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7 Attorneys for Plaintiff Nathan Hale, on behalf of himself and all "aggrieved employees" pursuant to  
8 Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN DIEGO**

11 NATHAN HALE, on behalf of himself and all  
12 "aggrieved employees" pursuant to Labor  
13 Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 HYG COUNTRY DRIVE IMPORTS, INC., a  
17 Delaware corporation, and DOES 1 through  
18 10, inclusive,

19 Defendants.

CASE NO: 37-2023-00045913-CU-OE-CTL

**REPRESENTATIVE ACTION  
COMPLAINT FOR PENALTIES  
PURSUANT TO LABOR CODE § 2699(f)  
FOR VIOLATIONS OF LABOR CODE  
§§ 201, 202, 226(a), 226.7, 227.3, 246, 510,  
512, 1194, AND 2802 AND PURSUANT  
TO LABOR CODE § 2699(a) FOR  
VIOLATIONS OF LABOR CODE §§ 226.3  
AND 558**

VIA FAX

1 Plaintiff NATHAN HALE ("Plaintiff"), on behalf of himself and others as an "aggrieved  
2 employee" under the Labor Code Private Attorneys General Act of 2004, complains of HYG  
3 COUNTRY DRIVE IMPORTS, INC., a Delaware corporation, and any subsidiaries or affiliated  
4 companies (hereinafter referred to as "Defendants") as follows:

5 I.

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of  
8 Plaintiff and other non-exempt California employees, including, but not limited to, those paid on a  
9 commission and/or piece rate basis, such as sales employees ("Aggrieved Employees").

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior  
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to  
12 Labor Code § 2698 *et seq.*, and continuing to the present (the "liability period"), Defendants have had  
13 consistent policies of:

14 a. Failing to pay all minimum wages and overtime wages earned, in violation of  
15 Labor Code §§ 510, 558, and 1194. Plaintiff and some other Aggrieved Employees are  
16 improperly classified as overtime-exempt inside sales employees. Under California law, an  
17 inside sales employee is exempt from overtime pay if more than half of the employee's pay is  
18 from commissions, so long as the hourly earnings are more than 1.5 times the minimum wage.  
19 Cal. Code Regs., tit. 8, § 11070, subd. 3(D). Plaintiff and similar Aggrieved Employees often  
20 do not satisfy the requirements of this exemption, and are therefore denied all minimum and  
21 overtime wages due. As a result, Plaintiff and similar Aggrieved Employees are not properly  
22 compensated for all minimum wages and overtime wages for work performed in excess of  
23 eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek  
24 at a rate of no less than one and one-half times the regular rate of pay, in violation of Labor  
25 Code §§ 510, 558, and 1194;

26 b. Failing to pay Plaintiff and some Aggrieved Employees for time when they are  
27 working, but cannot earn commission or piece rate, including, but not limited to, time spent  
28 on administrative tasks, wait times between sales, or rest periods, even though they are under

1 the control of Defendants and entitled to be paid at least the minimum wage for all hours  
2 worked or under the control of Defendant, in violation of Labor Code §§ 510, 558, and 1194.  
3 When employees are paid on a commission or piece rate basis, they must be paid separately  
4 for non-commission associated activities. *See Gonzalez v. Downtown LA Motors* (2013) 215  
5 Cal.App.4th 36, 47 (“the obligation to pay minimum wages attaches to each and every separate  
6 hour worked during the payroll period, and that payment must be made for all such hours on  
7 the established payday . . .”). Plaintiff and some other Aggrieved Employees are not paid  
8 separately for such tasks and, thus, are denied the payment of all minimum wages due for  
9 extended periods of their workdays. This violates Labor Code §§ 510, 558, and 1194;

11 c. Failing to properly compute bonuses, commission wages, shift differential  
12 wages, and/or other non-base hourly wages earned by Plaintiff and other Aggrieved  
13 Employees into their regular rate of pay for purposes of paying them meal and rest period  
14 premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in  
15 violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Defendants pay Plaintiff and  
16 other Aggrieved Employees bonuses, commission wages, shift differential wages, and/or  
17 other non-base hourly wages; however, Defendants fail to properly blend these forms of pay  
18 into the regular rate of pay, and instead pay Plaintiff and other Aggrieved Employees meal  
19 and rest period premiums, overtime wages, vacation wages, and sick pay wages based *only* on  
20 the base hourly rate of pay (and with no adjustment), if at all, thus depriving Plaintiff and  
21 other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation  
22 wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558,  
23 and 1194;

25 d. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary  
26 business expenses incurred in direct consequence of the discharge of their duties, in violation  
27 of Labor Code § 2802, including, but not limited to, the use of their personal cellphones.  
28 Labor Code § 2802 states that an employer must indemnify its employees for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of  
2 their duties. Defendants' failure to do so violates this section;

3 e. Failing to pay correct premium wages to Plaintiff and other Aggrieved  
4 Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage  
5 Order No. 7-2001. Plaintiff and other Aggrieved Employees are routinely unable to take a 10-  
6 minute rest period for every four (4) hours of work or major fraction thereof, but were not  
7 paid premium wages of one hour's pay for each missed rest period. In addition, as Plaintiff  
8 and certain Aggrieved Employees can only earn commissions, bonuses, and piece rate wages  
9 when they perform limited tasks, they should be separately paid for their rest periods when no  
10 commission wages, bonus, or piece rate wages can be earned, as discussed above. In addition,  
11 Plaintiff and other Aggrieved Employees are frequently too busy to take an off-duty rest  
12 period and they are therefore denied. This violates Labor Code § 226.7 and IWC Wage Order  
13 No. 7-2001;

14 f. Failing to pay correct premium wages to Plaintiff and other Aggrieved  
15 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512,  
16 and 558 and IWC Wage Order 7-2001. Plaintiff and other Aggrieved Employees are routinely  
17 denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for  
18 every shift worked that exceeded five hours, and a second proper, timely, uninterrupted, 30-  
19 minute meal period for every shift worked that exceeded ten hours, but are not paid premium  
20 wages of one hour's pay for each missed first or second meal period. When they are able to  
21 take a meal period, they are oftentimes late, cut short, or on-duty. This violates Labor Code  
22 §§ 226.7, 512, and 558 and IWC Wage Order 7-2001;

23 g. Failing to provide Plaintiff and all other Aggrieved Employees with wage  
24 statements that fully and accurately itemized the requirements set forth in Labor Code §  
25 226(a). As Plaintiff and other Aggrieved Employees are not paid all wages due, as stated  
26 above, the wage statements provided by Defendants fail to accurately state all gross wages  
27  
28

1       earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of  
2       Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)  
3       and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding  
4       numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

5               h.       Failing to pay Plaintiff and certain Aggrieved Employees all wages due,  
6       including all accrued, but unused vacation wages, at the separation of their employment based  
7       on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, Plaintiff  
8       and Aggrieved Employees are not paid all wages due during the course of their employment  
9       and, as a result of this failure, they are not timely paid all wages due at the separation of their  
10      employment. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of  
11      Plaintiff and certain Aggrieved Employees no longer employed by Defendant.

12  
13      3.       Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §  
14      2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

15      4.       Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395  
16      because Defendants employed Plaintiffs in San Diego County, California.

17                               **III.**

18                               **PARTIES**

19      **A.     Plaintiff**

20      5.       Plaintiff NATHAN HALE was employed by Defendants from February 2023 through  
21      June 2023 as a non-exempt employee in San Diego County, California.

22      **B.     Defendant**

23      6.       Defendant HYG COUNTRY DRIVE IMPORTS, INC. is a Delaware corporation that  
24      employed Plaintiff and Aggrieved Employees in San Diego County, California.

25      7.       The true names and capacities, whether individual, corporate, associate, or otherwise,  
26      of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who  
27      therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is  
28      informed and believes, and based thereon alleges, that each of the Defendants designated herein as a

DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. 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 Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable to the other Defendants.

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

#### IV.

#### CAUSES OF ACTION

##### FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1194, AND 2802 AND  
PURSUANT TO LABOR CODE § 2699(a)  
FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties 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, 226(a), 226.7, 227.3, 246, 510, 512, 1194, and 2802; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On July 27, 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 July 27, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

V.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and

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

Dated: October 4, 2023

Respectfully submitted,

GAINES & GAINES  
A Professional Law Corporation

By: Daniel F. Gaines  
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EVAN S. GAINES  
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