

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT AND RELEASE

This PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made by and between Plaintiff Jennifer Barton (“Plaintiff” or “Barton”) and Defendant United Development Group, Inc. (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”) subject to the approval of the Superior Court of the State of California for the County of San Diego (“Court”) and the terms and conditions set forth herein.

RECITALS

- (1) On or about July 12, 2021, Barton gave notice to Defendant and the California Labor Workforce and Development Agency (“LWDA”) that she intended to bring a civil action under Labor Code §§ 2698 *et seq.* (“PAGA”) to recover civil penalties allegedly due based on Defendant’s alleged violation of certain provisions of the California Labor Code.
- (2) On or about September 17, 2021, Barton initiated an action against Defendant in the San Diego Superior Court, Case No. 37-2021-00039885-CU-OE-CTL, alleging on behalf of allegedly aggrieved employees violations of the Labor Code, including alleged meal and rest break violations, unpaid overtime, failure to reimburse expenses, and wage statement violations, among other claims.
- (3) The Parties have engaged in significant informal discovery, including production by Defendant of payroll and time entry data, as well as relevant employment policies.
- (4) The Parties agreed to enter a separate settlement agreement covering Barton's individual claims that she previously intended to file in arbitration (the “Individual Barton Settlement Agreement”).
- (5) It is the desire of the Parties to fully, finally, and forever settle, compromise, discharge, and release Plaintiff’s PAGA claims against Defendant as defined in this Settlement Agreement.

THEREFORE, in consideration of the Recitals listed above and the terms and conditions set forth below, the Parties agree to the following:

§ 1. Definitions

- 1.1 “Aggrieved Employees” means all non-exempt employees of Defendant in the State of California at any time during the PAGA Period, including Plaintiff.
- 1.2 “Aggrieved Employees List” means the list that Defendant shall provide to the Settlement Administrator containing each of Defendant’s current and former employees that are Aggrieved Employees, and includes all copies of the list and all information contained on the list whether originally produced or subsequently

added or removed. According to Defendant's representations, the number of employees on the Aggrieved Employees List will be approximately 143.

- 1.3 "Approval Date" means the date on which the Court enters the Approval Order approving the settlement set forth in this Settlement Agreement.
- 1.4 "Approval Hearing" means the date set by the Court for the hearing on approval of the settlement set forth in this Settlement Agreement.
- 1.5 "Approval Order" means an order to be proposed by Plaintiff for entry and filing by the Court as specified in this Settlement Agreement.
- 1.6 "Court" means the Superior Court of the State of California for the County of San Diego.
- 1.7 "Defendant" means United Development Group, Inc.
- 1.8 "Defendant's Counsel" means the law firm of Hahn Loeser of San Diego, California.
- 1.9 "Individual Arbitration" means Barton's individual claims she previously planned to file in arbitration pursuant to her arbitration agreement.
- 1.10 "Last Known Address" means the most recently recorded mailing address for an Aggrieved Employee as such information is contained in Defendant's payroll records.
- 1.11 "Maximum Settlement Amount" means Two Hundred Twenty-Five Thousand Dollars (\$225,000), which is the total and maximum amount that Defendant can be required to pay under this Settlement Agreement for any and all purposes to any and all recipients as specified in this Settlement Agreement.
- 1.12 "Net Settlement Amount" means the portion of the Maximum Settlement Amount distributed to the LWDA and Aggrieved Employees after deductions from the Maximum Settlement Amount set forth in Section 4.1 of this Settlement Agreement.
- 1.13 "Notice of PAGA Settlement" means the document, substantially in the form attached to this Settlement Agreement as Exhibit "A," that shall be sent to Aggrieved Employees following the Court's entry of the Approval Order to notify Aggrieved Employees of the Settlement Agreement.
- 1.14 "Notice Packet" means the packet that includes the Notice of PAGA Settlement and the settlement check that is to be mailed to each Aggrieved Employee following the Court's Approval Order.
- 1.15 "PAGA Action" means the lawsuit entitled *Barton v. United Development Group, Inc.*, San Diego County Superior Court, Case No. 37-2021-00039885-CU-OE-CTL, filed September 17, 2021.

- 1.16 “PAGA Period” means the period of time beginning on July 12, 2020 and ending on January 10, 2023.
- 1.17 “Pay Periods Worked” means the number of Pay Periods an Aggrieved Employee worked as a non-exempt employee of Defendant in California from July 12, 2020 through January 10, 2023, as reported by Defendant, according to Defendant’s records.
- 1.18 “Plaintiff’s Counsel” means the Justice Law Corporation in Pasadena, California.
- 1.19 “Released Claims” means the claims set forth in Section 2.1 of this Settlement Agreement for which Plaintiff, the Aggrieved Employees, and the State of California release the Released Parties from liability.
- 1.20 “Released Parties” means Defendant and its parents, subsidiaries, affiliates, predecessors, successors, agents, insurers, employees (current and former), officers, directors, and attorneys.
- 1.21 “Settlement Administrator” means or refers to Xpand Legal Consulting, LLC, a third-party administrator jointly selected by the Parties, to effectuate the Settlement Agreement. The Settlement Administrator shall provide a “not to exceed” flat-fee bid for services.
- 1.22 “Settlement Agreement” means this Settlement Agreement and Release of the PAGA Action, and all of its attachments and exhibits.
- 1.23 “Settlement Share” means the total amount distributed to an Aggrieved Employee from the Net Settlement Amount.
- 1.24 “Updated Address” means a mailing address that was updated by a reasonable address verification measure of the Settlement Administrator or by an updated mailing address provided by the United States Postal Service or an Aggrieved Employee.

§ 2. Release of Claims by the State of California and Aggrieved Employees

- 2.1 **Release.** In consideration of Defendant’s payment of the Maximum Settlement Amount and upon entry of the Approval Order, Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, and the State of California, shall fully, finally, and forever release, settle, relinquish and discharge the Released Parties from any and all claims against the Released Parties for civil penalties asserted in the PAGA Action that were or could have been set forth against Defendant in this Action and the LWDA PAGA Notice Letter, whether stated explicitly or by implication, based on Aggrieved Employees’ work for Defendant during the PAGA Period. The LWDA PAGA Notice Letter submitted in the PAGA Action is attached hereto as Exhibits “B.” This release includes any and all claims for civil penalties, fees, and costs recoverable under the Private Attorneys General Act (Labor Code § 2698, *et seq.*) based on the facts and claims

asserted in the operative complaint filed in the PAGA Action, including without limitation, meal break violations, rest break violations, failure to pay overtime, failure to pay minimum wage, failure to pay wages when due, failure to reimburse business expenses, inaccurate wage statements, or any other allegations and claims which are reasonably related to the allegations and claims asserted in the operative complaint filed in the PAGA Action. This release shall apply to claims arising at any point during the PAGA Period. This release shall become effective immediately upon Defendant's payment of the Maximum Settlement Amount to the Settlement Administrator for distribution as specified in this Settlement Agreement.

- 2.2 The Parties agree that this Settlement Agreement and the judgment to be entered by the Court following approval of the settlement forever bar Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.

§ 3. Defendant's Consideration and Distribution of Maximum Settlement Amount

- 3.1 **Defendant's Payment of Maximum Settlement Amount.** In consideration of the Released Claims and upon entry of the Approval Order, Defendant shall pay up to the Maximum Settlement Amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000), which shall satisfy all of Defendant's obligations for payments, fees, and costs identified in this Settlement Agreement. No amount of the Maximum Settlement Amount shall revert to Defendant under any circumstances.
- 3.2 **Timing of Payment of Maximum Settlement Amount.** Defendant shall pay the Maximum Settlement Amount to a settlement fund maintained by the Settlement Administrator within thirty (30) calendar days of the Approval Date, provided no appeal of the Approval Order was timely filed.
- 3.3 **Escalator Clause.** The Maximum Settlement Amount is based on Defendant's representations that there are approximately 3,725 Pay Periods during the PAGA Period. If, at January 10, 2023, the number of Pay Periods has increased by 5% or more (i.e., if there are 3,911 or more Pay Periods), Defendant, at its option, can either choose to: (1) fix the end date for the release as of the date on which the number of Pay Periods reaches 3,911, or (2) increase the Maximum Settlement Amount on a proportional basis equal to the percentage increase in number of Pay Periods worked by aggrieved employees above the 6% (i.e. if there was 6% increase in the number of Pay Periods during the PAGA Period, Defendant would agree to increase the Maximum Settlement Amount by 1%).
- 3.4 **Execution of Individual Barton Settlement Agreement.** Notwithstanding the foregoing, this Settlement Agreement shall not become enforceable and Defendant shall have no obligation to make any settlement payment referenced in this Settlement Agreement unless and until Barton signs the Individual Barton

Settlement Agreement, and the Individual Barton Settlement Agreement becomes effective according to its terms.

§ 4. Distribution of the Maximum Settlement Amount

- 4.1 **Distribution of the Maximum Settlement Amount.** Subject to Court approval, the Settlement Administrator shall distribute the Maximum Settlement Amount as follows:
- (a) **Timing and Amount of Attorney's Fees and Litigation Costs.** Within forty-five (45) calendar days after the Approval Date, the Settlement Administrator shall distribute to Plaintiff's Counsel up to the total amount of Seventy-Eight Thousand Seven Hundred Fifty Dollars (\$78,750), and documented costs, as awarded by the Court, not to exceed a total of Ten Thousand Dollars (\$10,000), representing Plaintiff's litigation costs and expenses and attorneys' fees related to the PAGA Action.
 - (b) **Incentive Award.** Within forty-five (45) calendar days after the Approval Date, the Settlement Administrator shall distribute an incentive award to Barton, not to exceed a total of Five Thousand Dollars (\$5,000), subject to Court approval.
 - (c) **Settlement Administration Costs.** The costs of settlement administration will also be paid from the Maximum Settlement Amount in an amount not to exceed Ten Thousand Dollars (\$10,000), plus mailing costs, subject to Court approval.
- 4.2 **Plaintiff's Application Unopposed by Defendant; Amounts Not Approved.** Defendant shall not oppose Plaintiff's application for Court approval of attorneys' fees and costs set forth in Section 4.1(a). To the extent that Plaintiff's application is not approved by the Court, the amount not approved shall become a part of the Net Settlement Amount and distributed to Aggrieved Employees in accordance with the terms of this Settlement Agreement.
- 4.3 **Allocation and Distribution of Net Settlement Amount.** The Net Settlement Amount shall be allocated and distributed as follows:
- (a) 75% of the Net Settlement Amount shall be paid to the LWDA.
 - (b) 25% of the Net Settlement Amount shall be paid to the Aggrieved Employees pro rata and in proportion to each Aggrieved Employees' Pay Periods Worked for Defendant during the PAGA Period, as calculated by Defendant. The formula for distribution is: $(25\% \text{ of the Net Settlement Amount}) \times (\text{an Aggrieved Employee's Pay Periods worked during the PAGA Period} \div \text{Sum of all Aggrieved Employees' Pay Periods worked during the PAGA Period}) = \text{Share Distribution to an Aggrieved Employee.}$

- 4.4 **Timing and Manner of Settlement Share Distributions.** Within forty-five (45) calendar days after the Approval Date, the Settlement Administrator shall distribute to each Aggrieved Employee his or her Settlement Share by mailing via U.S. First-Class mail a check for the allocated Settlement Share amount, along with any necessary tax reporting forms, to each Aggrieved Employee's Last Known Address or Updated Address.
- 4.5 **Tax Treatment and Reporting of Payments to Aggrieved Employees.** For distributions made pursuant to Section 4 of this Settlement Agreement, 100% of the payments distributed to Aggrieved Employees will be deemed as payments for civil penalties and will not be subject to local, state or federal tax withholdings. The Settlement Administrator shall issue IRS Forms 1099 (if required) to Aggrieved Employees who receive settlement checks for their Settlement Share.
- 4.6 **Distribution of Uncashed Checks.** Checks to Aggrieved Employees shall remain negotiable for a period of 180 days. If any checks remain uncashed after the 180-day negotiability period, the Settlement Administrator shall void all such checks and, pursuant to the Unclaimed Property Law, deliver the proceeds remaining from all uncashed checks to the Office of the State Controller – Unclaimed Property, in the name(s) of the Aggrieved Employee(s) who did not cash check(s).

§ 5. Administration of Settlement and Notice

- 5.1 **Aggrieved Employee Data.** Within twenty-five (25) calendar days following the Approval Date, Defendant shall provide the Settlement Administrator an Aggrieved Employees List, in a format reasonably acceptable for the duties of the Settlement Administrator, which shall identify each Aggrieved Employee's name, Last Known Address, Social Security number, telephone numbers, total number of Pay Periods Worked as an Aggrieved Employee, start and end dates worked as an Aggrieved Employee, and leaves of absence taken during the PAGA Period.
- 5.2 **Duties of the Settlement Administrator Regarding the Aggrieved Employee List.** The Settlement Administrator shall:
- (a) Update the addresses for the Aggrieved Employees using industry-standard mailing address databases, including but not limited to the National Change of Address, and, to the extent this process yields an Updated Address, add the Updated Address to the Aggrieved Employee List and treat the Updated Address as the new Last Known Address for all initial and subsequent mailings and all other purposes of this Settlement Agreement;
 - (b) Calculate the number of Pay Periods Worked for each Aggrieved Employee based on the Aggrieved Employees List and use these numbers to calculate each Aggrieved Employee's Settlement Share; and

- (c) Keep the Aggrieved Employees List confidential, use it only for the purposes described herein, take adequate safeguards to protect the confidentiality of the information contained in the Aggrieved Employees List, and certify the destruction of information contained in the Aggrieved Employees List upon the completion of the settlement administration process.

5.3 Mailing of Notice Packet and Settlement Share.

- (a) Within forty-five (45) calendar days after the Approval Date, the Settlement Administrator shall send to the Last Known Address or Updated Address of each Aggrieved Employee via First-Class U.S. Mail a Notice Packet consisting of a Notice of PAGA Settlement (in the form of Exhibit A attached hereto) that provides each Aggrieved Employee with the number of Pay Periods Worked as determined by Defendant, the formula for determining each Aggrieved Employee's Settlement Share, and a check representing the Settlement Share of the Aggrieved Employee.
- (b) Any returned envelopes from the initial mailing containing forwarding addresses will be used by the Settlement Administrator to locate missing Aggrieved Employees and re-mail the Notice Packets to the correct or Updated Address. In the event that the first mailing of the Notice Packets is returned without a forwarding address, the Settlement Administrator shall immediately conduct a standard skip trace in an effort to ascertain the current address for the particular Aggrieved Employee in question. If a more recent or accurate address is found by this method, the Settlement Administrator will resend the Notice Packets to the Updated Addresses within three (3) calendar days of identifying the new address information. If no new information is ascertained by means of a skip trace, or if the Notice Packets is returned to the Settlement Administrator after using an address obtained from a standard skip trace, the Settlement Administrator will immediately perform a manual "in-depth skip trace" to locate a more recent or accurate address. If an Updated Address is identified by this method, the Settlement Administrator will re-mail the Notice Packets to the Updated Address within three (3) calendar days of identifying the Updated Address.

5.4 Uncashed Settlement Checks of Participating Aggrieved Employees.

Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. Any check that is not cashed within 180 calendar days shall become void and subject to a stop payment order, and then distributed to the Office of the State Controller – Unclaimed Property, as set forth in Section 4.6 of this Settlement Agreement.

§ 6. Court's Approval of Settlement

6.1 **Motion for or Stipulation for Approval.** Plaintiff shall promptly submit this Settlement Agreement to the Court together with a Motion for Approval of PAGA Settlement or a Stipulation for Approval of PAGA Settlement, but in any case no later than sixty (60) days after the Parties fully execute this Settlement Agreement. The motion/stipulation shall seek an order containing the following provisions:

- (a) Approving the Settlement Agreement, reciting the release terms in full, and directing that the Settlement Agreement terms and provisions be carried out;
- (b) Directing the mailing of the Notice Packet via U.S. First Class mail to Aggrieved Employees in accordance with the provisions in this Settlement Agreement; and
- (c) Approving the application for payment of reasonable attorneys' fees and costs to Plaintiff's Counsel as set forth in this Settlement Agreement.

6.2 Court's Non-Approval of Settlement.

- (a) **Settlement Agreement Contingent Upon Court's Approval.** In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court or any other court with jurisdiction over the PAGA Action, this Settlement Agreement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, further proceedings in the PAGA Action or any Individual Arbitration.
- (b) **Non-Approval as Basis for Termination of Settlement Agreement.** Failure of the Court to grant the Approval Order will be grounds for the Parties to terminate this Settlement Agreement and the terms of this Settlement Agreement, except that the Parties shall each be responsible for 50% of the costs of, and any payments due to, the Settlement Administrator for non-cancellable services performed up to that time.
- (c) **Duties of the Parties Upon Appeal.** In the event an appeal is filed from the Approval Order, or any other appellate review is sought, the duties and obligations of the Parties to this Settlement Agreement include the duty to defend the Approval Order on any appeal.

§ 7. Timeline for Completion of Settlement

7.1 The schedule for notice, approval, and payment procedures carrying out this Settlement Agreement is below. The schedule may be modified by agreement of the Parties in writing or order of the Court depending on whether and when the Court grants necessary approvals and sets further hearings. In the event of such

modification, the Parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Twenty-five (25) calendar days after Approval Date	Deadline for Defendant to provide Aggrieved Employees List to Settlement Administrator; deadline for the Defendant to pay the Maximum Settlement Amount to the Settlement Administrator.
Forty-five (45) calendar days after Approval Date	Deadline for settlement checks to be issued to Aggrieved Employees; deadline for payments to Plaintiff's Counsel for litigation costs and expenses and awarded attorneys' fees; deadline for payment to Plaintiff for Incentive Award.
180 days after the issue date on settlement checks	Deadline for Aggrieved Employees to cash settlement checks, after which, the Settlement Administrator shall process uncashed checks pursuant to the Unclaimed Property Law.

§ 8. Miscellaneous Provisions

- 8.1 **No Admission of Liability.** This Settlement Agreement shall not constitute an admission that Defendant is subject to any form of liability on Plaintiff's claims, or to the accuracy of any fact or allegation in the PAGA Action or the Individual Arbitration. Defendant specifically denies any and all liability.
- 8.2 **Advice of Counsel.** The Parties enter into this Settlement Agreement represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties agree that it reflects their good faith compromise of the claims raised in the PAGA Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.
- 8.3 **Parties' Authority.** The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions of this Settlement Agreement.
- 8.4 **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties further agree to cooperate fully and use their best efforts to obtain the Court's approval of this Settlement Agreement and all the terms herein.

- 8.5 **Miscellaneous Attorney's Fees.** Except as provided in Section 4.1 of this Settlement Agreement, the Parties shall bear their own attorneys' fees, costs and expenses incurred in the prosecution, defense, and settlement of the PAGA Action against Defendant.
- 8.6 **Notices.** Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be communicated by electronic mail and U.S. Mail, and shall be deemed to have been duly given as of the fifth (5th) business day after mailing by U.S. Mail, addressed as follows:

To Plaintiff's Counsel:

Doug Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Justice Law Corporation
751 N. Fair Oaks Avenue, Suite 101
Pasadena, CA 91103
Tel: (818) 230-7502

To Defendant's Counsel

Brent Douglas, Esq.
Trevor Locko, Esq.
Hahn Loeser
600 West Broadway, Suite 1500
San Diego, CA 92101
Tel: (619) 810-4300

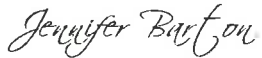
- 8.7 **Interpretation of Agreement.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement Agreement.
- 8.8 **Entire Agreement.** This Settlement Agreement constitutes the entire and integrated agreement between the Parties with respect to the settlement of the PAGA Action against Defendant, and all other prior and contemporaneous agreements, representations, warranties, or understandings of the Parties are superseded and merged into this Settlement Agreement. For avoidance of doubt, this paragraph does not apply to the Individual Barton Settlement Agreement.

- 8.9 **No Prior Assignments.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.
- 8.10 **Execution in Counterparts.** This Settlement Agreement may be signed in one or more counterparts, including by copies transmitted via facsimile or electronic delivery. Upon a Party's execution of a counterpart, that counterpart shall be deemed an original, and all signed counterparts shall together constitute one Settlement Agreement. A facsimile signature shall have the same force and effect as the original signature, if and only if it is transmitted from counsel for one party to the other. Such transmissions shall be interpreted as verification by the transmitting counsel that the signature is genuine and that the party signing has authorized and reviewed the Settlement Agreement. All executed copies of this Settlement Agreement and copies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.
- 8.11 **Governing Law.** This Settlement Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of California.
- 8.12 **No Publicity.** The Parties and their counsel shall not issue any press release or media release or have any communication with the press, media, social media, and/or any professional organization such as California Employment Lawyers Association regarding this settlement and shall not use this Settlement Agreement in any marketing materials. Except for purposes of obtaining the Court's and/or LWDA's approval of the Settlement Agreement, this Settlement Agreement shall not be filed or lodged, attached to motion papers, or otherwise used in any way by Plaintiff or Plaintiff's Counsel in any publicity, marketing, litigation, or arbitration.
- 8.13 **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction to ensure the continuing implementation of the provisions of this Settlement Agreement.
- 8.14 **Enforcement.** Should any party to this Settlement Agreement contend there is a breach by another party, such that an action becomes necessary to enforce any of the terms of this Settlement Agreement, the prevailing party in such dispute shall be entitled to recover its costs and reasonable attorneys' fees incurred, as determined by the Court, in connection with enforcing the terms of this Settlement Agreement.

IT IS SO AGREED:

PLAINTIFF

02/08/2023
February __, 2023



Jennifer Barton

DEFENDANT

UNITED DEVELOPMENT GROUP, INC.

February __, 2023

By: _____
Willy Ayyad, CEO

APPROVED AS TO FORM AND CONTENT:

By: 

Doug Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Justice Law Corporation
Attorneys for Plaintiff Jennifer Barton

By: _____
Brent Douglas, Esq.
Trevor Locko, Esq.
Hahn Loeser
Attorney for Defendant United Development Group, Inc.

PLAINTIFF

02/08/2023
February __, 2023

Jennifer Barton
Jennifer Barton

DEFENDANT

UNITED DEVELOPMENT GROUP, INC.

February 16, 2023

By: Willy Ayyad
Willy Ayyad, CEO

APPROVED AS TO FORM AND CONTENT:

By: D Han

Doug Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Justice Law Corporation
Attorneys for Plaintiff Jennifer Barton

By: Brent Douglas

Brent Douglas, Esq.
Trevor Locko, Esq.
Hahn Loeser
Attorney for Defendant United Development Group, Inc.

EXHIBIT A

Name
Address

Re: Lawsuit Settlement – Settlement Check Enclosed

Dear _____:

This letter contains information about the settlement of a PAGA lawsuit against United Development Group, Inc. (“UDG”). Because you are or were an employee of UDG during the relevant period, the parties to the lawsuit have concluded that you are entitled to a settlement payment. The San Diego County Superior Court has approved this settlement, and as such, you are receiving the check enclosed. Please cash the check as soon as possible, as the check will become void if not cashed within 180 days.

On September 17, 2021, Jennifer Barton filed a PAGA lawsuit in the San Diego County Superior Court, Case No. 37-2021-00039885-CU-OE-CTL, alleging that UDG violated the California Labor Code. UDG vigorously denies all of the claims in this lawsuit, and firmly believes it has always complied with California law. However, the parties have now agreed to a settlement of claims against UDG to avoid the time, expense, and uncertainty of a trial.

This settlement resolved claims for the civil penalties that can be brought only by or on behalf of the state of California. This settlement does not relate to any other claims.

According to UDG’s records, you were a non-exempt hourly worker employed by UDG in California between July 12, 2020 and [INSERT EARLIER OF EITHER APPROVAL DATE OR JUNE 10, 2021]. Under the settlement, all such employees are entitled to receive a settlement payment based on the number of pay periods they worked at UDG during this period. UDG’s records show that you were employed for [INSERT] pay periods during this period. Therefore, you are entitled to a settlement check in the amount of \$[INSERT].

The Court has approved this settlement, and in consideration of the settlement check enclosed, the Court has ordered that all current and former UDG employees receiving a settlement payment are barred from bringing all claims for civil penalties, fees, and costs recoverable under the Private Attorneys General Act (Labor Code § 2698, *et seq.*) based on the claims that were alleged in the lawsuit for the time period set forth above as an agent or proxy for the State of California.

Sincerely,

Willy Ayyad, CEO

EXHIBIT B

July 12, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: UNITED DEVELOPMENT GROUP, INC.

Dear Representative:

We have been retained to represent Jennifer Barton against United Development Group, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "UDG").

Ms. Barton is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Barton may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

United Development Group, Inc. is a California corporation located at 2805 Dickens St. Suite 103, San Diego, California 92106.

UDP employed Ms. Barton as an hourly-paid non-exempt Assistant Business Team Lead within one year of the date of this letter (until in or about January of 2021²) in the State of California. UDP directly controlled the wages, hours and working conditions of Ms. Barton and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Ms. Barton does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Barton will amend this notice when the true names and capacities are known. Ms. Barton is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Barton and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Barton's PAGA cause of action is tolled.

The “aggrieved employees” that Ms. Barton may seek penalties on behalf of are all current and former hourly-paid, non-exempt employees, salaried and/or exempt employees (whether hired directly or through a staffing agency) of UDP within the State of California.

UDP failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

UDP misclassified exempt employees (including, but not limited to, property managers on the basis of the Executive Exemption, despite property managers not being authorized to hire and terminate employees and exercise discretion and independent judgment) and failed to properly pay them for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Barton has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at UDP, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency.

UDP has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

///

///

///

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Barton and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. UDP failed to compensate Ms. Barton and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, waiting in line to clock-in, and during meal breaks. UDP also failed to include non-discretionary bonuses and incentives in Ms. Barton and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Barton and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, UDP failed to pay Ms. Barton and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, UDP routinely required Ms. Barton and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with UDP policies and expectations. UDP also failed to adequately staff its facilities and provide coverage to Ms. Barton and other aggrieved employees so they may be relieved of all work duties and take legally compliant meal and rest breaks. Moreover, UDP failed to authorize and permit Ms. Barton and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, UDP failed to compensate Ms. Barton and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, UDP failed to pay Ms. Barton and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, UDP failed to pay Ms. Barton and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

///

///

///

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, UDP did not provide Ms. Barton and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from UDP were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Barton and other aggrieved employees, (2) total hours worked by Ms. Barton and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Barton and other aggrieved employees (4) all deductions for Ms. Barton and other aggrieved employees, (5) net wages earned by Ms. Barton and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Barton and other aggrieved employees are paid, (7) the name of the aggrieved 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 Ms. Barton and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Barton and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, UDP failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Barton and other aggrieved employees.

///

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, UDP did not provide Ms. Barton and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, waiting in line to clock-in and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Barton and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by UDP, including for using their personal cellular phones and vehicles for work purposes.

We believe that Ms. Barton and other current and former California-based hourly-paid, non-exempt, salaried and/or exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Barton will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid, non-exempt, salaried and/or exempt employees of UDP within one year of the date of this letter, as allowed by law.

///

///

///

LWDA
July 12, 2021
Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Christopher Sparks
c/o United Development Group, Inc.
2805 Dickens St. Suite 103
San Diego, California 92106
Agent for Service of Process for United Development Group, Inc.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

PROOF OF SERVICE