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Attorneys for Plaintiff Sal Hernandez, individually and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SAL HERNANDEZ, individually and on
behalf of all similarly situated individuals,

Plaintiff,

v.

ANDONIAN ENTERPRISES, INC., a
California corporation, d/b/a DISCOUNT
TIRE & SERVICE CENTERS, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 22STCV21523

*Assigned to the Hon. Kenneth R. Freeman,
Dept. SS14*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL OF CLASS AND
REPRESENTATIVE ACTION**

[Filed Concurrently: Request for Dismissal]

Action Filed: July 1, 2022

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff SAL HERNANDEZ
4 (“Plaintiff”) in this matter. The matters set forth herein are of my own personal knowledge, and if
5 sworn as a witness, I could and would testify competently thereto.

6 2. On July 1, 2022, Plaintiff filed the instant Action seeking damages on a class wide and
7 representative basis, on behalf of himself and on behalf of all similarly situated individuals for
8 Defendant ANDONIAN ENTERPRISES, INC. d/b/a DISCOUNT TIRE & SERVICE CENTERS’
9 (“Defendant”) violations of California Labor Code, Business & Professions Code, codified as §
10 17200, *et seq.*, and the Private Attorneys’ General Act of 2004 (“PAGA”), codified as § 2698, *et seq.*
11 by allegedly failing to pay all wages due, provide meal and rest periods, or compensation in lieu
12 thereof, issue complete and accurate wage statements, and timely pay all wages due at separation of
13 employment. The alleged violations occurred when Plaintiff worked for Defendant in Los Angeles
14 County, California.

15 3. There is another pending case [*Sansoucie v. Andonian Enterprises Inc.*, San
16 Bernardino County Superior Court, Case No. CIVDS2004232] against Defendant that encompasses
17 all of Plaintiff’s claims. Following conversations with Defendant’s counsel, my office has ascertained
18 that the parties in the *Sansoucie* action are working towards resolving their action. Furthermore,
19 liability is disputed. This determination is based on information provided by Defendant’s counsel
20 through discussions in this matter.

21 4. The Parties have negotiated a settlement of Plaintiff’s individual claims only, and the
22 Class and PAGA claims will be dismissed without prejudice, as set forth in the concurrently-filed
23 request for dismissal. Attached hereto as **Exhibit A** is a true and correct redacted copy of the Parties’
24 Settlement Agreement.¹

25 5. The settlement of this Action does not provide for any consideration to any putative
26 class member in the Action nor does it provide for the waiver, settlement, or release of any claims
27

28 ¹ If the Court wishes to see an unredacted version of the Settlement Agreement, Plaintiff’s Counsel
will provide it for the Court’s *in camera* review.

1 asserted on behalf of any putative class member in the Action other than Plaintiff. Further, the
2 settlement does not contemplate the waiver of PAGA claims asserted on behalf of any employee or
3 the State, such that there is no allocation of civil penalties in the Settlement.

4 6. No notice is required to be given to the putative class because no notice of the pending
5 Action was ever given; there has been no publicity of which the Parties are aware; neither Plaintiff
6 nor my office have communicated with any absent class members about the Action; the putative class
7 is not reasonably ascertainable at the present time; and the *Sansoucie* action is being resolved and will
8 involve the same putative class as this action; consequently, no absent putative class member will
9 suffer prejudice as a result of this dismissal.

10 7. Plaintiff, therefore, requests that the Court enter a dismissal of this action ***with***
11 ***prejudice*** as to Plaintiff's individual claims and ***without prejudice*** as to the class and representative
12 action claims, pursuant to the request submitted concurrently herewith.

13 8. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted the
14 Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct and was executed on May 30, 2023, at Westlake Village, California.

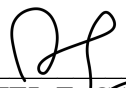
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19 _____
DANIEL F. GAINES

EXHIBIT A

SETTLEMENT AGREEMENT

I. RECITALS

WHEREAS, SAL HERNANDEZ (hereinafter referred to as “Plaintiff”) filed a complaint on or about July 1, 2022, against ANDONIAN ENTERPRISES, INC. (hereinafter referred to as “Defendant”) (collectively referred to as the Parties or individually as a Party), for various wage and hour causes of actions and Private Attorney General Act (“PAGA”) claims;

WHEREAS, Defendant denies all the allegations made in the lawsuit; and

WHEREAS, to conserve legal fees and costs, the Parties to this agreement seek to resolve all disputes they may have against each other, including but not limited to the asserted Claims (as defined below).

NOW THEREFORE, in view of the foregoing, and for valuable consideration, including the mutual promises set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

II. AGREEMENT

1. **Definitions.** As used herein, the following definitions shall apply:

A. As used herein, the phrase “the Action” shall mean the lawsuit filed against Defendant on or about July 1, 2022, in Superior Court of California, County of Los Angeles, case number 22STCV21523, alleging (1) Failure to pay all wages due; (2) Failure to Provide Rest Periods or Compensation in Lieu thereof; (3) Failure to Provide Meal Periods Or Compensation in Lieu Thereof; (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (5) Violation of Business and Professions Code § 17200, (6) and PAGA Penalties.

B. As used herein, the word “Claims” shall mean and include, but shall not be limited to, any and all claims, demands, obligations, controversies, debts, attorneys’ fees and costs,

expenses, damages, judgments, penalties, fines and liabilities of whatever kind or nature in law, equity or otherwise.

2. **Consideration.** In consideration of the promises, and each of them, made in this agreement, Defendant hereby agrees to pay the total sum of [REDACTED] to be paid as follows:

A. Subject to the execution of this Settlement Agreement and presentment of an executed W-9 form from Gaines and Gaines, APLC (“Plaintiff’s Attorneys”), Defendant shall pay [REDACTED] (“Settlement Payment”) by checks made payable to “Gaines & Gaines APLC Client Trust Account”. The payments shall be mailed or otherwise delivered to 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362 in accordance with the following installment payment plan:

- i. the sum of [REDACTED] made on or about March 1, 2023;
- ii. the sum of [REDACTED] made on or about April 1, 2023;
- iii. the sum of [REDACTED] made on or about May 1, 2023; and
- iv. the sum of [REDACTED] made on or about June 1, 2023;

C. Plaintiff agrees and acknowledges that he is not entitled to any additional compensation, reimbursements or benefits from Defendant. Plaintiff agrees that the Settlement Payment shall constitute the entire amount of monetary consideration provided to him under this Agreement and that he will not seek any further compensation for any other claimed damages, claims of costs, or attorney's fees in connection with any matter including all the matters encompassed in this Agreement and in the Action.

D. Pursuant to Paragraph 2A above, in exchange for the Settlement Payment, Plaintiff agrees to dismiss the Action. No later than ten (10) calendar days after Plaintiff’s Attorneys receive the total Settlement Payment, Plaintiff shall file in the Action a Stipulation and Order for Dismissal of the Action, without prejudice as to all class and PAGA claims and with

prejudice as to Plaintiff's individual claims only. The Stipulation and Order shall be accompanied by a declaration of Plaintiff's Attorneys which details the basis for the dismissal of the class and PAGA claims and attaches this Settlement Agreement as an exhibit, with the Settlement Payment amount redacted. Should the Court seek to review the amount of the Settlement Payment, Plaintiff's Attorneys may submit this Agreement without redaction in camera or under seal, or as otherwise as directed by the Court. Should the Court require that the unredacted Settlement be filed in the public record, Plaintiff's Attorneys may do so. Concurrently, with its submission to the Court, Plaintiff's counsel shall submit this Agreement (unredacted), the Stipulation and Order for Dismissal, and the supporting declaration to the Labor & Workforce Development Agency ("LWDA"), in compliance with PAGA.

3. **Mutual General Release.** Except for the obligations, rights and responsibilities specified in this Settlement Agreement, and subject to Defendant's full payment of the Settlement Payment, the Parties hereby irrevocably and unconditionally release, acquit and forever discharge each other and all persons acting by, through, under or in concert with the Parties, and each of their respective owners, shareholders, managers, members, employees, partners, heirs, successors, and assigns, or any of them, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions (including the "Claims"), causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, any tort, or any federal, state or other governmental statute, regulation, ordinance, or public policy (including the "Claims"), which both Parties now have, own or hold, or claim to have, own or hold, or which

either of them at any time heretofore had, owned or held, or claimed to have against the other Party.

In addition, upon receipt of all payments required by this agreement, the Parties, and each of them, hereby waive any rights or benefits which they may have by virtue of the provisions of California Civil Code Section 1542, or any equivalent federal law, which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Notwithstanding the provisions of Civil Code section 1542, the Parties hereby mutually, irrevocably and unconditionally release and forever discharge each other and all persons acting by, through, under, or in concert with the Parties, from any and all charges, complaints, claims, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, which the Parties at any time heretofore had or claimed to have or which the Parties at any time hereafter may have or claim to have, including, without limitation, any and all claims related or in any manner incidental to the incident(s) which form the basis of this Action.

The Parties represent and warrant that the waiver and release of any rights hereunder is knowing and voluntary and that the consideration given for each of the respective waivers and releases in this Agreement is in addition to anything of value to which they are already entitled.

The Parties further represent and warrant they have consulted and sought legal advice from their respective attorneys, that they have reviewed all aspects of this agreement, that they understand all the provisions of this agreement, that they understand that in agreeing to this document they are releasing each other of any and all claims they may have against each other

that they voluntarily and free from duress or undue influence agree to all the terms set forth in this agreement and that they knowingly and willingly intend to be legally bound by the same.

4. **Taxes.** The Parties understand and agree that no party makes any representations, warranties or agreements concerning any tax treatment of the settlement amount or any portion of the settlement amount. The Parties to this agreement, and all of them, understand and agree that they will be responsible for the payment of any and all taxes, assessments, or other financial obligations, whether federal, state or local, which they owe in connection with the settlement amount.

5. **Confidentiality.** It is understood by all Parties that the fact that the Action has been settled will be evident from the court file. Nonetheless, it is agreed that the terms and conditions of the settlement of this dispute shall remain confidential and shall not be communicated by the Parties or their counsel to any other party, except as otherwise provided herein (i.e. the Settlement shall be filed with the Court and the LWDA in order to comply with PAGA and obtain dismissal of the class and PAGA claims without prejudice). Notwithstanding the foregoing, the Parties and their counsel may disclose such information to tax preparers, spouses, attorneys, accountants, and if otherwise required by law. It is further agreed that the Parties will, if asked about the Action, inform parties only that “the case has been resolved to the satisfaction of all parties.”

6. **No Admissions.** Each of the Parties hereto denies, and nothing herein shall be deemed or construed to be an admission of any liability or fault in respect of any of the allegations or claims from or concerning the Claims made or which could have been made by or against any of the Parties to this dispute, for any purpose including any violation of the rights of Plaintiff or any person, violation of any order, law, statute, duty, or contract whatsoever against Plaintiff or any person. Defendant specifically disclaims any liability to Plaintiff or any other person for any

alleged violation of the rights of Plaintiff or any person, or for any alleged violation of any order, law, statute, duty, or contract on the part of Defendant.

7. **Right to Consult with Counsel; No Drafting Party.** Plaintiff acknowledges having read and considered all of the provisions of this Agreement carefully, and having had the opportunity to consult with his counsel. Given this, the Parties agree that the obligations created hereby are not unreasonable. Defendant acknowledges that it has had an opportunity to negotiate any and all of these provisions and no rule of construction shall be used that would interpret any provision in favor of or against a party on the basis of who drafted this Agreement.

8. **Ambiguities or Uncertainties.** This Settlement Agreement, and any ambiguities or uncertainties herein, shall be equally and fairly interpreted and construed without reference to the identity of the party or parties who prepared this document, on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of the settlement agreement, or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code Section 1654, and any equivalent federal rule of law, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

9. **Benefits; Binding Effect.** This Agreement shall be for the benefit of and binding upon the Parties hereto and their respective heirs, personal representatives, legal representatives, successors and, where permitted and applicable, assigns, including, without limitation, any successor to Defendant, whether by merger, consolidation, sale of assets or otherwise.

10. **Survival of Executory Provisions.** Except as otherwise stated in this agreement, any and all executory provisions under this Settlement Agreement shall survive the consummation of this settlement agreement and shall continue in full force and effect until fully performed and satisfied.

11. **Entire Agreement and Written Modifications.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and, upon its effectiveness, shall supersede all prior agreements, understandings and arrangements, both oral and written, between the Plaintiff and Defendant with respect to such subject matter. This Agreement may not be modified in any way unless by a written instrument signed by both the Plaintiff and Defendant. In the event of any conflict between the terms of this Agreement and any other agreement, the terms of this Agreement shall prevail and shall supersede all other agreements, contracts and understandings.

12. **Counterparts.** This Settlement Agreement may be executed in duplicate originals or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement. A signature transmitted by facsimile or other electronic means shall be deemed valid and binding for all purposes.

13. **Section Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14. **Severability; Invalidity of provision.** Wherever possible, each provision in this agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid by any such law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.

15. **Waivers.** The waiver by either Party hereto of a breach or violation of any term or provision of this Agreement shall neither operate nor be construed as a waiver of any subsequent breach or violation.

16. **Force Majeure.** Neither Party shall be liable for any failure to perform under this Agreement in the event such failure is due to causes beyond that party's reasonable control, including, but not limited to, acts of God, acts of State or government authorities, riots, war, acts of terrorism, epidemic, pandemic (including the COVID-19 pandemic), quarantine, civil commotion, natural catastrophe, fire, explosion, storm, flood, earthquakes, accident, and prolonged shortage of raw materials energy. In the event of such delay, any date stated herein shall be extended by a period of time as agreed upon by both Parties.

For avoidance of doubt, Force Majeure shall not include financial distress nor the inability of either party to make a profit or avoid a financial loss, changes in market prices or conditions, or a party's financial inability to perform its obligations hereunder.

17. **Successors.** This Settlement Agreement shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.

18. **Further Papers.** Each party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this settlement agreement.

19. **Non-Disparagement and Duty to Cooperate; Neutral Reference.** The Parties agree that from this time forward they will refrain from making any defamatory or derogatory remarks about the other, or any person associated with or representing the other. Defendant shall provide Plaintiff with a neutral reference, disclosing upon inquiry on his dates of employment and last position held, and nothing more. The Parties further agree that from this time forward they will not make or repeat any allegation of illegal, immoral, unethical, or improper conduct about the other, unless ordered to do so by a court of competent jurisdiction or otherwise required by law. Each Party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time from each other, whether to

carry out the terms of this Agreement or otherwise to evidence or confirm their rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement.

20. **Time of Essence.** Time is of the essence as to all provisions of this Agreement.

Should Defendant fail to timely make any installment payment of the Settlement Payment provided herein, it shall be in default of its obligations hereunder and Plaintiff may move the Court, as authorized by paragraph 23 below, to enforce this Agreement.

21. **Good Faith Settlement.** The Parties warrant, represent and agree this Settlement Agreement has been entered into in good faith, at arm's length, without collusion, and is the product of negotiations of adverse interests as between the Parties.

22. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California.

23. **Fees and Costs.** Each party and their respective attorneys and each of them understand and agree that each of them shall bear their own attorneys' fees and costs incurred as a result of the Claims and the Action. The Parties further agree that each has the right to enforce this Settlement Agreement or any provision thereof, as necessary for interim or injunctive relief, by filing any appropriate motion or proceeding, including a motion to enforce the settlement terms under California Code of Civil Procedure Section 664.6. The Parties agree, acknowledge and stipulate that the Court in the Action shall retain jurisdiction over the Parties to enter judgment consistent with this Agreement and determine any motion brought pursuant to Code of Civil Procedure Section 664.6. The prevailing party in any proceeding to enforce this Agreement shall recover its reasonable attorney's fees and costs incurred to enforce this Agreement.

IN WITNESS WHEREOF, the Parties have executed this settlement agreement on the date written below.

02 / 23 / 2023
DATED: February ____, 2023

Sal Hernandez

Sal Hernandez, Plaintiff

DATED: February ____, 2023

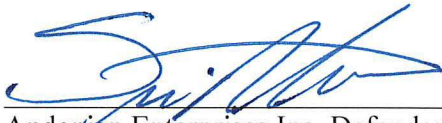
Andonian Enterprises Inc, Defendant
By _____

IN WITNESS WHEREOF, the Parties have executed this settlement agreement on the date written below.

DATED: February ____, 2023

Sal Hernandez, Plaintiff

DATED: February 23, 2023



Andonian Enterprises Inc, Defendant
By _____

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

____ (For messenger) my business address is:

On May 30, 2023, I served the foregoing document described as **DECLARATION OF DANIEL F. GAINES IN SUPPORT OF REQUEST FOR DISMISSAL OF CLASS AND REPRESENTATIVE ACTION** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**Vatché Chorbajian, Esq.
Alain Chorbajian, Esq.
Chandler Caffery, Esq.
LAW OFFICES OF VATCHE CHORBAJIAN, APC
P.O. Box 661
Rancho Santa Fe, CA 92067**

____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Westlake Village, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

 X (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission of CASEANYWHERE on the counsel of record listed above.

 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 30, 2023, at Westlake Village, California.



AMELIA BOOTH