

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Alejandro Ramirez

KARIN L. BACKSTROM, ESQ. SBN 163306
karin@backstromlaborlaw.com
BACKSTROM LABOR LAW
315 Laurel Street
San Diego, CA 92101
Telephone: (619) 851-7274
Facsimile:

Attorneys for Defendant De Anda Enterprises, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ALEJANDRO RAMIREZ, on behalf of
himself and on behalf of all similarly
situated individuals,

Plaintiff,

v.

DE ANDA ENTERPRISES, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 30-2021-10232142-CU-OE-CXC

*Assigned for all purposes to the Hon. William J.
Claster, Dept. CX104*

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: November 16, 2021

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1 **B. General.**

2 1. On November 12, 2021, Plaintiff exhausted the pre-filing requirements of the Labor
3 Code Private Attorneys General Act of 2004 (“PAGA”).

4 2. On or about November 16, 2021, Plaintiff initiated the Action by filing a Class
5 Action Complaint on behalf of himself and on behalf of all similarly situated individuals (the
6 “Complaint”). The First Amended Complaint, attached hereto as Exhibit 4 and which will be filed
7 as part of the settlement approval process, asserts representative action claims pursuant to PAGA
8 against Defendant for (1) failure to pay all minimum and overtime wages (Labor Code §§ 510,
9 1194, and 1194.2); (2) failure to provide compliant rest periods or compensation in lieu thereof
10 (Labor Code § 226.7; IWC Wage Order 5-2001); (3) failure to provide compliant meal periods or
11 compensation in lieu thereof (Labor Code §§ 226.7, 512, 1174, and 1174.5; IWC Wage Order 5-
12 2001); (4) failure to comply with itemized employee wage statement provisions (Labor Code §
13 226(a); (5) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203);
14 (6) violation of Business and Professions Code §§ 17200, *et seq.*; and (7) civil penalties pursuant
15 to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201-202, 226(a), 226.3, 226.7, 510,
16 512, 558, 1174, 1174.5, and 1194 (the “First Amended Complaint”).

17 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
18 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
19 purpose other than this settlement. Defendant contends that it has complied at all times with the
20 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
21 federal, state, and local laws and regulations. It is Defendant’s position that, if this case were to be
22 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
23 representative, Plaintiff’s claims are not typical of putative class members, and individual issues
24 predominate over class issues. The Action, the negotiation and execution of this Settlement
25 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
26 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
27 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
28 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and

1 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
2 class certification in the Action or with respect to any other proceeding.

3 4. The Class Representative contends that Defendant violated the California Labor
4 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
5 certification.

6 5. Class Counsel represent that they have conducted a thorough investigation into the
7 facts and law during the prosecution of this class action case, including the exchange of extensive
8 informal discovery and the review and verification of statistical data and other facts and information
9 provided by Defendant. Counsel for the Parties also represent that they have investigated the
10 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
11 potential defenses thereto, and the damages and other losses claimed by Plaintiff.

12 6. On November 30, 2022, following their exchange of information and documents
13 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
14 engaged in arm's-length negotiations with the assistance of mediator Mark LeHocky, Esq., through
15 which they were able to reach the resolution of the Action set forth herein.

16 7. Based on their own independent investigation and evaluation, Class Counsel are of
17 the opinion (and will so represent to the Court) that settlement for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
19 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
20 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
21 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
22 that this settlement is fair and in the best interest of the Settlement Class.

23 8. The Parties agree that the Settlement Class described herein may be certified for
24 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
25 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
26 approved, the certification will have no force or effect and will immediately be revoked. The
27 Parties further agree that certification for purposes of the settlement is in no way an admission that
28 class certification is proper under the more stringent standard applied for litigation and that

evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding.

C. Terms of Settlement.

1. The financial terms of the settlement are as follows:

(a) **Maximum Payment:** The Parties agree to settle this Action for a Maximum Payment of One Hundred Fifty Thousand Dollars (\$150,000.00) ("the Maximum Payment"). The Maximum Payment includes the attorneys' fees of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the enhancement payment to the Class Representative, as approved by the Court; the payments to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees pursuant to the PAGA claims in the Action; and all costs of administration, including, without limitation, settlement administration fees and expenses. Defendant shall pay all employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds in addition to, and separate and apart from, the Maximum Payment.

(b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the Maximum Payment less the amounts approved and awarded by the Court for: attorneys' fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the enhancement payment to the Class Representative; the payments to the LWDA and Aggrieved Employees pursuant to PAGA; and the costs of administering the settlement.

(c) **Individual Payment Amounts:** "Individual Payment Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and the portion of the PAGA Payment distributable to each PAGA Member, regardless of whether they request exclusion from the class settlement or not. The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly

1 rate. The weekly rate shall be multiplied by the number of weeks each individual participating
2 Class Member worked for Defendant in California in a non-exempt position during the Class Period
3 to yield their Individual Payment Amount. Each Participating Settlement Class Member who does
4 not opt out will receive an Individual Payment Amount equal to their individual weeks worked in
5 California in a non-exempt position during the Class Period multiplied by the Workweek Value,
6 and the Individual Payment Amounts to be paid to each PAGA Member will also include their
7 Individual PAGA Payment Amount, as detailed below.

8 i. For tax purposes, each Individual Payment Amount will be
9 apportioned (a) 10% as wages (reported on an IRS Form W-2 and subject to applicable
10 withholdings); and (b) 90%, equally as penalties and interest (reported on an IRS Form 1099, if
11 required). Individual PAGA Payment Amounts will be apportioned as 100% non-wage penalties
12 (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class
13 Members will be subject to any applicable wage garnishments, liens, or other legally mandated
14 treatment as required by law.

15 (d) **PAGA Payments:** The Parties agree that Ten Thousand Dollars
16 (\$10,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
17 amount, Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall
18 be paid to the LWDA, and the remaining Twenty-Five percent (25%), or Two Thousand Five
19 Hundred Dollars (\$2,500.00), shall be distributed to Aggrieved Employees on a pro rata basis based
20 on the number of workweeks worked by each PAGA Member during the PAGA Period.
21 "Individual PAGA Payment Amount" means the portion of the PAGA Payment distributable to
22 each PAGA Member. The Individual PAGA Payment Amounts will be calculated by dividing the
23 employee portion of the PAGA Payment (\$2,500.00) by the total weeks worked by all Aggrieved
24 Employees in California in a non-exempt position during the PAGA Period, which will yield the
25 applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual
26 PAGA Member worked for Defendant in California in a non-exempt position during the PAGA
27 Period to yield their Individual PAGA Payment Amount. Aggrieved Employees will receive their
28 portion of the Individual PAGA Payment Amounts regardless of their decision to opt out of the

1 class settlement (i.e., Class Members who opt out will nevertheless receive their Individual PAGA
2 Payment Amount).

3 (e) **Enhancement Payment to Class Representative:** The amount awarded to
4 the Class Representative as an enhancement payment will be set by the Court in its discretion, not
5 to exceed Five Thousand Dollars (\$5,000.00). This amount will be deducted from the Maximum
6 Payment. An IRS Form 1099 will be issued to the Class Representative for his enhancement
7 payment. Defendant agrees not to dispute or otherwise object to the enhancement payment if
8 Plaintiff requests \$5,000.00 or less.

9 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
10 deducted from the Maximum Payment in an amount to be set by the Court taking into account the
11 settlement award that has been made available for the Settlement Class by the efforts of Class
12 Counsel. The amount awarded shall not exceed one-third (33-1/3%) of the Maximum Payment
13 (i.e., Fifty Thousand Dollars (\$50,000.00)). An IRS Form 1099 will be issued to Class Counsel
14 with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise object to
15 the attorneys' fee award requested by Class Counsel so long as the request does not exceed one-
16 third of the Maximum Payment.

17 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
18 the Maximum Payment in an amount to be set by the Court for documented out-of-pocket litigation
19 costs and expenses, not to exceed Twelve Thousand Dollars (\$12,000.00). An IRS Form 1099 will
20 be issued to Class Counsel with respect to its award of costs and expenses. Defendant agrees not
21 to dispute or otherwise object to the attorneys' cost award requested by Class Counsel so long as
22 the request does not exceed \$12,000.

23 (h) **Settlement Administration Costs:** The fees and other charges of the
24 Settlement Administrator to administer the Settlement are expected to total no more than Five
25 Thousand Dollars (\$5,000.00), and will be paid from the Maximum Payment. These fees shall
26 include any costs associated with the required tax reporting on any Individual Payment Amounts,
27 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties
28 have agreed that Phoenix Settlement Administration will serve as a neutral third-party claims'

1 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
2 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing
3 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)
4 administering the settlement; (c) processing exclusions, objections, and field inquiries from Class
5 Members; (d) resolving disputes; (e) calculating the Individual Payment Amount each Participating
6 Class Members is eligible to receive, and the Individual PAGA Payment Amount each PAGA
7 Member shall receive; (f) distributing the Maximum Payment as directed by the Court and set forth
8 herein; (g) tax reporting; (h) providing necessary weekly status reports; and (i) other duties and
9 responsibilities set forth herein.

10 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
11 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
12 makes no representations regarding tax obligations or consequences, if any, related to this
13 Settlement Agreement.

14 **D. Release of Claims.**

15 1. **Settlement Class Members.** Upon the Effective Date, and subject to Defendant's
16 full payment of the Maximum Payment, Plaintiff and all Settlement Class Members who do not
17 timely opt-out will be deemed to have fully released and discharged Defendant and its respective
18 present and former parents, owners, subsidiaries and any affiliated or related persons or entities
19 and each of their respective officers, directors, employees, partners, shareholders, attorneys and
20 agents and any other successors, assigns or legal representatives ("Released Parties") from any
21 and all claims and/or causes of action, known or unknown, which accrued during the Class Period
22 during employment in a non-exempt position in California, that are alleged in the First Amended
23 Complaint, or that could have been alleged in the Action based on the facts set forth in the First
24 Amended Complaint.

25 2. **PAGA Members.** Upon the Effective Date, and subject to Defendant's full
26 payment of the Maximum Payment, Plaintiff and all PAGA Members will be deemed to have fully
27 released and discharged Defendant and Released Parties from any and all claims and/or causes of
28 action, known or unknown, which accrued during the PAGA Period during employment in a non-

1 exempt position in California, that are alleged in the First Amended Complaint, or that could have
2 been alleged in the Action based on the facts set forth in the First Amended Complaint.

3 **E. Notice and Exclusion Process.**

4 1. Within thirty (30) calendar days after entry of the order granting preliminary
5 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all
6 Class Members, including their last known addresses, telephone numbers, social security numbers,
7 and their dates of employment in a non-exempt position in California during the Class Period
8 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
9 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
10 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
11 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
12 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
13 storage, custody, use, and/or dissemination of the confidential information. Such information must
14 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

15 2. A notice of pendency of class action, proposed settlement, and hearing date for
16 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the
17 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
18 within fourteen (14) calendar days after receipt of the Settlement Class Information. Attached to
19 the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
20 attached hereto as Exhibit 2, and a workweek dispute form in the form attached hereto as Exhibit

21 3.

22 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
23 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
24 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
25 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
26 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
27 notices.

1 4. Each Class Member will be fully advised of the settlement, the ability to object to
2 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
3 inform the Class Members of the Court-established deadlines for filing objections and a Request
4 for Exclusion Form. The Request for Exclusion shall not be effective as to the release of claims
5 arising under PAGA as to Aggrieved Employees.

6 5. Each Class Notice will contain personalized information setting forth the number of
7 weeks each Class Member worked for Defendant in California in a non-exempt position during the
8 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
9 disputes any of the information listed on his or her Class Notice, the Class Member may produce
10 evidence to the Settlement Administrator showing such information the Class Member contends
11 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
12 however, and the Settlement Administrator's decision on these matters will be final. The Class
13 Notice will also set forth IRS W-9 information if required.

14 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
15 to receive an Individual Payment Amount—and Aggrieved Employees will receive their portion of
16 the PAGA Payment, if eligible, regardless of their decision to opt out of the class settlement—
17 which shall be mailed to them if and when the Effective Date occurs.

18 7. In order to elect not to participate in the Settlement, a Class Member must submit a
19 Request for Exclusion Form, and mail it to the Settlement Administrator no later than sixty (60)
20 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
21 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
22 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
23 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 60th day
24 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
25 on which the U.S. Postal Service is open.

26 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
27 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
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1 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
2 on which the U.S. Postal Service is open.

3 9. The Settlement Administrator will search for additional addresses on returned mail
4 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
5 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
6 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
7 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
8 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
9 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
10 Settlement Administrator will search using the social security number for a more current address.
11 If no address is found within 10 days, no further action is required.

12 10. The Settlement Administrator will notify the Parties of the total number of valid
13 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
14 Request for Exclusion Forms (seventy (70) days following the initial mailing of the Class Notice
15 and Request for Exclusion Forms to Class Members).

16 11. In order to submit a written objection to the settlement, a Class Member must mail
17 his or her objection to the Settlement Administrator no later than sixty (60) calendar days after the
18 mailing of the Class Notice, Request for Exclusion Form, and Workweek Dispute Form to Class
19 Members, unless the Court requires a longer period, in which case the Court ordered objection
20 period will apply. If the 60th day falls on a Sunday or federal holiday, the time to object to the
21 settlement will be extended to the next day on which the U.S. Postal Service is open. Any Class
22 Member may appear at the final approval hearing to argue their objections, regardless if they have
23 submitted a written objection.

24 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
25 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
26 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
27 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
28 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report

1 listing the amount of all payments to be made to each Class Member without names or personal
2 identifying information.

3 13. Defendant shall deposit the Maximum Payment and all employer payroll taxes with
4 the Settlement Administrator no later than thirty (30) calendar days after the Effective Date. The
5 effective date of this Settlement Agreement ("Effective Date") is the date the Court approves this
6 Settlement and enters judgment in accordance therewith. If there are one or more objections filed
7 to the Settlement which are not withdrawn, the Maximum Payment shall be paid no later than thirty
8 (30) calendar days after the appeals period expires, unless an appeal from the judgment is filed, in
9 which case the Maximum Payment shall be paid no later than thirty (30) calendar days after (1)
10 the judgment is affirmed and no further appeals or petitions for review may be filed, or (2) the
11 appeal is dismissed.

12 14. The Settlement Administrator shall disburse the Maximum Payment within fifteen
13 (15) calendar days after its receipt thereof. Class Members and Aggrieved Employees must cash
14 each of their Individual Payment Amount checks within one hundred eighty (180) calendar days
15 after they are mailed by the Settlement Administrator. The value of any checks uncashed more
16 than one hundred eighty (180) days after mailing shall be paid to the State of California State
17 Controller's Office, to be held in the name of the respective Class Member or PAGA Member.

18 **F. Duties of the Parties Prior to Court Approval.**

19 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
20 Court for preliminary approval of this settlement and entry of an order accomplishing the
21 following:

- 22 (a) scheduling a fairness hearing on the question of whether the proposed
23 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- 24 (b) approving as to form and content the proposed Class Notice;
- 25 (c) approving as to form and content the proposed Request for Exclusion
26 Form and Workweek Dispute Form;
- 27 (d) preliminarily certifying the Settlement Class for purposes of settlement;

- 1 (e) preliminarily approving the PAGA payments of \$7,500 to the LWDA and
2 \$2,500 to Aggrieved Employees, based on the formulas specified herein;
- 3 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- 4 (g) preliminarily setting the enhancement payment to the Class Representative;
- 5 (h) preliminarily approving Phoenix Settlement Administration as the
6 Settlement Administrator and its estimated fees and costs of \$5,000; and
- 7 (i) permitting Plaintiff to file the First Amended Complaint.

8 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
9 of Plaintiff's unopposed motion for preliminary approval of the settlement.

10 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

11 1. In connection with the hearing on final approval of the settlement provided for in
12 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
13 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
14 by the Court):

15 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
16 and adequate, and directing consummation of its terms and provisions;

17 (b) approving Class Counsel's application for an award of attorneys' fees and
18 reimbursement of documented litigation costs and expenses, the enhancement payment to the
19 Class Representative, the PAGA Payments to the LWDA and Aggrieved Employees, and the
20 costs of administering the settlement; and

21 (c) entering judgment in this Action in accordance with this Stipulation,
22 pursuant to Cal. Rules of Court, Rule 3.769(h).

23 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
24 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
25 on final approval (unless otherwise ordered by the Court).

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1 5. **No Admission.**

2 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
3 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
4 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
5 Settlement Agreement with the intention of avoiding further disputes and litigation with the
6 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
7 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
8 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
9 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

10 6. **Construction.**

11 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
12 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
13 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
14 any Party or his or its counsel participated in the drafting of this Settlement Agreement.

15 7. **Captions and Interpretations.**

16 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
17 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
18 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
19 recital.

20 8. **Modification.**

21 This Settlement Agreement may not be changed, altered, or modified, except in writing and
22 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
23 discharged except by performance in accordance with its terms or by a writing signed by each of
24 the Parties hereto on their attorneys.

25 9. **Integration Clause.**

26 This Settlement Agreement contains the entire agreement between the Parties relating to
27 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
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1 understandings, representations, and statements, whether oral or written and whether by a Party or
2 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
3 writing.

4 10. **Binding on Assigns.**

5 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
6 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

7 11. **Governing Law.**

8 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
9 according to the laws of the State of California, without giving effect to any conflict of law
10 principles or choice of law principles.

11 12. **Signatures of All Class Members Unnecessary to be Binding.**

12 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
13 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
14 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
15 provided herein and such shall have the same force and effect as if this Settlement Agreement was
16 executed by each Class Member.

17 13. **Counterparts.**

18 This Settlement Agreement may be executed in counterparts, and when each Party has
19 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
20 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
21 Agreement, which shall be binding upon and effective as to all Parties.

22 14. **Confidentiality**

23 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
24 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
25 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
26 agencies, or as otherwise required by law.

27 15. **No Publicity**

28 Plaintiff and his Counsel will not contact the media about the settlement or respond to any

inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any information about the settlement on social media or their firms' websites.

16. Representation Regarding Class Size.

Defendant has represented that there are no more than approximately 260 Class Members who worked no more than 15,000 workweeks during the Class Period. Should either of these numbers increase by more than 20%, the Maximum Payment shall increase proportionately with the greater increase.

Dated: 03 / 06 / 2023

By: 

ALEJANDRO RAMIREZ
Plaintiff and Class Representative

Dated: 03 / 27 / 2023

DE ANDA ENTERPRISES, INC.

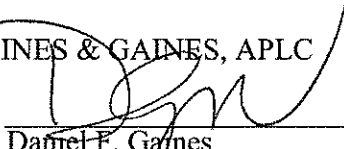
By: 

Its: President

APPROVED AS TO FORM AND CONTENT:

Dated: 3/6/2023

GAINES & GAINES, APLC

By: 
Daniel F. Gaines
Alex P. Katofsky
Evan S. Gaines
Counsel for Plaintiff and Class
Representative Alejandro Ramirez

Dated: 03/29/2023

BACKSTROM LABOR LAW

By: 
Karin L. Backstrom
Counsel for Defendant De Anda
Enterprises, Inc.

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ALEJANDRO RAMIREZ, on behalf of himself
and on behalf of all similarly situated
individuals,

Plaintiff,

v.

DE ANDA ENTERPRISES, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 30-2021-10232142-CU-OE-CXC

*Assigned For All Purposes to the Honorable
Judge William Claster, Dept. CX104*

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$150,000 to pay claims to and on behalf of all individuals who worked for De Anda Enterprises, Inc. ("Defendant") as non-exempt employees in California at any time between November 16, 2017 and November 30, 2022 (the "Class Period") and all non-exempt employees in California at any time between November 12, 2020 and November 30, 2022 (the "PAGA Period").
- The settlement resolves a lawsuit alleging that Defendant failed to pay all minimum and overtime wages; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and, in exchange, releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$50,000 as attorneys' fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. The above amounts will be paid from the total settlement amount.
- Defendant believes it has complied with the law in all respects and deny any liability for the claims asserted by Plaintiff. Defendant is not admitting liability of any of the factual and legal allegations asserted in the lawsuit, and deny that the lawsuit should proceed as a class action for any purpose other than this Settlement. After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case in order to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and his counsel believe the Settlement is in the best interests of all non-exempt employees who worked for Defendant in California during the Class Period ("Class Members") and the PAGA Period ("Aggrieved Employees").

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself from the class settlement, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against De Anda Enterprises, Inc. about the legal claims that were brought in this case. Note that if you exclude yourself and you are an Aggrieved Employee, you will still receive a payment for PAGA penalties and be bound by the settlement of the PAGA claims.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class and representative action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a Class Member and/or Aggrieved Employee on whose behalf this class and representative action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On November 16, 2021, Plaintiff Alejandro Ramirez ("Plaintiff"), a former employee of De Anda Enterprises, Inc., filed this lawsuit in Orange County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant employed from November 16, 2017 through November 30, 2022. Specifically, the lawsuit alleges that Class Members and Aggrieved Employees were not paid all minimum and overtime wages due; were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Gaines & Gaines, APLC

4550 E. Thousand Oaks Blvd., Suite 100

Westlake Village, CA 91362

Phone: (866) 550-0855

Defendant's Attorneys

Karin L. Backstrom, Esq.

BACKSTROM LABOR LAW

315 Laurel Street

San Diego, CA 92101

Telephone: (619) 851-7274

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would prevail on one or more of his claims at a trial, if he elected to and/or were forced to move forward formally. Defendant does not believe Plaintiff would win anything from a trial, if Defendant elected to and/or was forced to move forward formally, and if Plaintiff were to make it that far on one or more of his claims. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement Agreement" or "Stipulation of Settlement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members and Aggrieved Employees.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for De Anda Enterprises, Inc. as hourly and/or non-exempt employees in California at any time between November 16, 2017 and November 30, 2022, and, with regard to the PAGA Claims, all Aggrieved Employees who worked between November 12, 2020 and November 30, 2022.

C. What does the Settlement provide?

1. Maximum Payment.

The Settlement provides that Defendant will pay One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Maximum Payment") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Payment that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds is the Maximum Payment less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Class Members.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed Fifty Thousand Dollars (\$50,000.00);

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed Twelve Thousand Dollars (\$12,000.00);

(c) **Enhancement Payment to the Class Representative** in an amount set by the Court, not to exceed Five Thousand Dollars (\$5,000.00), for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed Five Thousand Dollars (\$5,000), for administering the settlement; and

(e) **PAGA Payments** in the total amount of Ten Thousand Dollars (\$10,000.00) for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining Twenty-Five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500.00), will be distributed to non-exempt California employees who worked for Defendant from November 12, 2020 to November 30, 2022 ("Aggrieved Employees"), for the release of their claims arising under PAGA.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below. Your Individual Payment Amount includes both your estimated share of the Net Settlement Proceeds and, if eligible, your share of the PAGA Payment ("Individual PAGA Payment Amount").

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the "Effective Date," as defined below, and subject to Defendant's full payment of the Maximum Payment, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant and its respective present and former parents, owners, subsidiaries and any affiliated or related persons or entities and each of their respective officers, directors, employees, partners, shareholders, attorneys and agents and any other successors, assigns or legal representatives ("Released Parties") from any and all claims and/or causes of action, known or unknown, which accrued during the Class Period during employment in a non-exempt position in California, that are alleged in the First Amended Complaint, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint.

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Payment, Plaintiff and all PAGA Members will be deemed to have fully released and discharged Defendant and Released Parties from any and all claims and/or causes of action, known or unknown, which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the First Amended Complaint, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint.

The Effective Date of this Settlement Agreement ("Effective Date") is the date the Court approves the Settlement and enters judgment in accordance. If there are one or more objections filed to the Settlement which are not withdrawn, the Maximum Payment shall be paid no later than fifteen (15) calendar days after the appeals period expires, unless an appeal from the judgment is filed, in which case the Maximum Payment shall be paid no later than fifteen (15) calendar days after (1) the judgment is affirmed and no further appeals or petitions for review may be filed, or (2) the appeal is dismissed.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) and all Aggrieved Employees shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each PAGA Member, regardless if they request exclusion from the class settlement of not.

As to Class Members, the Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate ("Workweek Value"). The Workweek Value shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the Workweek Value, and the Individual Payment Amounts to be paid to each Aggrieved Employee will also include their Individual PAGA Payment Amount, as detailed below.

As to Aggrieved Employees, individual PAGA Payment Amounts will be calculated by dividing the employee portion of the PAGA Payment (\$2,500.00) by the total weeks worked by all Aggrieved Employees in California in a non-exempt position during the PAGA Period (November 12, 2020 to November 30, 2022), which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual Aggrieved Employee worked for Defendant in California in a non-exempt position during the PAGA Period to yield their Individual PAGA Payment Amount. Aggrieved Employees will receive their portion of the PAGA Payment regardless of their decision to opt out of the class settlement (i.e., Class Members who opt out will nevertheless receive their Individual PAGA Payment).

For tax purposes, each Individual Payment Amount will be apportioned (a) 10% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 90% as non-wage statutory damages and interest (reported on an IRS Form 1099, if required). The PAGA Payment Amounts will be apportioned 100% as non-wage penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] weeks while employed in a non-exempt position in California from November 16, 2017 through November 30, 2022 and you worked [] weeks while employed in a non-exempt position in California from November 12, 2020 through November 30, 2022. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit the enclosed workweek dispute form and provide an explanation and evidence in support of your position to the Settlement Administrator, postmarked, no later than [], 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at _____ a.m., in the Courtroom of Judge Claster of the Orange County Superior Court, Department CX104, located at 751 West Santa Ana Blvd, Santa Ana, CA 92701. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an enhancement payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT AND RELEASE OF NON-PAGA CLAIMS**

You have a right to exclude yourself ("opt out") from the Settlement Class and release of non-PAGA claims, but if you choose to do so, you will not receive any benefits from the proposed settlement. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim. You will not be bound by a judgment in this case, and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____. The Request for Exclusion shall not be effective as to the release of claims arising under PAGA. Class Members who opt-out of the Settlement will nevertheless release Released Claims that arise under PAGA.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Orange County Superior Court, located at 751 West Santa Ana Blvd, Santa Ana, CA 92701. You can also access the case file on the Court's website at <https://www.occourts.org/online-services/case-access>. The case number is 30-2021-10232142-CU-OE-CXC and the filing year is 2021.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE CLASS ACTION KNOWN AS *Alejandro Ramirez, Plaintiff, v. De Anda Enterprises, Inc., and Does 1 Through 10, Inclusive, Defendants, Orange County Superior Court*, Case No. 30-2021-10232142-CU-OE-CXC.

I confirm that I was employed by Defendant De Anda Enterprises, Inc. as an hourly and/or non-exempt employee in California between November 16, 2017 and November 30, 2022 (the "Class Period").

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed class action settlement. I understand that I will receive a share of the PAGA Payment and be bound by a release of PAGA claims even if I opt out of the class settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[60 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

De Anda Enterprises, Inc. Claims Administrator
c/o Phoenix Settlement Administration

EXHIBIT 3

WORKWEEK DISPUTE FORM

ONLY COMPLETE AND SUBMIT THIS WORKWEEK DISPUTE FORM IF YOU DISAGREE WITH THE WORKWEEK CALCULATIONS BELOW.

According to the records of Defendant De Anda Enterprises, Inc., you worked [] weeks while employed in a non-exempt position in California from November 16, 2017 to November 30, 2022 and you worked [] weeks while employed in a non-exempt position in California from November 12, 2020 to November 30, 2022.

If you disagree with the workweek count above, please state below what you believe are the correct number of weeks worked:

I believe I worked _____ weeks while employed by Defendant in a non-exempt position in California from November 16, 2017 to November 30, 2022.

I believe I worked _____ weeks while employed in a non-exempt position in California from November 12, 2020 to November 30, 2022

Please submit any documentation or other evidence you have to support your proffered workweek calculations above.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE TIMELY, THIS WORKWEEK DISPUTE FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [60 days after mailing of Notice]. Send this signed form to the Settlement Administrator:

De Anda Enterprises, Inc. Claims Administrator
c/o Phoenix Settlement Administration

EXHIBIT 4

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

Attorneys for Plaintiff Alejandro Ramirez, on behalf of himself and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ALEJANDRO RAMIREZ, on behalf of
himself and on behalf of all similarly situated
individuals,

Plaintiff,

v.

DE ANDA ENTERPRISES, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 30-2021-10232142-CU-OE-CXC

*Assigned for all purposes to the Hon. James
DiCesare, Dept. C-16*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES (LABOR
CODE §§ 510, 1194 AND 1194.2)**
- 2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 5-2001)**
- 3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 512,
1174, AND 1174.5; IWC WAGE ORDER 5-
2001)**
- 4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**
- 5. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**
- 6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

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**7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.7,
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

Complaint Filed: November 16, 2021

Plaintiff ALEJANDRO RAMIREZ ("Plaintiff"), on behalf of himself, all similarly situated individuals (the "Class" or "Plaintiff Class"), and on behalf of the general public, and as an "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and the Class of individuals described in detail below against DE ANDA ENTERPRISES, INC., a California corporation, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants").

2. For at least four (4) years prior to the filing of this action and continuing to the present (the "liability period"), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due, provide legally compliant meal and rest periods, or compensation in lieu thereof; failing to pay all wages due upon separation of employment; and failing to issue accurately itemized wage statements.

3. Plaintiff, on behalf of himself members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 1194, and 1194.2 seeking compensation for all unpaid wages, meal and rest period premium wages, liquidated damages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

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

7. Pursuant to the Judicial Council's Emergency Rule 9 of the California Rules of Court, Plaintiff's claims are subject to tolling from April 6, 2020, through October 1, 2020.

II.

PARTIES

A. Plaintiff

8. Plaintiff ALEJANDRO RAMIREZ was employed by Defendants from May 2020 through June 2020 as a non-exempt employee and performed work for Defendants in Orange County, California.

9. During his work with Defendants, Plaintiff was:

- a. Willfully denied all meal and rest periods or compensation in lieu thereof;
- b. Willfully denied the payment of all minimum and overtime wages due;
- c. Willfully denied accurately itemized wage statements; and
- d. Denied the timely payment of all wages upon separation of his employment.

B. Defendants

10. Defendant DE ANDA ENTERPRISES, INC. is a California corporation. Defendant DE ANDA ENTERPRISES, INC. employed Plaintiff in Orange County, California.

11. 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. 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.

///

12. 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.

13. 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.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All persons employed as non-exempt employees by Defendants in California at any time since the date four years preceding the filing of this Action.

15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

16. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and each proposed Class is easily ascertainable.

A. Numerosity

17. The potential members of the Class as defined are so numerous that joinder of all class members is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 50 persons in the State of California who fall within the Class definition.

1 18. Accounting for employee turnover during the relevant period necessarily increases this
2 number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of members of the Class. Joinder of members of the Class is not practicable.

4 **B. Commonality**

5 19. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual class members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Defendants failed to pay all minimum and overtime wages due to
9 Plaintiff and Class Members, in violation of Labor Code §§ 510, 1194, and
10 1194.2;
- 11 b. Whether Defendants failed to properly provide rest periods, or compensation
12 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §
13 226.7, and IWC Wage Order 5-2001;
- 14 c. Whether Defendants failed to properly provide meal periods, or compensation
15 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
16 226.7, 512, 1174, and 1174.5, and IWC Wage Order 5-2001;
- 17 d. Whether Defendants failed to provide Plaintiff and Class Members with
18 accurately itemized wage statements, in accordance with Labor Code § 226(a)
19 and (e);
- 20 e. Whether Defendants failed to timely Plaintiff and pay members of the Class
21 all wages due and owing at the separation of their employment, in violation of
22 Labor Code §§ 201-203; and
- 23 e. Whether Plaintiff and members of the Class are entitled to equitable relief
24 pursuant to Business & Professions Code § 17200 *et seq.*

25 **C. Typicality**

26 20. The claims of the named Plaintiff are typical of the claims of members of the Class.
27 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
28

1 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
2 of law, and statutes as alleged herein.

3 **D. Adequacy of Representation**

4 21. Plaintiff will fairly and adequately represent and protect the interests of members of
5 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
6 employment class actions.

7 **E. Superiority of Class Action**

8 22. A class action is superior to other available means for the fair and efficient adjudication
9 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
10 questions of law and fact common to the proposed Class predominate over any questions affecting
11 only individual members of the proposed Class. Each member of the proposed Class has been
12 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

13 23. Class action treatment will allow those similarly situated persons to litigate their
14 claims in the manner that is most efficient and economical for the parties and the judicial system.
15 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
16 action that would preclude its maintenance as a class action.

17 **IV.**

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

21 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

22 **(LABOR CODE §§ 510, 1194 AND 1194.2)**

23 24. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
24 forth herein.

25 25. During the liability period, Defendants failed to pay all overtime wages due, in
26 violation of Labor Code §§ 510 and 1194. Defendants paid Plaintiff and Class Members straight time
27 wages only, with no adjustment for premium overtime wages. Specifically, Plaintiff and Class
28 Members would work in excess of 8 hours per day and 40 hours per week, but were never properly

1 compensated for work performed in excess of eight (8) hours in a workday and work performed in
2 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
3 rate of pay. Furthermore, Plaintiff and Class Members would routinely work without any
4 compensation whatsoever, thereby denying them all minimum and overtime wages due. This violates
5 Labor Code §§ 510, 1194, and 11942.

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

10 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

11 V.

12 **SECOND CAUSE OF ACTION**

13 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

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

15 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 5-2001)**

16 27. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set
17 forth herein.

18 28. Plaintiff and Class Members are entitled to one hour of pay for each day that
19 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
20 IWC Wage Order 5-2001.

21 29. Defendants failed to pay premium wages to Plaintiff and Class Members who were
22 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 5-2001. Plaintiff and
23 Class Members were routinely unable to take a 10-minute rest period for every four (4) hours of work
24 or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest
25 period. When Plaintiff and Class Members were provided with a rest period, they would be interrupted
26 in the middle of such rest periods and would be required to continue working. This violates Labor
27 Code § 226.7 and IWC Wage Order 5-2001.

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30. Pursuant to Labor Code § 226.7 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

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

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7, 512, 1174, AND 1174.5 AND IWC WAGE ORDER 5-2001)

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff and Class Members are 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 and IWC Wage Order 5-2001.

33. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. When Plaintiff and Class Members did receive meal periods, they would typically be late (commencing after the fifth hour of work) or short (less than 30 minutes in duration). Defendants also failed to maintain meal period records. This violates Labor Code §§ 226.7, 512, 1174, and 1174.5 and IWC Wage Order 5-2001.

34. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all meal period compensation which Class Members are owed for four years preceding the filing of this Action, according to proof.

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

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. 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).

37. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiff and Class Members were not paid all minimum wages, overtime wages, and meal and rest period premium wages. 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).

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

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

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set forth herein.

40. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due 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.

41. Defendants paid Plaintiff and members of the Class their final wages beyond the time frames set forth in Labor Code §§ 201 and 202 in violation of Labor Code § 203. Plaintiff and members of the Class were not paid all wages due and owing throughout the course of their employment, including all minimum and overtime wages and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from

1 employment with Defendants, they were not paid all final wages due and owing for the entirety of
2 their employment.

3 42. More than 30 days have passed since Plaintiff and certain members of the Class have
4 left Defendants' employ.

5 43. As a consequence of Defendants' willful conduct in not paying wages owed timely
6 upon separation of employment, Plaintiff and members of the Class are entitled to up to 30 days'
7 wages as a penalty under Labor Code §§ 203 for Defendants' failure to timely pay legal wages at
8 separation of employment.

9 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

10 **IX.**

11 **SIXTH CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

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

15 44. Plaintiff incorporates paragraphs 1 through 42 of this Complaint as though fully set
16 forth herein.

17 45. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and
18 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
19 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
21 and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest
22 within the meaning of Code of Civil Procedure § 1021.5.

23 46. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 47. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
27 practices.

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

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

13 50. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 51. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
17 17200 *et seq.* of the Business & Professions Code.

18 52. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
19 similarly situated have been damaged in a sum as may be proven.

20 53. Unless restrained by this Court, Defendants will continue to engage in the unlawful
21 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
22 make such orders or judgments, including the appointment of a receiver, as may be necessary to
23 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive
24 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
25 disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to the
26 money Defendants have unlawfully failed to pay.

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28 \\

1 X.

2 SEVENTH CAUSE OF ACTION

3 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

4 PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
5 LABOR CODE §§ 201-202, 226(a), 226.7, 510, 512, 1174, 1174.5 AND 1194 AND PURSUANT
6 TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

7 54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set
8 forth herein.

9 55. As a result of the acts alleged above, including the Labor Code violations set forth
10 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

11 56. For each such violation, Plaintiff and all other aggrieved employees are entitled to
12 penalties in an amount to be shown at the time of trial subject to the following formula:

13 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
14 each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, 510, 512,
15 1174, 1174.5 and 1194; and

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

18 57. Penalties recovered will be allocated 75% to the Labor and Workforce Development
19 Agency, and 25% to the affected employees.

20 58. On November 12, 2021, Plaintiff sent a letter, by online submission to the LWDA and
21 by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
22 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
23 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
24 calendar days of November 12, 2021. Plaintiff may therefore commence this action to seek civil
25 penalties pursuant to Labor Code § 2698 *et seq.*

26 Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as
27 described below.

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

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

Dated: February 23, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: February 23, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff