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Sacramento
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By _____, Deputy
34-2023-00335761-CU-01

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Rene Simmons, on behalf of herself and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RENE SIMMONS, on behalf of herself and on
behalf of all similarly situated individuals,

Plaintiff,

v.

PACIFIC FUEL & AUTO SERVICES, INC.,
a California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 34-2023-0335761

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

BY FAX

- 1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES (LABOR
CODE §§ 510, 1194, AND 1194.2; IWC
WAGE ORDER 7-2001)**
- 2. UNLAWFUL DEDUCTIONS FROM
WAGES (LABOR CODE §§ 221, 510, AND
1194; IWC WAGE ORDER 7-2001)**
- 3. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 7-2001)**
- 4. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 7-2001)**
- 5. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**
- 6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

7. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

8. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 212, 221, 226(a), 226.7, 510, AND 1194 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 225.5, 226.3, 432.5, AND 558

DEMAND FOR JURY TRIAL

Complaint Filed: March 7, 2023

Plaintiff RENE SIMMONS (“Plaintiff”), on behalf of herself, all similarly situated individuals, and on behalf of the general public, complains of Defendants PACIFIC FUEL & AUTO SERVICES, INC., a California corporation and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and the Class of individuals described in detail below against Defendants.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due, pay all wages due, provide legally compliant meal and rest periods, or compensation in lieu thereof; timely pay all wages due upon separation of employment; and issue accurately itemized wage statements.

3. Plaintiff, on behalf of herself and Class Members, brings this action pursuant to Labor Code §§ 201-203, 221, 226(a), 226.7, 510, 512, 1194, and 1194.2 seeking compensation for all unpaid wages, meal and rest period premium wages, liquidated damages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due.

5. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §§ 2698 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members throughout California, including in Sacramento County.

II.

PARTIES

A. Plaintiff

7. Plaintiff RENE SIMMONS was employed by Defendants from July 2022 through February 2023 as a non-exempt employee and performed work for Defendants in Sacramento County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all minimum and overtime wages due;
- b. Subject to unlawful deductions from wages;
- c. Willfully denied all meal and rest periods or compensation in lieu thereof;
- d. Willfully denied accurately itemized wage statements; and
- e. Willfully denied the timely payment of all wages upon separation of her employment.

B. Defendants

9. Defendant PACIFIC FUEL & AUTO SERVICES, INC. is a California corporation. Defendant PACIFIC FUEL & AUTO SERVICES, INC. employed Plaintiff and Class Members throughout the State of California, including in Sacramento County.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is

1 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
2 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
3 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
4 designated hereinafter as DOES when such identities become known.

5 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
6 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
7 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
8 attributable to the other Defendants.

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

12 III.

13 CLASS ACTION ALLEGATIONS

14 13. Plaintiff brings this action on behalf of herself, and all others similarly situated as a
15 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
16 following class composed of and defined as follows:

17 THE CLASS

18 All persons employed as non-exempt employees by Defendants in
19 California at any time since the date four years preceding the filing of
20 this Action, plus any additional time tolled by the California State
21 Judicial Council pursuant to Emergency Rule 9 in response to the
22 COVID-19 pandemic and continuing through the present.

23 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
24 modify this class description with greater specificity or further division into subclasses or limitation
25 to particular issues.

26 15. This action has been brought and may properly be maintained as a class action under
27 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
28 interest in the litigation and each proposed Class is easily ascertainable.

A. Numerosity

16. The potential Class Members as defined are so numerous that joinder of all class members is impracticable. While the precise number of Class Members has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 50 persons in the State of California who fall within the Class definition.

17. Accounting for employee turnover during the relevant period necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of Class Members. Joinder of Class Members is not practicable.

B. Commonality

18. There are questions of law and fact common to the Class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

- a. Whether Defendants failed to pay all minimum and overtime wages due to Plaintiff and Class Members, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 7-2001;
- b. Whether Defendants made unlawful deductions from the wages of Plaintiff and Class Members, in violation of Labor Code §§ 221, 510, and 1194 and IWC Wage Order 7-2001;
- c. Whether Defendants failed to properly provide rest periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7 and IWC Wage Order 7-2001;
- d. Whether Defendants failed to properly provide meal periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001;
- e. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);

- 1 f. Whether Defendants failed to timely Plaintiff and pay Class Members all
2 wages due and owing at the separation of their employment, in violation of
3 Labor Code §§ 201-203; and
- 4 g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
5 to Business & Professions Code § 17200 *et seq.*

6 **C. Typicality**

7 19. The claims of the named Plaintiff are typical of the claims of Class Members. Plaintiff
8 and Class Members sustained injuries and damages arising out of and caused by Defendants' common
9 course of conduct in violation of laws, regulations that have the force and effect of law, and statutes
10 as alleged herein.

11 **D. Adequacy of Representation**

12 20. Plaintiff will fairly and adequately represent and protect the interests of Class
13 Members. Counsel who represents Plaintiff are competent and experienced in litigating large
14 employment class actions.

15 **E. Superiority of Class Action**

16 21. A class action is superior to other available means for the fair and efficient adjudication
17 of this controversy. Individual joinder of all proposed Class Members is not practicable, and
18 questions of law and fact common to the proposed Class predominate over any questions affecting
19 only individual members of the proposed Class. Each member of the proposed Class has been
20 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

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

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

5 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

6 **(LABOR CODE §§ 510, 1194, AND 1194.2 AND IWC WAGE ORDER 7-2001)**

7 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
8 forth herein.

9 24. During the liability period, Defendants required Plaintiff and Class Members to
10 frequently work off-the-clock. Plaintiff and Class Members were not compensated for time spent
11 counting money in the till after their shift. This deprived Plaintiff and Class Members of significant
12 hours worked and minimum and overtime wages due, and constitute violations of Labor Code §§ 510,
13 1194, and 1194.2 and IWC Wage Order 7-2001.

14 25. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum
15 and overtime wages due, Plaintiff and Class Members have been deprived of wages in amounts to be
16 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,
17 attorneys' fees, and costs, pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor
18 Code § 1194.2.

19 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

20 **V.**

21 **SECOND CAUSE OF ACTION**

22 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

23 **UNLAWFUL DEDUCTIONS FROM WAGES**

24 **(LABOR CODE §§ 221, 510, AND 1194 AND IWC WAGE ORDER 7-2001)**

25 26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set
26 forth herein.

27 27. During the liability period, Defendants failed to pay all wages due to Plaintiff and
28 Class Members by making unlawful deductions from their wages, in violation of Labor Code §§ 221,

1 510, and 1194 and IWC Wage Order No. 7-2001. Defendants unlawfully made deductions from
2 Plaintiff's and Class Members' wages when there was a cash shortage or a counterfeit bill. Labor
3 Code § 221 states that it is "unlawful for any employer to collect or receive from an employee any
4 part of wages theretofore paid by said employer to said employee." Defendants' practice of unlawfully
5 deducting wages from Plaintiff and Class Members violates Labor Code §§ 221, 510, and 1194 and
6 IWC Wage Order No. 7-2001, section 7.

7 28. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
8 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
9 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
10 costs, pursuant to Labor Code § 1194.

11 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

12 **VI.**

13 **THIRD CAUSE OF ACTION**

14 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

16 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 7-2001)**

17 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set
18 forth herein.

19 30. Plaintiff and Class Members are entitled to one hour of pay for each day that
20 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
21 IWC Wage Order 7-2001.

22 31. Defendants failed to pay premium wages to Plaintiff and Class Members who were
23 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Plaintiff
24 and Class Members were routinely unable to take a 10-minute rest period for every four (4) hours of
25 work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed
26 rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty.
27 This violates Labor Code § 226.7 and IWC Wage Order 7-2001.

32. Pursuant to Labor Code § 226.7 and IWC Wage Order 7-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 7-2001)

33. Plaintiff incorporates paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001.

35. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were late, cut short, or on-duty. This violates Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001.

36. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001, Plaintiff seeks the payment of all meal period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the class she seeks to represent request relief as described below.

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VIII.
FIFTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

37. Plaintiff incorporates paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

39. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiff and Class Members were not paid all wages due. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1) total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

40. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

43. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202 in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

44. More than 30 days have passed since Plaintiff and certain Class Members have left Defendants' employ.

45. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as a penalty under Labor Code §§ 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

46. Plaintiff incorporates paragraphs 1 through 45 of this Complaint as though fully set forth herein.

47. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

49. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

50. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor

standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

51. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

52. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of §17200 *et seq.* of the Business & Professions Code.

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

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

55. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, 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 Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the money Defendants have unlawfully failed to pay.

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XI.

EIGHTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 212, 221, 226(a), 226.7, 510, AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 225.5, 226.3, 432.5, AND 558**

56. Plaintiff incorporates paragraphs 1 through 55 of this Complaint as though fully set forth herein.

57. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* against Defendants on behalf of herself and all other non-exempt California employees employed at any time from March 1, 2022 and continuing through the present (“Aggrieved Employees”).

58. Furthermore, Defendants issued Plaintiff and other Aggrieved Employees wages by paychecks drawn on an account at Wells Fargo Bank. Wells Fargo Bank charges all non-account holders check cashing fees. Plaintiff and other Aggrieved Employees do not have a bank account with Wells Fargo, such that they were forced to incur check cashing fees at Wells Fargo to obtain their wages. Further, there was no California business address listed on their paychecks where they could be cashed without any fees, violating the express requirements of Labor Code § 212. By not making arrangements with Wells Fargo or another business to permit employees to cash their paychecks without paying a fee, Defendants have violated Labor Code §§ 212 and 225.5. In addition, Defendants required Plaintiff and other Aggrieved Employees to agree to employment contract terms that are prohibited by law, in violation of Labor Code § 432.5. Defendants improperly required Plaintiff and Aggrieved Employees to agree to illegal terms as a condition of their employment including, but not limited to, covering all cash shortages. Labor Code § 432.5 provides that “No employer . . . shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer . . . thereof to be prohibited by law.”

59. For each such violation, Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 212, 221, 226(a), 226.7, 510, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 225.5, 226.3, 432.5, and 558.

60. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

61. On March 1, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 1, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 510, 1194, and 1194.2 in the amount of all unpaid overtime and minimum wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members, pursuant to Labor Code § 226.7;
3. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
4. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
5. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

1 6. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
2 1194, and other applicable law;

3 7. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, and other
4 applicable law;

5 8. An award of prejudgment and post-judgment interest; and

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

7 Dated: May 5, 2023

Respectfully submitted,

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9 GAINES & GAINES
A Professional Law Corporation

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11 By: Daniel F. Gaines
12 DANIEL F. GAINES
13 EVAN S. GAINES
Attorney for Plaintiff

14 **DEMAND FOR JURY TRIAL**

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

16 Dated: May 5, 2023

Respectfully submitted,

17 GAINES & GAINES
18 A Professional Law Corporation

19 By: Daniel F. Gaines
20 DANIEL F. GAINES
21 EVAN S. GAINES
22 Attorney for Plaintiff
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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of VENTURA, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On May 5, 2023, I served the foregoing document described as **FIRST AMENDED CLASS ACTION**
6 **COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes
7 addressed as follows:

8 **Laura C. McHugh, Esq. -laura@dugganmchugh.com**
9 **Brittany M. Johnson, Esq. - brittany@dugganmchugh.com**
10 **DUGGAN MCHUGH LAW CORPORATION**
11 **641 Fulton Avenue, Suite 100**
12 **Sacramento, CA 95825**
13 **Attorneys for Defendant, Pacific Fuel & Auto Services, Inc.**

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

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

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

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

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

_____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
transmission on the counsel of record listed above.

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

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

Executed on May 5, 2023, at Westlake Village, California.

27 Katherine Soriano
28 KATHERINE SORIANO