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Attorneys for Plaintiff Peter Oun, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

PETER OUN, on behalf of himself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 *et seq.*,

Plaintiff,

v.

DUNCAN INDUSTRIES, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: **23NWCV00280**

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

1 Plaintiff PETER OUN (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of DUNCAN INDUSTRIES, INC., a California corporation, and/or any
4 subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and non-exempt California employees who currently work or formerly worked for
9 Defendants in California (“Aggrieved Employees”).

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

14 a. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
15 denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order
16 4-2001. Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a
17 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in
18 duration, or a second timely, uninterrupted, 30-minute meal period for every shift worked that
19 exceeded ten hours in duration, but were not paid premium wages of one hour’s pay for each missed
20 first or second meal period. When Plaintiff and Aggrieved Employees did receive a meal period, it
21 would typically and routinely be late (after the fifth hour of work). This violates Labor Code §§ 226.7,
22 512, and 558 and Wage Order 4-2001;

23 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
24 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Plaintiff
25 and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4)
26 hours of work or major fraction thereof but were not paid premium wages of one hour’s pay for each
27 missed rest period. They were simply denied and not authorized to take their legally entitled rest
28

1 periods and were not paid premium wages for missed rest periods. These instances violate Labor
2 Code § 226.7 and IWC Wage Order No. 4-2001;

3 c. Failing to provide Plaintiff and other Aggrieved Employees with wage
4 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
5 226.3. Plaintiff and other Aggrieved Employees were not paid all premium meal and rest period wages
6 due, as stated above. As such, the wage statements provided by Defendants failed to accurately state
7 all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in
8 violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§
9 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3; and

11 d. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
12 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
13 stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course
14 of their employment and, as a result of this failure, they were not timely paid all wages due at the
15 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
16 Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

17 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
18 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

19 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
20 The Labor Code violations alleged against Defendants herein arose throughout California, including
21 in Los Angeles County.

22 II.

23 PARTIES

24 A. Plaintiff

25 5. Plaintiff PETER OUN was employed by Defendants as a non-exempt employee from
26 2018 through September 2021 and May 2022 through November 2022 in Los Angeles County,
27 California.

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1 **B. Defendants**

2 6. Defendant DUNCAN INDUSTRIES, INC. is a California corporation that employed
3 Plaintiff and Aggrieved Employees in Los Angeles County, California.

4 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
5 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
6 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
7 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
8 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
9 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
10 designated hereinafter as DOES when such identities become known.

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

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

18 **III.**

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
22 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
23 **CODE §§ 201, 202, 226(a), 226.7, AND 512 AND PURSUANT TO LABOR CODE § 2699(a)**
24 **FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

25 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
26 forth herein.

27 11. As a result of the acts alleged above, including the Labor Code violations set forth in
28 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

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

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

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

14. On November 17, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 17, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

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1 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
2 law; and

3 4. Such other and further relief as this Court may deem just and proper.

4 Dated: January 26, 2023

Respectfully submitted,

5 GAINES & GAINES
6 A Professional Law Corporation

7 By: Daniel F. Gaines
8 DANIEL F. GAINES
9 EVAN S. GAINES
Attorneys for Plaintiff