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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO
Southern Branch – Hall of Justice

EDUIN S. SOTO, on behalf of himself and all
“aggrieved employees” pursuant to Labor Code §
2698 *et seq.*

Plaintiff,

v.

GAWFCO ENTERPRISES, INC., a corporation,
and DOES 1-20 inclusive,

Defendants.

Civil Case No.: 25-CIV-02096
COMPLAINT AND DEMAND
FOR TRIAL; REPRESENTATIVE ACTION
COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT (PAGA)

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/21/2025
By /s/ Kimberly Claussen
Deputy Clerk

1 **GENERAL ALLEGATIONS**

2 Plaintiffs hereby bring this Complaint for Damages for **(1)** Illegal Deductions from Gratuity (Cal.
3 Lab. Code §351) **(2)** Failure to Reimburse Expenses (Cal. Lab. Codes §§ 2802 and 2804); **(3)** Failure to
4 Provide Itemized Wage Statements (Cal. Lab. Code §226) **(4)** Failure to Maintain Accurate Records (Cal.
5 Lab. Code §§353-353.5; 1174-1174.5) **(5)** Unfair and Unlawful Business Practices (Cal. Bus. and Prof. Code
6 §17200 et seq. and Cal. Lab. Code §1199), and; **(6)** Private Attorney’s General Act Claims (Cal. Lab. Code
7 §2698, *et seq.*)
8

9 **VENUE AND JURISDICTION**

10 1. Venue is proper in this Court, as events described in the Complaint are located within the
11 Jurisdiction.

12 **PARTIES**

13 2. At all times mentioned herein, Plaintiff EDUIN S. SOTO (hereinafter referred to as “Plaintiff”
14 or “Mr. Soto”) was an employee for GAWFCO ENTERPRISES, INC. in the County of San Mateo.

15 3. At all times mentioned herein, Defendant GAWFCO ENTERPRISES, INC (hereinafter referred
16 to as “GAWFCO” or “Defendant”) was and is a company doing business in the County of San Mateo that
17 employed and/or assumed the employment of Mr. Soto at times relevant herein.

18 4. Plaintiff is ignorant of the true identity and capacity of Defendants designated as DOES 1
19 through 20, but will amend the Complaint when their identities have been ascertained according to proof at
20 the time of trial. Plaintiff alleges on information and belief, however, that the named Defendants and every
21 DOE Defendant is in some manner responsible for the acts, omissions, and conduct of Defendants, and
22 were, and are, responsible for the injuries, damages, and harm, incurred by Plaintiff. Plaintiff further alleges
23 on information and belief that each such designated Defendant acted, and acts, as authorized agent,
24 representative, and associate of the Defendants in doing the things alleged herein.

25 **BACKGROUND FACTS**

26 5. GAWFCO runs multiple car washes, gas and auto service stations in Northern California.

27 6. Mr. Soto is a laborer/clerk employee who would receive tips from customers and has worked
28 for the GAWFCO since June of 2022.

1 7. Under information and belief there are thirty-five (35) other properties that employs up to ten
2 labor/clerk employees who receive tips at any given time who were working under the same circumstances
3 as Mr. Soto.

4 8. At various times throughout his employment with GAWFCO, Mr. Soto and others were forced
5 to share a portion of all tips with their manager.

6 9. As such, the true amount of tips earned were not delineated clearly on any paystubs or
7 employment records.

8 10. Mr. Soto was also required to pay for work related expenses, such as cell-phone use during his
9 shifts and off-the-clock, as well as being instructed to use his vehicle during his shift, all without
10 reimbursement.

11 11. Finally, despite seeking all wage and hour records, personnel file records and all documents
12 signed by the Mr. Soto, GAWFCO declined to provide any of those records.

13 **FIRST CAUSE OF ACTION**
14 **AGAINST DEFENDANT AND DOES 1-15**
15 **FOR ILLEGAL DEDUCTIONS FROM GRATUITIES**

16 12. Plaintiff realleges and incorporates by reference the allegations contained in all preceding and
17 all subsequent paragraphs of the Complaint as though fully set forth herein.

18 13. Labor Code Section 351 states that “[n]o employer or agent shall collect, take, or receive any
19 gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount
20 from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any
21 part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every
22 gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given,
23 or left for”.

24 14. Defendant violated this provision when it allowed Plaintiff’s manager to take a percentage of
25 the tip pool that was to be allocated to laborer/clerks who provide retail, food, beverage or car wash services
26 directly to patrons.

27 15. Managers, or other members of GAWFCO who were ineligible for gratuities, regularly kept
28 portions of the tips for themselves.

1 16. In addition, at least one of Defendant's managers would manipulate or otherwise hide the record
2 of all gratuities received in order to deceive employees as to the true amount of tips received.

3 17. Defendants would implicitly or directly authorize this practice in violation of Labor Code §§351-
4 356.

5 18. As a result of Defendant's acts and omissions, Plaintiff has been deprived of earned
6 compensation in an amount to be determined in trial, and is entitled to recover such amounts, plus interest
7 thereon, attorney's fees and costs.

8 **SECOND CAUSE OF ACTION**

9 **AGAINST DEFENDANT AND DOES 1-15**

10 **FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

11 19. Plaintiff realleges and incorporates by reference the allegations contained in all preceding and all
12 subsequent paragraphs of the Complaint as though fully set forth herein.

13 20. California Labor Code §2802 entitles employees to be reimbursed for all necessary expenditures
14 or losses incurred by the employee in direct consequence of the discharge of his or her duties. All hours
15 must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum
16 wage obligation. None of the reimbursements may be used as a credit against a minimum wage obligation.

17 21. All awards made by this court for reimbursement of necessary expenditures under this section
18 shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which
19 the employee incurred the necessary expenditure or loss.

20 22. The term "necessary expenditures or losses" shall include all reasonable costs, including, but not
21 limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

22 23. Defendants failed to indemnify Plaintiff for expenditures incurred by Plaintiff in direct
23 consequence of the discharge of his duties, in the form of fees for use of personal telephones and vehicle in
24 violation of Labor Code sections 2800, 2802, and 2804.

25 24. Defendant was aware of these costs but failed to reimburse Plaintiff for all necessary expenditures
26 during Plaintiff's employment.

27 25. As a result of these violations Plaintiff is entitled to recover such amounts, with interest,
28 attorney's fees and cost of suit.

1 **THIRD CAUSE OF ACTION**

2 **AGAINST DEFENDANTS AND DOES 1-15**

3 **FOR FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

4 26. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding and all
5 subsequent paragraphs of the Complaint as though fully set forth herein.

6 27. Labor Code section 226(a) provides, in pertinent part, that: "Every employer shall, semimonthly
7 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of
8 the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
9 check or cash, an accurate itemized statement in writing showing "... (2) total hours worked by the
10 employee, ..., and (9), all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee."

12 28. Defendants failed to include in its paystubs the total amount of tips earned for each of Plaintiff's
13 pay periods, permitting Plaintiff to recover up to \$4,000 pursuant to Labor Code section 226(e).

14 29. Labor Code section 226(c) that an employer has no more than twenty-one (21) days to furnish
15 pay records upon request by an employee (or former employee) and a failure to do so entitles the employee
16 to \$750.00 pursuant to section 226(f)

17 30. Defendants knowingly failed in their affirmative obligation to keep accurate records regarding
18 time worked, overtime compensation and the premium wages owed to the employees and failed to provide
19 wage statement to Plaintiff upon request, and therefore failed to properly and accurately itemize the gross
20 and net wages earned by Plaintiff.

21 31. Plaintiff was damaged due to Defendant's failure to accurately itemize his earnings. Such a
22 pattern and practice and uniform administration of policy as described herein is unlawful and creates an
23 entitlement to recovery by the Plaintiff herein for all damages and/or penalties pursuant to Labor Code
24 section 226, including interest thereon, attorney's fees and costs of suit.

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FOURTH CAUSE OF ACTION
AGAINST DEFENDANTS AND DOES 1-15
FAILURE TO MAINTAIN ACCURATE RECORDS

32. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding and all subsequent paragraphs of the Complaint as though fully set forth herein.

33. Under Labor Code Section 1174 employers are required to maintain accurate payroll records for a period of three years.

34. Because the payroll records are inaccurate as it relates to the amount of gratuities earned by the employee, Defendant has failed to maintain accurate payroll records.

35. Under Labor Code Section 1174.5 employers in violation of this rule are subject to a civil penalty of \$500.

36. Under Labor Code Section 353 employers are required to keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

37. Because the Defendant stole gratuities from its employees, the records related to those gratuities are inaccurate as it relates to the amount of gratuities earned by the employee.

38. Under Labor Code Section 353.5 employers in violation of this rule are subject to a fine of \$1000.

39. Plaintiff was damaged due to Defendant's failure to accurately maintain records. Such a pattern and practice and uniform administration of policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff herein for all damages and/or penalties, including interest thereon, attorney's fees and costs of suit.

FIFTH CAUSE OF ACTION
AGAINST DEFENDANTS AND DOES 1-17
FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES

40. Plaintiff realleges and incorporates by reference the allegations contained in all preceding and all subsequent paragraphs of the Complaint as though fully set forth herein.

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1 41. Business and Professions Code §17200 prohibits unfair competition in the form of any unlawful,
2 unfair, or fraudulent business act or practice.

3 42. Business and Professions Code §17204 allows “any person who has suffered injury in fact and
4 has lost money or property” to prosecute a civil action for unfair and unlawful business practices.

5 43. For the duration of Plaintiff’s employment, Defendants have committed unlawful, unfair, and/or
6 fraudulent business acts and practices as defined by Business and Professions Code §17200 by failing to pay
7 all earned gratuities, failing to reimburse business expenses, failing to provide accurate and itemized wage
8 statements and failing to maintain accurate payroll records.

9 44. The above-described unlawful actions constitute false, unfair, fraudulent and/or deceptive
10 business practices within the meaning of Business and Professions Code §17200, *et seq.*

11 45. As a result of their unlawful acts, Defendants have reaped and continues to reap unfair benefits
12 and illegal profits at the expense of Plaintiff, its employees and the public. Defendants should be made to
13 disgorge these ill-gotten gains and pay restitution.

14 **SIXTH CAUSE OF ACTION**

15 **AGAINST ALL DEFENDANTS**

16 **PRIVATE ATTORNEY’S GENERAL ACT CLAIMS**

17 46. Plaintiff realleges and incorporates by reference the allegations contained in all preceding and all
18 subsequent paragraphs of the Complaint as though fully set forth herein.

19 47. As a result of the acts alleged herein, Plaintiff, as an aggrieved employee within the meaning of
20 Labor Code section 2699, subdivision (c), on behalf of himself and other current or former hourly, non-
21 exempt employees of Defendants, seek the recovery of civil penalties against Defendants pursuant to
22 California Labor Code sections 2698 et seq., for the following knowing and intentional violations of the
23 California Labor Code:

- 24 a. For failing to pay all gratuities earned by Plaintiff and all other hourly, non-exempt employees
25 pursuant to Labor Code Section 351-356.
- 26 b. For failing to indemnify Plaintiff and other hourly, non-exempt employees for expenditures
27 incurred by such employees in direct consequence of their discharge of duties, in the form of
28 fees for use of telephones, and vehicle mileage;

- 1 c. For failing to maintain for and provide to Plaintiff and other hourly, non-exempt employees
2 the accurate, itemized wage statements required by Labor Code sections 226(a) and (c),
3 d. For failing to maintain accurate payroll and gratuity records required by Labor Code sections
4 353, 353.5, 1174 and 1174.5.

5 48. The above-referenced civil penalties shall include the recovery of amounts specified in the
6 applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and shall
7 include those amounts sufficient to recover all penalties, including all necessary expenditures or losses
8 incurred by Plaintiff and other labor/clerk employees, pursuant to Labor Code sections 210, 225.5, 226.3,
9 226.8, 558(a), 1197.1(a), 2802, and 2699, subdivisions (a) and (f).

10 49. Plaintiffs reserve their rights to allege any additional and all other violations of the Labor Code
11 and the Wage Order as may be disclosed in discovery and as a result of additional investigation that may be
12 pursued in this action.

13 50. On or about December 13, 2024, Plaintiff sent a letter by Certified Mail to Defendants giving
14 notice of Defendants' Labor Code and Wage Order violations, as alleged herein. A copy of said PAGA
15 letter was also submitted on the same date to the California Labor and Workplace Development Agency
16 ("LWDA"), via the online filing system required by the PAGA statute.

17 51. The January 8, 2025 letter to Defendant and the LWDA gave notice of Plaintiff's intent to
18 prosecute a private enforcement action to assess and recover civil penalties under PAGA in the event the
19 LWDA, following review, declined to investigate the asserted violations of the California Labor Code and
20 Wage Order 2-2001.

21 52. Sixty-five days have passed since notifying Defendants and the LWDA of these violations and
22 Plaintiff has not received any response, thereby exhausting Plaintiff's administrative requirements for
23 bringing a claim under the Private Attorneys General Act with respect to these violations.

24 53. Plaintiff was compelled to retain the services of counsel to file this court action to protect her
25 interests and those of Defendants' other former and current Loan Processors, and to assess and collect the
26 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are
27 entitled to recover under Labor Code section 2699.

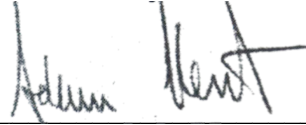
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1 **WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AGAINST DEFENDANTS AS**
2 **FOLLOWS:**

- 3 1. For special damages as to be proven at trial;
4 2. For incidental and consequential damages;
5 3. For general and compensatory damages;
6 4. For restitution of all monies due to Plaintiff and disgorgement of profits from the unlawful
7 business practices of Defendants;
8 5. For all applicable statutory penalties and damages;
9 6. For Plaintiff's reasonable attorney's fees, expenses, and costs of suit as provided by law;
10 7. For pre-judgment and post-judgment interest to the extent permitted by law;
11 8. Penalties and relief pursuant to Labor Code § 2699; and
12 9. For such other and further relief as is just and proper

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14 Dated: 03/20/2025

LAW OFFICE OF JENNIFER B. SIVERTS

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17 ADAM M. KENT
18 Attorney for Plaintiff
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