]

DEMAND FOR JURY TRIAL

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 19 2022

BY 
SANDRA ORTEGA, DEPUTY



Plaintiffs ESPERANZA SOLIS (“PLAINTIFF SOLIS”) and SHAMU MAUGA (“PLAINTIFF MAUGA”) (collectively, “PLAINTIFFS”), individually and on behalf of all other aggrieved employees, hereby allege as follows:

INTRODUCTION

1. PLAINTIFFS bring this action on behalf of themselves and all other aggrieved employees of defendants TIRECO, INC. (“TIRECO”); TIRE DISTRIBUTOR XPERTS, LLC (“TIRE XPERTS”); and DOES 1 through 50 inclusive (collectively, “DEFENDANTS”), in the State of California during the relevant statutory period to recover penalties arising from DEFENDANTS’ failure to provide employees meal and rest periods, failure to provide minimum and overtime wages for all hours worked, failure to timely pay wages during employment, failure to pay wages due upon separation, failure to maintain required records, failure to provide accurate itemized wage statements, and failure to indemnify employees for necessary expenditures and/or losses incurred the discharge of their duties.

JURISDICTION AND VENUE

2. The Superior Court of the State of California has jurisdiction in this matter because PLAINTIFFS are residents of the State of California and defendants are citizens and residents of, and/or regularly conduct business in California. Further, no federal question is at issue because the claims are based solely on California law.

3. Venue is proper in this judicial district and the County of San Bernardino, California because DEFENDANTS reside and maintain offices and facilities and transact business in the County of San Bernardino, and because DEFENDANTS' unlawful policies and practices that are the subject matter of this action were applied, at least in part, to PLAINTIFF and other persons similarly situated and aggrieved in the County of San Bernardino.

4. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of interest and costs.

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PLAINTIFFS

5. PLAINTIFF SOLIS is and was, at all times material to this complaint, a resident of the State of California and is DEFENDANTS' former, non-exempt, employee.

6. PLAINTIFF MAUGA is and was, at all times material to this complaint, a resident of the State of California and is DEFENDANTS' former, non-exempt, employee.

DEFENDANTS

7. PLAINTIFFS are informed and believe, and thereon allege, that TIRECO is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of California. PLAINTIFFS are further informed and believe, and thereon allege, that TIRECO is authorized to conduct business in the State of California, and has at all relevant times conducted business in the State of California under California entity number C2210826. Specifically, upon information and belief, TIRECO maintains offices and conducts business in the County of San Bernardino, State of California.

8. PLAINTIFFS are informed and believe, and thereon allege, that TIRE XPERTS is, and at all times relevant hereto was, a limited liability company organized and existing under the laws of the State of California. PLAINTIFFS are further informed and believe, and thereon allege, that TIRE XPERTS is authorized to conduct business in the State of California, and has at all relevant times conducted business in the State of California. Specifically, upon information and belief, TIRE XPERTS maintains offices and conducts business in the County of San Bernardino, State of California.

9. The true names and capacities of DOES 1 through 100 ("DOE DEFENDANTS"), inclusive, are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sue such defendants under fictitious names. PLAINTIFFS are informed and believe, and thereon allege, that each defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE DEFENDANTS. PLAINTIFF shall seek leave of the court to amend this complaint to allege the true names and capacities of such DOE DEFENDANTS when ascertained.

1 10. At all relevant times herein, DEFENDANTS were the joint employers of
2 PLAINTIFFS and other aggrieved employees. PLAINTIFFS are informed and believe, and
3 thereon allege, that at all times material to this complaint DEFENDANTS were the alter egos,
4 divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals,
5 related entities, co-conspirators, authorized agents, partners, joint venture(s), and/or guarantors,
6 actual or ostensible, of each other. Each defendant was completely dominated by his, her, or its
7 co-defendant, and each was the alter ego of the other.

8 11. PLAINTIFFS are informed and believe, and thereon allege, that at all relevant times
9 there was such unity of interest and ownership between DEFENDANTS that the separate
10 personalities of the DEFENDANTS never existed and that it would be unfair to attribute the illegal
11 acts and omissions alleged herein by PLAINTIFFS to be the acts and omissions of the corporations
12 or companies named as defendants alone.

13 12. At all relevant times herein, DEFENDANTS employed PLAINTIFFS and other
14 aggrieved employees under employment agreements that were partly written, partly oral, and
15 partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of
16 them, acted pursuant to, and in furtherance of, their policies and practices of not paying
17 PLAINTIFFS and other aggrieved employees all wages earned and due, through methods and
18 schemes which include, but are not limited to, failing to pay overtime premiums; failing to provide
19 rest and meal periods; failing to properly maintain records; failing to provide accurate itemized
20 statements for each pay period; failing to properly compensate PLAINTIFFS and other aggrieved
21 employees for necessary expenditures; and requiring, permitting or suffering PLAINTIFFS and
22 other aggrieved employees to work off the clock, in violation of the California Labor Code and
23 the applicable IWC Wage Orders.

24 13. PLAINTIFFS are informed and believe, and thereon allege, that each and every one
25 of the acts and omissions alleged herein were performed by, and/or attributable to, all
26 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
27 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
28 and scope of said agency, employment and/or direction and control.

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15. Pursuant to California Labor Code § 2699.3, PLAINTIFF SOLIS gave written notice on March 22, 2021, by online filing to the LWDA and by certified mail to TIRECO of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have passed since the filing and the LWDA has not provided notice to PLAINTIFF SOLIS that it intends to investigate the alleged violations.

16. Pursuant to California Labor Code § 2699.3, PLAINTIFF MAUGA gave written notice on October 11, 2021 by online filing to the LWDA and by certified mail to TIRECO of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have passed since the filing and the LWDA has not provided notice to PLAINTIFF MAUGA that it intends to investigate the alleged violations.

Failure to Provide Required Meal Periods

17. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a policy and practice of failing to provide PLAINTIFF and other aggrieved employees full and timely meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 9-2001 § 11.

18. As a result of DEFENDANTS' policies and practices as alleged herein, PLAINTIFF and other aggrieved employees regularly have been, and continue to be, denied the

1 opportunity to take full, uninterrupted, and timely meal periods as required under California Labor
2 Code §§ 226.7 and 512 and IWC Wage Order No. 9-2001 § 11.

3 19. DEFENDANTS further violated, and continue to violate, California Labor Code §
4 226.7 and IWC Wage Order No. 9-2001 § 11 by failing to compensate PLAINTIFFS and other
5 aggrieved employees who were not provided a meal period, in accordance with the applicable IWC
6 Wage Order, one additional hour of compensation at each employee's regular rate of pay for each
7 workday that a meal period was not provided.

8 **Failure to Provide Required Rest Periods**

9 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

10 20. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
11 policy and practice of failing to authorize and permit PLAINTIFFS and other aggrieved employees
12 to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order No. 9-2001
13 § 12. As a result of DEFENDANTS' policies and practices as alleged herein, PLAINTIFF and
14 other aggrieved employees regularly have been, and continue to be, denied the opportunity to take
15 full, uninterrupted, and timely rest periods as required under California Labor Code § 226.7 and
16 IWC Wage Order No. 9-2001 § 12.

17 21. DEFENDANTS further violated, and continue to violate, California Labor Code §
18 226.7 and IWC Wage Order No. 9-2001 § 12 by failing to pay PLAINTIFFS and other aggrieved
19 employees who were not provided a rest period, in accordance with the applicable IWC Wage
20 Order, one additional hour of compensation at each employee's regular rate of pay for each
21 workday that a rest period was not provided.

22 **Failure to Pay Overtime Wages**

23 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

24 22. Pursuant to California Labor Code §§ 510 and 1194, and IWC Wage Order No. 9-
25 2001 § 3, DEFENDANTS are required to compensate PLAINTIFFS and other aggrieved
26 employees for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all
27 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
28 first eight (8) hours on the seventh consecutive workday and at a rate of twice the regular rate of

1 pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
2 in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

3 23. PLAINTIFFS and other aggrieved employees are current and former non-exempt
4 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
5 Order No. 9-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate, and
6 continue to fail to compensate, PLAINTIFFS and other aggrieved employees for all overtime hours
7 worked as required under the foregoing provisions of the California Labor Code and IWC Wage
8 Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double
9 the regular rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage
10 Order No. 9-2001 § 3; requiring, suffering or permitting PLAINTIFFS and other aggrieved
11 employees to work off the clock; requiring, suffering or permitting PLAINTIFFS and other
12 aggrieved employees to work during meal breaks without compensation; illegally and inaccurately
13 recording time worked by PLAINTIFFS and other aggrieved employees; and other methods to be
14 discovered.

15 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

16 **[Cal. Labor Code §§ 201, 202, 203]**

17 24. Pursuant to Labor Code § 201, 202, and 203, DEFENDANTS are required to pay
18 all earned and unpaid wages to an employee who is discharged.

19 25. Labor Code § 201 mandates that if an employer discharges an employee, the
20 employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

21 26. Furthermore, pursuant to Labor Code § 202, DEFENDANTS are required to pay
22 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
23 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
24 in which case the employee is entitled to his or wages at the time of quitting.

25 27. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
26 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
27 employer is liable for waiting time penalties in the form of continued compensation to the
28 employee at the same rate for up to 30 workdays.

1 28. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
2 pay accrued wages and other compensation to PLAINTIFFS and other aggrieved employees in
3 accordance with Labor Code §§ 201 and 202.

4 **Failure to Maintain Required Records**

5 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]**

6 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal policies and
7 practices to deprive PLAINTIFFS and other aggrieved employees of all wages earned and due,
8 DEFENDANTS failed to maintain records as required under California Labor Code §§ 226 and
9 1174 and IWC Wage Order No. 9-2001 § 7, including but not limited to the following records:
10 total daily hours worked by each employee; applicable rates of pay; all deductions; and time
11 records showing when each employee begins and ends each work period, including for meal
12 periods.

13 **Failure to Furnish Accurate Itemized Wage Statements**

14 **[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]**

15 30. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
16 provide PLAINTIFFS and other aggrieved employees timely and accurate itemized wage
17 statements in writing showing each employee's gross wages earned, total hours worked, all
18 deductions made, net wages earned, the name and address of the legal entity or entities employing
19 PLAINTIFFS and other aggrieved employees, and all applicable hourly rates in effect during each
20 pay period and the corresponding number of hours worked at each hourly rate, in violation of
21 California Labor Code § 226 and IWC Wage Order No. 9-2001 § 7.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

24 **[Cal. Labor Code §§ 2698, *et seq.*]**

25 **(Against All DEFENDANTS)**

26 31. PLAINTIFFS incorporate herein by reference, as though fully set forth the
27 allegations in paragraphs 1 through 30.
28

32. PLAINTIFFS are “aggrieved employees” within the meaning of California Labor Code § 2699(c), and a proper representative who may bring a civil action on behalf of herself and other current and former aggrieved employees of DEFENDANTS pursuant to the procedures specified in California Labor Code § 2699.3, because DEFENDANTS employed PLAINTIFFS, who allege that DEFENDANTS subjected them to violations of the California Labor Code during their and other aggrieved employees’ periods of employment.

33. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, et seq., PLAINTIFFS seek to recover civil penalties, including, but not limited to, penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 1174.5, 1197.1, 1199, and IWC Wage Order No. 9-2001, § 20, from DEFENDANTS in a representative action for the violations set forth above, including, but not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. PLAINTIFFS are also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all other aggrieved employees, respectfully prays for relief against DEFENDANTS, and each of them, as follows:

1. For civil penalties according to proof, including but not limited to all penalties authorized by Labor Code §§ 226(e) and 2698, *et seq.*;

2. For interest on the unpaid wages at 10% per annum pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

3. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 1194, 2699, 2802, California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

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4. For such further relief that the Court may deem just and proper.

Dated: December 14, 2022

MATERN LAW GROUP, PC

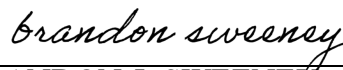


MATTHEW J. MATERN
MIKAEL H. STAHLE

Attorneys for PLAINTIFFS ESPRANZA
SOLIS and SHAMU MAUGA, individually
and on behalf of all other aggrieved
employees

Dated: December 14, 2022

THE SWEENEY LAW FIRM, APC



BRANDON J. SWEENEY

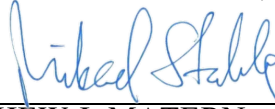
Attorneys for Plaintiffs ESPRANZA SOLIS
and SHAMU MAUGA, individually and on
behalf of all other aggrieved employees

DEMAND FOR JURY TRIAL

PLAINTIFFS, individually and on behalf of all aggrieved employees, hereby demand a trial by jury with respect to all issues so triable.

Dated: December 14, 2022

MATERN LAW GROUP, PC

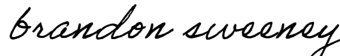


MATTHEW J. MATERN
MIKAEL H. STAHL

Attorneys for PLAINTIFFS ESPRANZA SOLIS and SHAMU MAUGA, individually and on behalf of all other aggrieved employees

Dated: December 14, 2022

THE SWEENEY LAW FIRM, APC



BRANDON J. SWEENEY

Attorneys for Plaintiffs ESPRANZA SOLIS and SHAMU MAUGA, individually and on behalf of all other aggrieved employees

PROOF OF SERVICE

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 this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On December 16, 2022, I served the following document or documents:

FIRST AMENDED COMPLAINT



By e-mail or electronic transmission. I caused the documents to be sent to the person at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Edson K. McClellan, Esq. emcclellan@rutan.com Kimberly A. Nayagam, Esq. knayagam@rutan.com Kenneth Zielinski, Esq. kzielinski@rutan.com RUTAN & TUCKER, LLP 18575 Jamboree Road., 9 th Floor Irvine, CA 92612	<i>Attorneys for Defendant Tireco, Inc.</i>
Brandon J. Sweeney, Esq. bsweeney@thesweeneylawfirm.com THE SWEENEY LAW FIRM 15233 Ventura Blvd., Suite 500 Sherman Oaks, CA 91403 Tel: (323) 486-2508 Facsimile: (747) 998-1201	<i>Attorney for Plaintiff Esperanza Solis</i>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 16, 2022 at Los Angeles, California.



Christian Lopez