

EVAN S. GAINES, ESQ. SBN 287668
GAINES LAW CORPORATION
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 93162
Telephone: (805) 892-8200
Facsimile: (805) 800-8928
evan@gaines.law

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/16/2024 at 09:54:19 AM
Clerk of the Superior Court
By Amanda Gidron, Deputy Clerk

Attorneys for Plaintiff Arthur Ponce,
on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ARTHUR PONCE, an individual,

Plaintiff,

v.

EXPRESS DRY, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 37-2024-00022921-CU-OE-CTL

COMPLAINT FOR:

**1. FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 226.7, 246, 510, 512, 1174,
1174.5, 1194, AND 1194.2; IWC WAGE
ORDER 4-2001)**

**2. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF
(LABOR CODE § 226.7; IWC WAGE ORDER
4-2001)**

**3. FAILURE TO PROVIDE MEAL PERIODS
OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7 AND 512; IWC
WAGE ORDER 4-2001)**

**4. FAILURE TO TIMELY PAY WAGES DUE
UPON SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203 AND 227.3)**

**5. KNOWING AND INTENTIONAL FAILURE
TO COMPLY WITH ITEMIZED EMPLOYEE
WAGE STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**7. CIVIL 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, AND 1194,
AND PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Plaintiff ARTHUR PONCE (“Plaintiff”), individually, on behalf of himself and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§ 2698 *et seq.*, complains of EXPRESS DRY, INC., a California corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. For at least four (4) years prior to the filing of this action, plus any additional time tolled by the California State Judicial Council pursuant to Emergency Rule 9 in response to the COVID-19 pandemic, and continuing through the present (the “liability period”), Defendants have had consistent policies of voluntarily and knowingly failing to pay all wages due to Plaintiff; failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Plaintiff; failing to timely pay Plaintiff all wages due upon separation of his employment; and failing to provide accurately itemized wage statements to Plaintiff.

2. Plaintiff brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1194, and 1194.2 seeking compensation for all unpaid wages, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

3. Plaintiff, on behalf of himself pursuant to Business & Professions Code §§ 17200-17208, also seeks restitution and disgorgement of all benefits Defendants enjoyed from their failure to him pay all wages due.

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

5. Plaintiff, on behalf of himself and all other non-exempt California employees of Defendants (“Aggrieved Employees”) pursuant to Labor Code § 2698 *et seq.*, also seeks civil penalties for Defendants’ violations of the California Labor Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

PARTIES

A. Plaintiff

6. Plaintiff ARTHUR PONCE was employed by Defendants from January 2023 through February 2024 as a non-exempt employee in San Diego County, California.

7. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due, including minimum, overtime, sick, vacation, and meal and rest period premium wages due;
- b. Willfully denied rest periods or compensation in lieu thereof;
- c. Willfully denied meal periods or compensation in lieu thereof;
- d. Willfully denied the timely payment of wages upon separation of employment;
and
- e. Willfully denied accurately itemized wage statements.

B. Defendants

8. Defendant EXPRESS DRY, INC. is a California corporation that employed Plaintiff and Aggrieved Employees in San Diego County, California.

9. 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 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, including as a successor to Defendants. 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.

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

11. 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 AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL WAGES DUE

(LABOR CODE §§ 226.7, 246, 510, 512, 1174, 1174.5, 1194, AND 1194.2;

IWC WAGE ORDER 4-2001)

12. Plaintiff incorporates paragraphs 1 through 11 of this Complaint as though fully set forth herein.

13. During the liability period, Defendants required Plaintiff to be on-call, under Defendants' control, with substantial restrictions, and without pay. Defendants did not compensate him for time spent on-call, notwithstanding the fact he was subject to Defendants' control during this on-call time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of his employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When Plaintiff was on-call from 8:00 a.m. to 10:00 p.m. for specific days of the week and expected to respond to calls immediately (within 2 minutes), he was under the control of Defendants and required to be compensated for all hours worked. Defendants, however, failed to do so. These instances deprived Plaintiff of significant hours worked and minimum and overtime wages due. Defendants also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for every shift, including, but not limited to, standby/on-call shifts. These constitute violations of Labor Code §§ 510, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 4-2001.

14. Furthermore, Defendants failed to properly compute bonuses, commissions, and/or other non-base hourly wages earned by Plaintiff into his regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the

1 correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, and 1194. Defendants paid Plaintiff
2 bonuses, commissions, and/or other non-base hourly wages; however, Defendants failed to properly
3 blend these forms of pay, and instead pay Plaintiff meal and rest period premiums, overtime wages,
4 vacation wages, and sick pay wages based only on the base hourly rate of pay, thus depriving Plaintiff
5 of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned.
6 This violates Labor Code §§ 226.7, 246, 510, 512, and 1194.

7 15. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
8 Plaintiff has been deprived of wages in amounts to be determined at trial, and is entitled to restitution
9 and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor
10 Code § 1194, and liquidated damages, pursuant to Labor Code § 1194.2.

11 Wherefore, Plaintiff requests relief as described below.

12 **IV.**

13 **SECOND CAUSE OF ACTION**

14 **PLAINTIFF AGAINST ALL DEFENDANTS**

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

16 **(LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**

17 16. Plaintiff incorporates paragraphs 1 through 15 of this Complaint as though fully set
18 forth herein.

19 17. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
20 provide one or more rest periods as set forth in Labor Code § 226.7.

21 18. Plaintiff was routinely unable to take a 10-minute rest period for every four (4) hours
22 of work or major fraction thereof, but was not paid premium wages of one hour's pay for each missed
23 rest period. Plaintiff was denied and not authorized to take his legally entitled rest periods and was
24 never paid premium wages for missed rest periods. When he was able to take a rest period, it was
25 oftentimes late, cut short, or on-duty. This practice violates Labor Code § 226.7 and IWC Wage Order
26 No. 4-2001.

27 ///

28 ///

19. Pursuant to Labor Code § 226.7, Plaintiff seeks the payment of all rest period compensation which he is owed for no less than four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff requests relief as described below.

V.

THIRD CAUSE OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 510, 512, 1174, 1174.5, AND 1194; IWC WAGE ORDER 4-2001)**

20. Plaintiff incorporates paragraphs 1 through 19 of this Complaint as though fully set forth herein.

21. Plaintiff is 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.

22. Plaintiff was routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but was not paid premium wages of one hour's pay for each missed first or second meal period. When he was able to take a meal period, it was oftentimes late, cut short, or on-duty. Defendants also improperly deducted 30-minutes from Plaintiff's wages for a meal period even if he did not take them, resulting in uncompensated time (and a failure to pay all minimum and overtime wages due). Defendants also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for Plaintiff's start and end times for meal periods. This violates Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 4-2001.

23. Pursuant to Labor Code §§ 226.7 and 512, Plaintiff seeks the payment of all meal period compensation which he is owed for no less than four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff requests relief as described below.

///

VI.
FOURTH CAUSE OF ACTION
PLAINTIFF AGAINST ALL DEFENDANTS
FAILURE TO TIMELY PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203 AND 227.3)

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

25. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due (including vacation wages) 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.

26. Defendants paid Plaintiff his final wages beyond the time frames set forth in Labor Code §§ 201, 202, and 227.3, in violation of Labor Code § 203. As stated above, Plaintiff was not paid all wages due during the course of his employment, and as a result of this failure, he was not timely paid all wages due at the separation of his employment (including vacation wages).

27. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff is entitled 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 requests relief as described below.

///

///

///

///

///

///

///

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

28. Plaintiff incorporates paragraphs 1 through 27 of this Complaint as though fully set forth herein.

29. 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).

30. Defendants failed to provide Plaintiff with wage statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a). Plaintiff was not paid all wages due, as stated above. 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). Moreover, and independent of the above allegations, the wage statements issued to Plaintiff and all other California employees fail to set forth the name of the legal entity that is the

1 employer, in violation of Labor Code §§ 226(a)(8) and 226.3. They wage statements set forth the
2 employing entity as Express Dry Restoration Inc., an entity which does not exist (it is neither
3 registered with the California Secretary of State nor does it maintain a fictitious business filing for this
4 entity name), instead of the correct entity name, Express Dry, Inc.

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

14 Wherefore, Plaintiff requests relief as described below.

15 **VIII.**

16 **SIXTH CAUSE OF ACTION**

17 **PLAINTIFF AGAINST ALL DEFENDANTS**

18 **UNFAIR COMPETITION PURSUANT TO**

19 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

20 32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set
21 forth herein.

22 33. This is an Action for Unfair Business Practices. Plaintiff brings this claim pursuant to
23 Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
24 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff. Plaintiff seeks to
25 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
26 § 1021.5.

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

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

6 36. Wage and hour laws express fundamental public policies. Properly providing
7 employees with all wages due is a fundamental public policy of this State and of the United States.
8 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
9 standards, to ensure that employees are not required or permitted to work under substandard and
10 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
11 lower their costs by failing to comply with minimum labor standards.

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

17 38. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
18 §17200 *et seq.* of the Business & Professions Code.

19 39. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
20 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
21 17200 *et seq.* of the Business & Professions Code.

22 40. As a proximate result of the above-mentioned acts of Defendants, Plaintiff has been
23 damaged in a sum as may be proven.

24 41. Unless restrained by this Court, Defendants will continue to engage in the unlawful
25 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
26 should make such orders or judgments, including the appointment of a receiver, as may be necessary
27 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
28 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited

1 to, disgorgement of profits which may be necessary to restore Plaintiff the money Defendants have
2 unlawfully failed to pay.

3 **IX.**

4 **SEVENTH CAUSE OF ACTION**

5 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
6 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
7 **LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, AND 1194, AND**
8 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**
9 **LABOR CODE §§ 226.3 AND 558**

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

12 43. As a result of the acts alleged above, including the Labor Code violations set forth
13 herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.*

14 44. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to
15 penalties in an amount to be shown at the time of trial subject to the following formula:

- 16 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
17 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3,
18 246, 510, 512, 1174, 1174.5, and 1194; and
19 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
20 §§ 226.3 and 558.

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

23 46. On March 12, 2024, Plaintiff sent a letter, by online submission to the LWDA and by
24 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
25 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
26 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
27 calendar days of March 12, 2024. Plaintiff may therefore commence this action to seek civil penalties
28 pursuant to Labor Code § 2698 *et seq.*

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 510 and 1194 in the amount of all unpaid wages due to Plaintiff;
2. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff;
3. 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, pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 226(e);
5. For penalties pursuant to Labor Code §§ 201-203;
6. An award of prejudgment and post-judgment interest;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
9. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and other applicable law;
10. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and other applicable law; and
11. Such other and further relief as this Court may deem just and proper.

Dated: May 16, 2024

Respectfully submitted,

GAINES LAW CORPORATION

By: 

EVAN S. GAINES
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: May 16, 2024

Respectfully submitted,

GAINES LAW CORPORATION

By: 

EVAN S. GAINES
Attorneys for Plaintiff