

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

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

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

10 **FOR THE COUNTY OF SAN JOAQUIN**

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

14 Plaintiff,

15 v.

16 LAHHAM AUTOMOTIVE, INC., a
California corporation, and DOES 1 through
17 10, inclusive,

18 Defendants.

STK-CV-~~WOL~~-2023- 9779

**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, 1174, 1174.5, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

**FILED
SUPERIOR COURT**

2023 SEP 13 AM 11:43

STEPHANIE BOHRER, CLERK

**BY TRACY LINDEMAN
DEPUTY**

1 Plaintiff JUAN RODRIGUEZ JR. ("Plaintiff"), on behalf of himself and others as an
2 "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, codified as
3 Labor Code §§ 2698 *et seq.*, complains of LAHHAM AUTOMOTIVE, INC., a California
4 corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as "Defendants"),
5 as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

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

27 b. Failing to pay Plaintiff and some Aggrieved Employees for time when they are
28 working, but cannot earn commissions or piece rate wages, including, but not limited to, time spent

1 on administrative tasks, wait times between sales, or rest periods, even though are under the control
2 of Defendants and entitled to be paid at least the minimum wage for all hours worked or under the
3 control of Defendant, in violation of Labor Code §§ 510, 558, and 1194. When employees are paid
4 on a commission or piece rate basis, they must be paid separately for non-commission or piece-rate
5 associated activities. *See Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 47 (“the
6 obligation to pay minimum wages attaches to each and every separate hour worked during the payroll
7 period, and that payment must be made for all such hours on the established payday . . .”). Plaintiff
8 and some other Aggrieved Employees are not paid separately for such tasks and, thus, are denied the
9 payment of all minimum wages due for extended periods of their workdays. This violates Labor Code
10 §§ 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 Employees into
13 their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages,
14 vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246,
15 510, 512, 558, and 1194. Defendants pay Plaintiff and other Aggrieved Employees bonuses,
16 commission and piece-rate wages, shift differential wages, and/or other non-base hourly wages;
17 however, Defendants fails to properly blend these forms of pay, and instead pay Plaintiff and other
18 Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay
19 wages based only on the base hourly rate of pay, if at all, thus depriving Plaintiff and other Aggrieved
20 Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages
21 earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194;

22 d. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
23 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
24 Code § 2802, including, but not limited to, the use of their personal cellphones. Labor Code § 2802
25 states that an employer must indemnify its employees for all necessary expenditures or losses incurred
26 by the employee in direct consequence of the discharge of their duties. Defendants’ failure to do so
27 violates this section;
28

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

11 f. Failing to pay correct premium wages to Plaintiff and other Aggrieved
12 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558
13 and IWC Wage Order 7-2001. Plaintiff and other Aggrieved Employees are routinely denied, and not
14 authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that
15 exceeded ten hours, but are not paid premium wages of one hour's pay for each missed first or second
16 meal period. When they are able to take a meal period, they are oftentimes late, cut short, or on-duty.
17 Defendants also fail to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5,
18 including for employees' start and end times for meal periods. This violates Labor Code §§ 226.7,
19 512, 558, 1174, and 1174.5 and IWC Wage Order 7-2001;

20 g. Failing to provide Plaintiff and all other Aggrieved Employees with wage
21 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
22 Plaintiff and other Aggrieved Employees are not paid all wages due, as stated above. As such, the
23 wage statements provided by Defendants fail to accurately state all gross wages earned, in violation
24 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
25 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
26 hourly rates in effect during the pay period and the corresponding numbers of hours worked at each
27 rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and
28

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

7 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
8 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

9 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
10 The Labor Code violations alleged against Defendants herein arose throughout California, including
11 in San Joaquin County.

12 II.

13 PARTIES

14 A. Plaintiff

15 5. Plaintiff JUAN RODRIGUEZ JR. was employed by Defendants as a non-exempt
16 employee from approximately May 2019 through May 2022 in San Joaquin County, California.

17 B. Defendant

18 6. Defendant LAHHAM AUTOMOTIVE, INC., is a California corporation that
19 employed Plaintiff and Aggrieved Employees throughout the state of California, including in San
20 Joaquin County.

21 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
22 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
23 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
24 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
25 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
26 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
27 designated hereinafter as DOES when such identities become known.
28

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 Defendant is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were 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.

III.

CAUSES OF ACTION

FIRST 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, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 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 penalties and other relief 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, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1194, and 2802; and

b. Pursuant to Labor Code § 2699(f), the 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 6, 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 6, 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.

IV.

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: September 12, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff