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SUPERIOR COURT OF CALIFORNIA

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County of Tehama

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By Lane Harris, Deputy
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Attorneys for Plaintiff and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TEHAMA

JUAN LOPEZ, an individual, on behalf of
himself and others similarly situated

PLAINTIFF,

v.

ANDERSEN & SONS SHELLING, INC.;
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 22CI-000148

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT**

1. Penalties Pursuant to Labor Code §2699,
et seq.

1 Plaintiff JUAN LOPEZ (“Plaintiff”), on behalf of himself and on behalf of the people of
2 the State of California and as an “aggrieved employee” under Labor Code Private Attorneys
3 General Act of 2004, § 2699, et seq. (hereafter “PAGA”), complains of Defendant ANDERSEN
4 & SONS SHELLING, INC. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Representative Action, pursuant to Labor Code § 2699, *et seq.*, on behalf
8 of the following group of individuals:

9 All employees who are employed or have been employed as an
10 hourly employee by ANDERSEN & SONS SHELLING, INC., in
11 the State of California who worked one or more pay periods since
12 one (1) year prior to the date of Plaintiff’s notice letter to the Labor
13 & Workforce Development Agency (“LWDA”) and continuing to
14 the present plus any additional time during which the statutes of
limitation for the causes of action herein were tolled pursuant to
Emergency Rule 9 of the California Rules of Court, the ‘Emergency
Rules Related to COVID-19’. (“aggrieved employees”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. For at least one (1) year prior to the date of the letter sent to the LWDA and
24 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
25 has failed to properly comply with Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802.

26 4. For at least one (1) year prior to the date of the letter sent to the LWDA and
27 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
28 failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods
and failed to provide compliant meal periods. Defendant has had a consistent policy of: 1)

1 requiring Plaintiff and the aggrieved employees within the State of California to work at least five
2 (5) hours without a meal period; 2) requiring Plaintiff and the aggrieved employees within the
3 State of California to work at least ten (10) hours without a second meal period; and 3) failing to
4 pay such employees one (1) hour of pay at the employees' regular rate of compensation for each
5 workday that the first meal period was not provided within the first (5) hours of the shift and a
6 second meal period was not provided after ten (10) hours, as required by California state wage and
7 hour laws. Additionally, when meal premiums are provided, Defendant has had a consistent policy
8 of paying meal period premiums at the base rate and not the blended rate in violation of Labor
9 Code §§ 226.7 and 512.

10 5. For at least one (1) year prior to the date of the letter sent to the LWDA and
11 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
12 failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods
13 and failed to provide compliant rest periods. Defendant has had a consistent policy of failing to
14 provide all required rest periods of at least ten (10) minutes per four (4) hours worked or major
15 fraction thereof and failing to pay such employees one (1) hour of pay at the employee's regular
16 rate of compensation for each workday that the rest period was not provided, as required by
17 California state wage and hour laws. When rest premiums are provided, Defendant has had a
18 consistent policy of paying meal period premiums at the base rate and not the blended rate in
19 violation of Labor Code §§ 226.7 and 512.

20 6. For at least one (1) year prior to the date of the letter sent to the LWDA and
21 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
22 has failed to reimburse Plaintiff and the aggrieved employees for the cost of using their personal
23 cell phones for business purposes. These are necessary business expenditures under California
24 law and Defendant failed to reimburse the aggrieved employees as required by law.

25 7. For at least one (1) year prior to the filing of this action continuing to the present,
26 Defendant has failed to comply with Labor Code § 226(a) by failing to issue Plaintiff and the
27 aggrieved employees accurate itemized wage statements that show all applicable hourly rates in
28 effect during the pay period and the corresponding number of hours worked at each hourly rate by

1 the employee. This is as a result of Defendant's failure to issue Plaintiff and aggrieved employees
2 itemized wage statements that do not accurately include meal and rest period premiums as
3 described herein and when they do, they are not at the accurate rate.

4 8. For at least one (1) year prior to the date of the letter sent to the LWDA and
5 Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
6 has failed to pay all wages due at the time of termination or resignation to Plaintiff and the
7 aggrieved employees.

8 9. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly
9 employed by Defendant during the liability period, brings this representative action pursuant to
10 Labor Code § 2699, *et seq.* seeking penalties for Defendant's violations of Labor Code §§ 201,
11 202, 203, 226(a), 226.7, 512, and 2802.

12 **II.**

13 **JURISDICTION AND VENUE**

14 10. This Court has subject matter jurisdiction over all causes of action asserted herein
15 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
16 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
17 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
18 State of California or is subject to adjudication in the courts of the State of California.

19 11. This Court has personal jurisdiction over Defendant because Defendant has caused
20 injuries in the County of Tehama and the State of California through their acts, and by their
21 violation of the California Labor Code, California state common law, and California Business &
22 Professions Code § 17200, *et seq.*

23 12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
24 Civil Procedure § 395. Defendant operates within California and do business within Tehama
25 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all aggrieved
26 employees members within the State of California and the county of Tehama.

27 13. This case should be classified as complex according to Rule 3.400 of the California
28 Rules of Court, and assigned to a complex litigation judge and department, as it will involve

substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

14. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code § 2699, et seq. as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

III.

PARTIES

A. PLAINTIFF

15. Plaintiff JUAN LOPEZ is a resident of California.

16. Upon information and belief, Plaintiff and the aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 8-2001 (Title 8 Cal. Code of Regs. § 11080).

17. Plaintiff and all aggrieved employees as defined herein, and in his notice letter to the LWDA, are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code §2699(c).)

B. DEFENDANTS

18. Defendant ANDERSEN & SONS SHELLING, INC. is believed to be a California corporation operating within the State of California. Defendant ANDERSEN & SONS SHELLING, INC.’S corporate address is believed to be 4530 Rowles Road Vina, CA 96092. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, 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.

20. 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. Furthermore, Defendant in all respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

21. Furthermore, Defendants acted in all respects as the employers or joint employers of the aggrieved employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of the aggrieved employees, or suffered or permitted the aggrieved employees to work, or engaged, thereby creating a common law employment relationship, with the aggrieved employees. Therefore, Defendants, and each of them, employed or jointly employed the aggrieved employees.

IV.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22. Plaintiff and the aggrieved employees are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant.

23. Upon information and belief, Plaintiff and the aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 8-2001 (Title 8 Cal. Code of Regs. § 11080).

24. Plaintiff and all aggrieved employees have been forced by Defendant to work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Defendant also failed to inform Plaintiff and the aggrieved employees of their right to take compliant meal periods by way of a lawful policy.

25. Plaintiff and all aggrieved employees have been forced by Defendant to work over ten (10) hours in one day without being provided a second thirty (30) minute uninterrupted meal

1 break and not being compensated one (1) hour of pay at their regular rate of compensation for each
2 workday that a second meal period was not provided, all in violation of California labor laws,
3 regulations, and Industrial Welfare Commission Wage Orders. Defendant also failed to inform
4 Plaintiff and the aggrieved employees of their right to take compliant second meal periods by way
5 of a lawful policy.

6 26. Defendant has had a consistent policy of failing to provide all required rest periods
7 of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to pay
8 such employees one (1) hour of pay at the employee's regular rate of compensation for each
9 workday that the rest period was not provided, as required by California state wage and hour laws.
10 Defendant also failed to inform Plaintiff and the aggrieved employees of their right to take
11 compliant rest periods by way of a lawful policy.

12 27. Plaintiff and the aggrieved employees have not been properly reimbursed for
13 business expenses necessary for the completion of their job duties. Defendant required that
14 Plaintiff and the aggrieved employees be available by cell phone and answer/use their personal
15 cell phones to communicate with Defendant's management consistently to perform their job duties.
16 These cell phones were not provided by Defendant and Defendant has failed to reimburse Plaintiff
17 and the aggrieved employees the for the cost of using their personal cell phones, which are
18 necessary for them to discharge their duties in violation of Labor Code § 2802.

19 28. Defendant has failed to comply with Labor Code § 226(a). Defendant failed to
20 issue Plaintiff and the aggrieved employees accurate itemized wage statements that show all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee. This is because Defendant failed to issue Plaintiff and
23 the aggrieved employees accurate itemized wage statements that include meal and rest premiums
24 as a result of the claims alleged above and/or provide them at the accurate rate.

25 29. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
26 aggrieved employees quit or were discharged. This failure was willful, without legal justification,
27 and interfered with Plaintiff's and aggrieved employees' rights.

28 30. On a regular and consistent basis, for all aggrieved employees employed by

1 Defendant, Defendant has violated Labor Code §2699, *et seq.* by failing to comply with Labor
2 Code §§ 201, 202, 203, 226(a), 226.7, 512, 2802, and Wage Order 8-2001.

3 **V.**

4 **FIRST CAUSE OF ACTION**

5 **PLAINTIFF ON BEHALF OF ALL AGGRIEVED EMPLOYEES**

6 **AGAINST ALL DEFENDANTS FOR PENALTIES PURSUAN TO LABOR CODE §2699,**

7 **ET SEQ., FOR VIOALATION OF LABOR CODE §§ 201, 202, 203, 226(A), 226.7, 512,**

8 **AND 2802**

9 31. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 32. For at least one (1) year prior to the date of the letter sent to the LWDA and
11 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
12 violated California's meal period laws. Labor Code §§ 226.7 and 512 require an employer to pay
13 an additional hour of compensation for each meal period the employer fails to provide. Employees
14 are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be
15 provided within the first five (5) hours of the shift. Moreover, an employee who works more than
16 ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free
17 meal period.

18 33. Defendant failed to maintain a policy informing Plaintiff and the aggrieved
19 employees of these rights.

20 34. Plaintiff and the aggrieved employees consistently worked shifts over five (5)
21 hours. Defendant failed to provide Plaintiff and the aggrieved employees with proper meal periods
22 of not less than thirty (30) minutes within the first five hours of work as required by the Labor
23 Code during the relevant time period.

24 35. Plaintiff and the aggrieved employees consistently worked shifts over ten (10)
25 hours. Defendant failed to provide Plaintiff and the aggrieved employees with proper meal periods
26 of not less than thirty (30) minutes within the first ten (10) hours for shifts over ten (10) hours
27 work as required by the Labor Code during the relevant time period.

28 36. Defendant has had a consistent policy of failing to pay Plaintiff and the aggrieved

employees one (1) hour of pay at the employees' regular rate of compensation for each workday that all required meal periods were not provided, as required by California state wage and hour laws. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of bonus pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those bonus payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee's base hourly rate. Here, when meal periods are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

37. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant violated Labor Code § 226.7, which requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).

38. Defendant failed to maintain an accurate policy informing Plaintiff and the aggrieved employees of their rights with respect to rest periods.

39. Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes for every four (4) hours worked (or major fraction thereof) as required by the Labor Code during the relevant time period. Defendant consistently failed to provide rest breaks for Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees were not able to take rest periods.

40. Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when rest period premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code

1 §§ 226.7 and 512.

2 41. For at least one (1) year prior to the date of the letter sent to the LWDA and
3 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
4 failed to reimburse business related expenses. Labor Code § 2802 provides that an employer shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
6 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
7 directions of the employer, even though unlawful, unless the employee, at the time of obeying the
8 directions, believed them to be unlawful.

9 42. Defendant required that Plaintiff and the aggrieved employees be available by cell
10 phone and answer/use their personal cell phones to communicate with Defendant's management
11 consistently to perform their job duties.

12 43. These cell phones were not provided by Defendant and Defendant failed to
13 reimburse Plaintiff and the aggrieved employees for the costs associated with these necessary
14 business expenditures in violation of the Labor Code.

15 44. For at least one (1) year prior to the date of the letter sent to the LWDA and
16 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
17 failed to furnish accurate itemized wage statements to its employees. Labor Code §226(a) requires
18 that every employer shall semimonthly or at the time of each payment of wages, furnish each of
19 his or her employees, an accurate itemized statement in writing showing total hours worked by the
20 employee and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee. Sections 226(a)(2) and (9).

22 45. Plaintiff and the aggrieved employees are issued wage statements that do not
23 accurately show all applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate by the employee in violation of the Labor Code.

25 46. This is because Plaintiff and the aggrieved employees are issued wage statements
26 that do not include meal and rest premiums at the accurate rate.

27 47. As such, it is impossible for Plaintiff and aggrieved employees to tell their accurate
28 rates of pay from the itemized wage statements alone all in violation of Labor Code § 226(a).

1 48. Defendant's failure to provide accurate itemized wages statements according to
2 Labor Code § 226(a) was all done on a regular and consistent basis.

3 49. For at least one (1) year prior to the date of the letter sent to the LWDA and
4 Defendant giving notice of his claim pursuant to PAGA and continuing to the present, Defendant
5 violated Labor Code §§ 201-203.

6 50. Numerous aggrieved employees including the Plaintiff are no longer employed by
7 Defendant. They were either fired or quit Defendant's employ.

8 51. Defendant's failure to pay wages, as alleged above was willful in that Defendant
9 knew wages to be due but failed to pay them, thus entitling Plaintiff and the aggrieved employees
10 to penalties under Labor Code § 203, which provides that an employee's wages shall continue as
11 a penalty until paid for a period of up to thirty (30) days from the time they were due.

12 52. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
13 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§
14 201, 202, 203, 226(a), 226.7, and 512; Wage Order 5-2001; and California Code of Regulations,
15 Title 8, Section 11080, which call for civil penalties.

16 53. For each such penalty, Plaintiff and the aggrieved employees are entitled to
17 penalties in an amount to be shown at trial, subject to the following formula:

18 a. \$100 for the initial violation per employee per pay period.

19 b. \$200 for each subsequent violation per employee per pay period.

20 54. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
21 twenty-five percent (25%) to the affected employees.

22 55. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
23 LWDA¹ and mailed a letter by certified mail to Defendant's entity address, which is 4530 Rowles
24 Road, Vina, CA 96092, as proscribed by the Code on July 8, 2022, describing Defendant's conduct
25 in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802. (*see* Exhibit "1.").
26 Plaintiff received signed green return receipts from Defendant, indicating that it received
27

28 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 Plaintiff's notice letter. (*see* Exhibit "2.") Plaintiff also obtained an e-filing confirmation from the
2 LWDA confirming receipt of the notice (*see* Exhibit "3").

3 56. As no letter evidencing the LWDA's intention to investigate was received by
4 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
5 action as though the LWDA had not chosen to investigate pursuant to Labor Code
6 §2699.3(a)(2)(A).

7 57. Plaintiff will also provide the LWDA with a filed-stamped copy of the Second
8 Amended Representative Action Complaint immediately.

9 **RELIEF REQUESTED**

10 **WHEREFORE**, Plaintiff prays for the following relief:

- 11 1. For penalties under Labor Code § 2699, *et seq.* for Defendant's violation of Labor
12 Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802 and Wage Order 8-2001;
13 2. An award of prejudgment and post judgment interest;
14 3. An award providing for payment of costs of suit;
15 4. An award of attorneys' fees; and
16 5. Such other and further relief as this Court may deem proper and just.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.
19

20 DATED: April 5, 2023

KINGSLEY & KINGSLEY, APC

21
22 By: _____

Liane Katzenstein Ly
Attorneys for Plaintiff JUAN LOPEZ and the
aggrieved employees
23
24
25
26
27
28

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

July 8, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

ANDERSEN & SONS SHELLING, INC.
4530 Rowles Road
Vina, CA 96092
Via Certified Mailing No.: 7015 0640 0003 6593 1837

ANDERSEN & SONS SHELLING, INC.
PO Box 100
Vina, CA 96092
Via Certified Mailing No.: 7015 0640 0003 6593 1844

ANDERSEN & SONS SHELLING, INC.
c/o Agent for Service of Process
Patrick Knudt Andersen
4530 Rowles Avenue
Vina, CA 96092
Via Certified Mailing No.: 7015 0640 0003 6593 1851

Re: JUAN LOPEZ v. ANDERSEN & SONS SHELLING, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents JUAN LOPEZ (“Plaintiff”) and a proposed group of current and former employees working for ANDERSEN & SONS SHELLING, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All employees who are employed or have been employed as an hourly employee by ANDERSEN & SONS SHELLING, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

July 8, 2022

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Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant first and second meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, when meal premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 8-2001, Defendant is required to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide all required ten (10) minute rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

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employee's base hourly rate. Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate when rest premiums are provided, in violation of Labor Code § 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees for the cost of using their personal cell phones, necessary for them to discharge their duties. Specifically, Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their personal cell phones to communicate with Defendant's management consistently to perform their job duties. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with these necessary business expenditures in violation of Labor Code § 2802.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a). Defendant failed to issue Plaintiff and all aggrieved employees wage statements that accurately show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Plaintiff and all aggrieved employees are issued itemized wage statements that do not accurately include meal and rest premiums as a result of the claims alleged herein and when they are provided, they are not provided at the proper rate. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ, as described herein. Defendant failed to pay Plaintiff and all aggrieved employees all wages owed within the time constraints of Labor Code §§201-202. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

July 8, 2022

Page 4 of 4

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/km

CC: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, Los Angeles, CA 90010-2513 via Electronic
Mail Transmission: wza@abramsonlabor.com; dani@abramsonlabor.com

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Andersen & Sons Shelling, Inc.
 4530 Rowles Road
 Vina, CA 96092



9590 9402 7136 1251 6481 96

2. Article Number (Transfer from service label)
7015 0640 0003 6593 1837

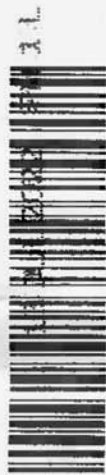
COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee
X *Sherry L. Tate*
 B. Received by (Printed Name) C. Date of Delivery
Sherry L. Tate *7/13/22*
 D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature ☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery ☐ Registered Mail™
☒ Certified Mail® ☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™
☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery ☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

USPS RACINE, WI 53405



9590 9402 7136 1251 6481 96

United States
Postal Service

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY

A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
ANDERSEN & SONS SELLING, INC.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Andersen & Sons Shelling, Inc.
 PO Box 100
 Vina, CA 96092



0590 9402 7136 1251 6481 89

2. Article Number (Transfer from service label)
7015 0640 0003 6593 1844

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ <i>Sherry Spoke</i>		☐ Agent ☐ Addressee
B. Received by (Printed Name) <i>Sherry Spoke</i>	C. Date of Delivery <i>7/13/22</i>	
D. Is delivery address different from item 1? If YES, enter delivery address below: ☒ Yes ☐ No		

3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery
--	---

USPS TRACKING #



9590 9402 7136 1251 6481 89

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY

A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
ANDERSEN & SONS SELLING, INC.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
Andersen & Sons Shelling, Inc.
 c/o Agent for Service of Process
 Patrick Knudt Andersen
 4530 Rowles Avenue
 Vina, CA 96092



9590 9402 7136 1251 6481 72

2. Article Number (Transfer from service label)
7015 0640 0003 6593 1851

COMPLETE THIS SECTION ON DELIVERY

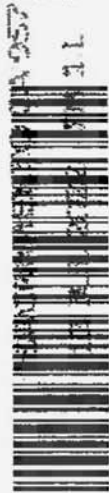
A. Signature ☐ Agent
☒ Adult Signature ☐ Addressee
 B. Received by (Printed Name) *Sherry Zook* C. Date of Delivery *7/13/22*
 D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Collect on Delivery
☐ Insured Mail (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7136 1251 6481 72

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box*

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
ANDERSEN & SONS SELLING, INC.



EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC



(Enter "in pro per" if you are representing yourself)

Your Email Address *

kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Juan Lopez

Plaintiff/Aggrieved Employee Occupation *

machine operator

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...



Employer Name *

ANDERSEN & SONS SHELLING, INC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

4530 Rowles Road

Employer City *

Vina

Employer State *

California

Employer Zip/Postal Code *

96092

Employer Industry *

Agriculture

Add additional defendants

- ☒ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select...

Employer Name *

ANDERSEN & SONS SHELLING, INC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

PO Box 100

Employer City *

Vina

Employer State *

California

Employer Zip/Postal Code *

96092

Employer Industry *

Agriculture

Additional Employer Information (Corporation/General Partnership)

[Remove](#)**Employer Entity Type**

Please select...

Employer Name *

ANDERSEN & SONS SHELLING, INC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

4530 Rowles Avenue

Employer City *

Vina

Employer State *

California

Employer Zip/Postal Code *

96092

Employer Industry *

Agriculture

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

kimberly@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type ***Credit Card Number *****CVV Number *****Credit Card Expiration Month ***

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) *****Choose File** LWDA Letter– A...ling, Inc..pdf**Other Attachment – (if any) (must be a .pdf)****Choose File** No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, July 8, 2022 9:11 AM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

7/8/2022

LWDA Case No. LWDA-CM-894268-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Juan Lopez
Employer: ANDERSEN & SONS SHELLING, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7C1738a79fb9f4431ca37e08da60fc84ac%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637928934922609380%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=np667vIOS52pZ3lwin3BsSMMjKzcNJIBLNeKIUhU9QE%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, July 8, 2022 9:12 AM
To: Kimberly Madrid
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-894268-22

Order Number: ORD-000182989

Total:\$75.00

Card Type: 

Date: 7/8/2022

Billing Information

Name: Eric Kingsley

Email: kimberly@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436