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Superior Court of California,  
County of Los Angeles  
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David W. Slayton,  
Executive Officer/Clerk of Court,  
By D. Simon, Deputy Clerk

8 Attorneys for Plaintiff Nyighyell Anthony,  
9 on behalf of himself and all “aggrieved employees”  
10 pursuant to Labor Code § 2698 *et seq.*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES—NORTH DISTRICT**

13 NYIGHYELL ANTHONY, on behalf of  
14 himself and all “aggrieved employees”  
15 pursuant to Labor Code § 2698 *et seq.*,

16 Plaintiff,

17 v.

18 AV HOME RESCUE, LLC, a California  
19 limited liability company, MATTHEW  
20 EVANS, an individual, and DOES 1 through  
21 10, inclusive,

22 Defendants.

CASE NO: 24AVCV01652

**REPRESENTATIVE ACTION  
COMPLAINT FOR PENALTIES  
PURSUANT TO LABOR CODE § 2699(f)  
FOR VIOLATIONS OF LABOR CODE  
§§ 201, 202, 212, 226(a), 226.7, 510, 512,  
AND 1194 AND PURSUANT TO LABOR  
CODE § 2699(a) FOR VIOLATIONS OF  
LABOR CODE §§ 225.5, 226.3, 226.8, 558,  
AND 1102.5**

1 Plaintiff NYIGHYELL ANTHONY (“Plaintiff”), on behalf of himself and others as an  
2 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of  
3 AV HOME RESCUE, LLC, a California limited liability company, MATTHEW EVANS, an  
4 individual, and any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”) as  
5 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 persons improperly classified as independent contractors rather than non-exempt  
10 employees (“Aggrieved Employees”).

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

15 a. Voluntarily and knowingly misclassified Plaintiff and other Aggrieved  
16 Employees as independent contractors, instead of non-exempt employees, in violation of  
17 Labor Code § 226.8. Defendants controlled their wages, hours and working conditions.  
18 Defendants controlled their rate of pay. Defendants provided them with a set hourly schedule  
19 in which to perform their jobs, thereby controlling Aggrieved Employees’ working hours—  
20 including, among other things, the number of hours they were permitted to work and their  
21 work schedules. Defendants also controlled their working conditions—including, among  
22 other things, requiring Plaintiff and Aggrieved Employees to work at specified worksites  
23 during specific work hours. As Defendants had control over Plaintiff’s and Aggrieved  
24 Employees’ wages, hours and working conditions, Plaintiff and Aggrieved Employees were  
25 improperly classified as independent contractors and instead should have been classified as  
26 non-exempt employees;

27 b. Failing to pay Plaintiff and other Aggrieved Employees all overtime wages due  
28 during the course of employment, in violation of Labor Code §§ 510, 558, and

1 1194. Defendants paid Plaintiff and Aggrieved Employees straight-time wages only, without  
2 any payment of applicable overtime wages for applicable overtime shifts. Thus, when Plaintiff  
3 and Aggrieved Employees work in excess of eight (8) hours in a workday and/or over forty  
4 (40) hours in a workweek, they were entitled to premium overtime pay of one-and-one-half  
5 times the regular rate of pay for all overtime hours worked. Defendants simply fail to pay any  
6 overtime wages for applicable shifts/weeks. This violates Labor Code §§ 510, 558, and 1194;

7 c. Failing to pay premium wages to him and other Aggrieved Employees who  
8 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-  
9 2001. Plaintiff and Aggrieved Employees were routinely unable to take a 10-minute rest  
10 period for every four (4) hours of work or major fraction thereof, but were not paid premium  
11 wages of one hour's pay for each missed rest period. Plaintiff and Aggrieved Employees were  
12 simply denied their entitled rest periods and were never paid a premium rest period wage in  
13 lieu thereof. Furthermore, when they do take a rest period, they were impermissibly required  
14 to clock out for their rest periods, rendering them unpaid. This violates Labor Code §§ 226.7,  
15 510, 558, 1194 and 1194.2 and IWC Wage Order No. 4-2001;

16 d. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who  
17 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC  
18 Wage Order 4-2001. Plaintiff and Aggrieved Employees were routinely denied, and not  
19 authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift  
20 worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal  
21 period for every shift worked that exceeded ten hours, but were not paid premium wages of  
22 one hour's pay for each missed first or second meal period. When Plaintiff and Aggrieved  
23 Employees do receive a meal period, it is typically short, late, on-duty, or they would be  
24 required to work through them, resulting in uncompensated time and unpaid wages. This  
25 violates Labor Code §§ 226.7, 510, 512, 558, 1194, and 1194.2, and IWC Wage Order 4-  
26 2001;

1 e. Failing to issue Plaintiff and all other Aggrieved Employees itemized wage  
2 statements altogether. As such, they did not receive wage statements that accurately set forth  
3 all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, the total hours  
4 worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of  
5 Labor Code §§ 226(a)(5) and 226.3, all deductions, in violation of Labor Code §§ 226(a)(4)  
6 and 226.3, the inclusive dates of the pay period, in violation of Labor Code §§ 226(a)(6) and  
7 226.3, an employee identification number or the last four digits of employees' social security  
8 numbers, in violation of Labor Code §§ 226(a)(7) and 226.3, the name and an address of the  
9 legal entity that is the employer, in violation of Labor Code §§ 226(a)(8) and 226.3, and all  
10 hourly rates in effect during the pay period and the corresponding number of hours worked,  
11 in violation of Labor Code §§ 226(a)(9) and 226.3.; and  
12

13 h. Failing to issue wages to Plaintiff and other Aggrieved Employees by an  
14 instrument payable in cash, on demand, and without discount, in violation of Labor Code §§  
15 212 and 225.5. Defendants pay Plaintiff and other Aggrieved Employees by way of personal  
16 checks that contain a "Deposit Only" restriction, which bars them from cashing their check at  
17 a place of business in California and discriminates against employees who do not have a bank  
18 account. This violates Labor Code §§ 212 and 225.5.  
19

20 3. Furthermore, Defendants retaliated against Plaintiff by taking him off the work  
21 schedule (and effectively terminating his employment) on or about October 10, 2024 after  
22 transmission and receipt of his October 2, 2024 letter to the Labor & Workforce Development Agency  
23 ("LWDA") and Defendants setting forth violations of the California Labor Code discussed below, in  
24 violation of Labor Code § 1102.5. Labor Code § 1102.5 provides that:

25 An employer, or any person acting on behalf of the employer, shall not  
26 retaliate against an employee for disclosing information, . . . to a  
27 government or law enforcement agency . . . if the employee has  
28 reasonable cause to believe that the information discloses a violation of  
state or federal statute, or a violation of or noncompliance with a local,  
state, or federal rule or regulation, regardless of whether disclosing the  
information is part of the employee's job duties.

1 Here, Defendants have patently violated Labor Code § 1102.5 because they retaliated against Plaintiff  
2 by removing him from the schedule nine days after Plaintiff sent the October 2, 2024 LWDA letter  
3 alleging a “violation of state or federal statute, or a violation of or noncompliance with a local, state,  
4 or federal rule or regulation.”

5 4. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §  
6 2698 *et seq.*, seeks civil penalties for Defendants’ violations of the California Labor Code.

7 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395  
8 because Defendants employed Plaintiff and other Aggrieved Employees in Los Angeles County,  
9 California.

### 10 III.

### 11 PARTIES

#### 12 A. Plaintiff

13 6. Plaintiff NYIGHYELL ANTHONY was employed by Defendants from July 2024  
14 through October 2024 as a non-exempt employee in Los Angeles County, California.

#### 15 B. Defendant

16 7. Defendant AV HOME RESCUE, LLC, is a California limited liability company, that  
17 employed Plaintiff and Aggrieved Employees in Los Angeles County, California.

18 8. Defendant MATTHEW EVANS is an individual that employed Plaintiff and  
19 Aggrieved Employees in Los Angeles County, California. Defendant MATTHEW EVANS is either  
20 an owner, director, officer, and/or managing agent of the other Defendants, who violated, or caused  
21 violations of, California wage and hour laws, MATTHEW EVANS is personally liable for the  
22 violations alleged herein pursuant to Labor Code section 558.1. Additionally, as an owner, director,  
23 officer, and/or managing agent of the other Defendants, who directly and/or indirectly, or through an  
24 agent or some other person, engaged, suffered, and/or permitted Plaintiff to work and exercised  
25 control over Plaintiff’s wages, hours, and working conditions, MATTHEW EVANS is personally  
26 liable for the violations alleged herein pursuant to *Martinez v. Combs*, (2010) 49 Cal.4th 35.

27 9. The true names and capacities, whether individual, corporate, associate, or otherwise,  
28 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who

1 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is  
2 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a  
3 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will  
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants  
5 designated hereinafter as DOES when such identities become known.

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

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

13 **IV.**

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**  
17 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**  
18 **LABOR CODE §§ 201, 202, 212, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO**  
19 **LABOR CODE § 2699(a) FOR VIOLATIONS OF**  
20 **LABOR CODE §§ 225.5, 226.3, 226.8, 558, AND 1102.5**

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

23 13. As a result of the acts alleged above, including the Labor Code violations set forth in  
24 paragraphs 2 and 3 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

25 14. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to  
26 civil penalties subject to the following formula:  
27  
28

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 212, 226(a), 226.7, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 225.5, 226.3, 226.8, 558, and 1102.5.

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

15. On October 2, 2024 and October 11, 2024, Plaintiff sent letters, 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 October 2, 2024 and October 11, 2024. 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.

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1 Dated: December 16, 2024

Respectfully submitted,

2 GAINES LAW CORPORATION

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4 By:



5 EVAN S. GAINES  
6 Attorneys for Plaintiff  
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