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Attorneys for Plaintiff Peter Oun
and Proposed Class Counsel

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.*,

Plaintiffs,

v.

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

Defendants.

CASE NO: 23NWCV00280

Assigned to the Hon. Olivia Rosales, Department F

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Date: March 13, 2024

Time: 10:30 a.m.

Dept.: C

RSVP 408156518546

Complaint Filed: January 26, 2023

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Peter Oun ("Oun" or "Plaintiff")
4 and proposed Class Counsel in this action. I have personal knowledge of the facts set forth herein
5 and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
14 Gaines, APLC. My father practiced law in California for over 40 years, emphasizing litigation for
15 the vast majority of his career. Our current practice specializes in litigation, with an emphasis in
16 employment disputes like this one. Over 95% of our practice is devoted to complex employment
17 litigation.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
21 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On November 17, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
24 Code Private Attorneys General Act of 2004 ("PAGA").

25 7. On January 26, 2023, Plaintiff initiated his Action in the Los Angeles County
26 Superior Court by filing a representative action complaint, pursuant to PAGA, on behalf of himself
27 and all other similarly situated individuals.

1 8. As part of the approval of this Settlement, Plaintiff will file a First Amended
2 Complaint substantially in the form attached to the Settlement as **Exhibit 3** which asserts claims
3 against Defendant for (1) failure to pay all wages due (Labor Code §§ 226.7, 246, 510, 512, 1194,
4 and 1194.2 and IWC Wage Order 4-2001); (2) failure to provide rest periods or compensation in
5 lieu thereof (Labor Code § 226.7 and IWC Wage Order 4-2001); (3) failure to provide meal periods
6 or compensation in lieu thereof (Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001); (4)
7 knowing and intentional failure to comply with itemized employee wage statement provisions
8 (Labor Code §§ 226(a) and (e)); (5) failure to timely pay wages due at the separation of
9 employment (Labor Code §§ 201-203); (7) violation of Business and Professions Code § 17200
10 for underlying violations of the Labor Code as set forth in the complaint in the Action; and (8)
11 civil penalties pursuant to PAGA for underlying violations of the Labor Code as set forth in the
12 complaint in the Action.

13 9. Defendant denies any liability or wrongdoing of any kind associated with the claims
14 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
15 purpose other than this settlement. Defendant contends that it has complied at all times with the
16 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
17 certification would be inappropriate because Plaintiff is not an adequate Class Representative,
18 Plaintiff's claims are not typical of putative class members, and individual issues predominate
19 over class issues, among other defenses. The Action, the negotiation and execution of the
20 Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance
21 of the Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing
22 by the Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence
23 of fault on behalf of Defendant in any action before a civil court, criminal court, administrative
24 agency of any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as,
25 an admission or evidence of the appropriateness of these or similar claims for class certification
26 in the Action or with respect to any other proceeding whatsoever.

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

Investigation and Settlement Discussions

11. My colleagues and I have conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery, including but not limited to documents regarding Defendant's employment/workplace policies in place during the applicable period and a sample of records relating to hours worked and wages paid to Defendant's non-exempt employees during the relevant time periods, and the review and verification of statistical data, financial data, and other facts and information provided by Defendant. Class Counsel also represents that they have investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

12. The Parties agreed to participate in nonbinding mediation of Plaintiff's claims. On August 11, 2023, following their exchange of information and documents, the Parties engaged in arm's-length negotiations with the assistance of an experienced wage and hour mediator, Steve Pearl, Esq. The mediation ended with the resolution set forth herein.

Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued Litigation:

13. Based on our independent investigation and evaluation, my colleagues and I are of the opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

14. The Parties agree that the Settlement Class described herein may be certified for settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement Class is for purposes of the settlement only. If for any reason the settlement is not approved, the certification will have no force or effect and will immediately be revoked. The

1 Parties further agree that certification for purposes of the settlement is in no way an admission that
2 class certification is proper under the more stringent standard applied for litigation and that
3 evidence of this Settlement Agreement is for settlement purposes only and will not be admissible
4 for any purpose in this or any other proceeding.

5 15. The parties jointly prepared the Settlement Agreement and Release of Claims
6 (“Settlement Agreement”, “Settlement”, or “Stip.”). A true and correct copy of the Settlement is
7 attached hereto as **Exhibit B**.

8 16. Plaintiff contends that Defendant failed to pay Class Members all wages due. First,
9 Plaintiff contends Defendant rounded down the hours reflected on Class Members’ time records
10 to pay fewer hours than were actually worked, in violation of Labor Code §§ 510, 558, 1194, and
11 1194.2. Plaintiff contends that, on a weekly basis, this rounding practice deprived Class Members
12 of significant hours worked and wages due. Plaintiff contends that Class Members were adversely
13 affected because of the rounding policy.

14 17. Next, Plaintiff contends Defendant paid Class Members non-discretionary bonuses
15 that were not included in their regular rate of pay for purposes of paying them meal and rest period
16 premiums, sick pay, and overtime wages at the correct rates, in violation of Labor Code §§ 226.7,
17 246, 510, 512, 558, and 1194 and IWC Wage Order No. 4-2001. Plaintiff contends Defendant
18 allegedly failed to properly blend these non-discretionary bonuses and instead paid Class Members
19 meal and rest period premiums, sick pay wages, and overtime wages based only on the base hourly
20 rate of pay, thus depriving them of all wages earned, in violation of Labor Code §§ 226.7, 246,
21 510, 512, 558, and 1194 and IWC Wage Order No. 4-2001. California Labor Code § 510 requires
22 the payment of premium overtime compensation based on employees’ regular rate of pay. Labor
23 Code § 207(e) defines the “regular rate” to include all remuneration for employment paid to or on
24 behalf of the employee. Here, when Class Members worked overtime hours, they were paid at one
25 and one-half times the base hourly rate of pay. Plaintiff contends that the bonuses earned by Class
26 Members were not discretionary within the meaning of the applicable regulation (29 U.S.C. §
27 207(e)), and accordingly, must have been included in their regular rate of pay for purposes of
28 determining their overtime pay, sick pay, and meal and rest period premiums. Plaintiff contends

1 Class Members are entitled to significant restitution as a result. Plaintiff calculates Defendant's
2 damages for these unpaid wages claims at \$177,406 (\$68,775 from rounding and \$108,631 from
3 blending) and PAGA civil penalty liability for these claims of \$352,800.

4 18. Plaintiff also contends that Defendant allegedly failed to pay employees overtime
5 wages when overtime was worked, and only paid straight time wages. Defendant also denies this
6 contention and asserts that it paid overtime premium pay for all overtime worked.

7 19. Plaintiff contends Defendant allegedly failed to provide Class Members with legally
8 compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor
9 Code §§ 226.7 and IWC Wage Order 4-2001. Plaintiff contends that Defendant did not maintain
10 any written rest period policies prior to 2022. Despite Defendant maintaining legally compliant
11 written policies since 2022, Plaintiff contends Class Members were denied, and therefore unable
12 to take, 10-minute rest periods for every four hours of work or major fraction thereof, but were
13 not paid premium wages of one hour's pay for each missed, denied, and unauthorized rest period.
14 When they were able to take a rest period, they were often late, cut short, or on-duty. Plaintiff
15 calculates Defendant's rest period damages at \$933,985 and PAGA civil penalty liability for this
16 claim of \$266,900.

17 20. Plaintiff contends Defendant allegedly failed to permit or authorize Class Members
18 to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of
19 Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Labor Code § 512 provides that
20 employers may not employ employees for work periods of more than five (5) hours without
21 providing a 30-minute meal period starting no later than the end of the 5th hour. Plaintiff contends
22 Class Members were routinely unable to take a proper meal period when they worked shifts in
23 excess of five (5) hours in duration and a second meal period when they worked shifts in excess
24 of ten (10) hours in duration.

25 21. Plaintiff contends that Defendant did not maintain any written meal period policies
26 prior to 2022. Plaintiff also contends Defendant maintained non-compliant written meal period
27 policies since 2022. Further, Defendant contends that when Class Members did receive a meal
28 period, they were frequently late (after the fifth hour of work). Plaintiff contends that significant

1 meal period premiums are owed. Plaintiff calculates Defendant's meal period damages at
2 \$814,384 and PAGA civil penalty liability for this claim of \$266,900.

3 22. Plaintiff contends Defendant also purportedly failed to issue Class Members
4 accurately itemized wage statements because Class Members were not paid all wages due, as
5 detailed above. As a result, Plaintiff contends the wage statements issued by Defendant to Class
6 Members fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1),
7 total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor
8 Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).
10 Plaintiff calculates the damages for this claim at \$143,500 in addition to \$266,900 in PAGA civil
11 penalties.

12 23. Plaintiff contends Defendant allegedly failed to pay Class Members all wages due
13 upon separation of employment, in violation of Labor Code §§ 201-202. Plaintiff contends that
14 since Defendant failed to pay Class Members all wages due during the course of employment, as
15 discussed above, and these wages remained due and owing upon separation of employment.
16 Plaintiff calculates statutory penalties on this claim at \$116,162, with PAGA civil penalty liability
17 of \$1,400.

18 24. The compromise reached here is fair and reasonable considering the factual and
19 legal disputes among the Parties, the defenses raised by Defendant as to class certification and the
20 merits of Plaintiff's claims, the risk the Court would reduce or eliminate any award of penalties,
21 and the fact that Defendant has a limited ability to pay any judgment due to financial constraints.
22 Defendant strongly contends that its policies and practices do not violate any laws. It contends
23 that it properly paid all wages, that its rounding practice are neutral and lawful, that any bonuses
24 paid were discretionary and not required to be blended into premium rates of pay, and that it
25 provided for all meal and rest periods and fully compensated its employees for all time worked. It
26 further contends that the wage statements it provided to its employees were fully compliant with
27 California law.

1 25. When the costs and risks of non-certification and loss on the merits are considered,
2 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

3 26. The settlement for each Class Member is fair, reasonable and adequate, given the
4 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
5 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
6 Actions.

7 **Class Certification Requirements:**

8 27. To date, no class has been certified. The Stipulation of Settlement contains a
9 provision pursuant to which we stipulate to the Court's provisional certification of the
10 approximately 50-member Settlement Class, but do so for purposes of this settlement only.

11 28. In this case, the Class Members are identifiable from Defendant's employment and
12 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
13 According to Defendant's records, the Class comprises approximately 50 members.

14 29. The Class Members' claims all stem from a common source: members of the
15 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
16 with their employment in non-exempt positions. All members of the Class seek the same relief
17 under the same California laws (related to unpaid wages, unpaid meal and rest period premiums,
18 inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, and
19 derivative claims). Under these circumstances, the commonality requirement is satisfied for
20 purposes of certifying the Settlement Class for settlement purposes.

21 30. In this case, named Plaintiff and proposed Class Representative Peter Oun is a
22 former non-exempt employee who worked for Defendant in the State of California during the
23 Class Period. He contends that Defendant failed to pay all wages, failed to provide meal and rest
24 periods, failed to comply with itemized employee wage statement provisions, and failed to timely
25 pay wages at the separation of employment, in violation of Labor Code §§ 201, 202, 226(a), 226.3,
26 226.7, 246, 510, 512, 558, 1194, 1194.2, 2698, and 2699, among other Labor Code provisions.
27 He has the same claims as those that the members of the Settlement Class would reasonably be
28 expected to bring based on the course of conduct alleged herein.

31. Plaintiff has also demonstrated that he will aggressively and competently assert the interests of the proposed Settlement Class; he has taken an active role in the litigation and has no apparent conflicts with other class members.

Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)

32. Concurrently with the filing of this Motion, my office is transmitting the Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor Code § 2699(l)(2). Evidence of submission is attached hereto as **Exhibit C**.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 21st day of September, 2023 at Westlake Village, California.

Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsmann v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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7 Attorneys for Plaintiff Peter Oun, on behalf of himself, the general public, and all "aggrieved
8 employees" pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 PETER OUN, on behalf of himself and all
12 "aggrieved employees" pursuant to Labor
13 Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 DUNCAN INDUSTRIES, INC., a
California corporation, and DOES 1 through
17 10, inclusive,

18 Defendants.

CASE NO: 23NWCV00280

Assigned to the Hon. Olivia Rosales, Dept. F

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: January 26, 2023

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A. Definitions.

2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of record for Plaintiff Peter Oun. For purposes of this Settlement Agreement only, the firm of Gaines & Gaines, APLC shall be designated as “Class Counsel.”

4. The “Settlement Class” shall be defined as “all current and former employees of Defendant who were employed in California as a non-exempt employee during the Class Period.” Defendant represents that this Class contains no more than approximately 50 Class Members who worked an estimated 5,987 workweeks during the Class Period through August 31, 2023.

6. The “Aggrieved Employees” shall be defined as “all current and former employees of Defendant who were employed in California as a non-exempt employee during the PAGA period.”

8. Members of the Settlement Class shall collectively be referred to as a “Class” or “Class Members.” Any Class Member who files a timely request for exclusion, as set forth below, will be excluded from the final Settlement Class.

9. The “Class Representative” refers to Plaintiff Peter Oun.

1 10. The “Effective Date” is defined as the date the Court signs an order granting final
2 approval of the settlement and entering judgment thereon (the “Effective Date”) If objections to
3 the settlement are filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice
4 of the final approval order is mailed, unless an appeal is filed, in which case the Effective Date is
5 the day after (1) the settlement is upheld by the Court of Appeals, or (2) all appeals are dismissed.

6 **B. General.**

7 1. On November 17, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
8 Code Private Attorneys General Act of 2004 (“PAGA”).

9 2. On January 26, 2023, Plaintiff initiated his Action in the Los Angeles County
10 Superior Court by filing a representative action complaint, pursuant to PAGA, on behalf of himself
11 and all other similarly situated individuals.

12 3. As part of the approval of this Settlement, Plaintiff will file a First Amended
13 Complaint substantially in the form attached hereto as **Exhibit 3** which asserts claims against
14 Defendant for (1) failure to pay all wages due (Labor Code §§ 226.7, 246, 510, 512, 1194, and
15 1194.2 and IWC Wage Order 4-2001); (2) failure to provide rest periods or compensation in lieu
16 thereof (Labor Code § 226.7 and IWC Wage Order 4-2001); (3) failure to provide meal periods or
17 compensation in lieu thereof (Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001); (4)
18 knowing and intentional failure to comply with itemized employee wage statement provisions
19 (Labor Code §§ 226(a) and (e)); (5) failure to timely pay wages due at the separation of employment
20 (Labor Code §§ 201-203); (7) violation of Business and Professions Code § 17200 for underlying
21 violations of the Labor Code as set forth in the complaint in the Action; and (8) civil penalties
22 pursuant to PAGA for underlying violations of the Labor Code as set forth in the complaint in the
23 Action.

24 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
25 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
26 purpose other than this settlement. Defendant contends that it has complied at all times with the
27 California Labor Code. It is Defendant’s position that, if this case were to be litigated, class
28 certification would be inappropriate because Plaintiff is not an adequate Class Representative,

1 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
2 class issues, among other defenses. The Action, the negotiation and execution of this Settlement
3 Agreement, and all acts performed or documents executed pursuant to or in furtherance of this
4 Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing by the
5 Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence of fault
6 on behalf of Defendant in any action before a civil court, criminal court, administrative agency of
7 any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission
8 or evidence of the appropriateness of these or similar claims for class certification in the Action or
9 with respect to any other proceeding whatsoever.

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

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

19 7. The Parties agreed to participate in nonbinding mediation of Plaintiff's claims. On
20 August 11, 2023, following their exchange of information and documents regarding the Settlement
21 Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-length
22 negotiations with the assistance of an experienced wage and hour mediator, Steve Pearl, Esq. The
23 mediation ended with the resolution set forth herein.

24 8. Based on their own independent investigation and evaluation, Class Counsel are of
25 the opinion (and will so represent to the Court) that settlement for the consideration and on the
26 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
27 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
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1 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
2 asserted by Defendant.

3 9. The Parties agree that the Settlement Class described herein may be certified for
4 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
5 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
6 approved, the certification will have no force or effect and will immediately be revoked. The
7 Parties further agree that certification for purposes of the settlement is in no way an admission that
8 class certification is proper under the more stringent standard applied for litigation and that
9 evidence of this Settlement Agreement is for settlement purposes only and will not be admissible
10 for any purpose in this or any other proceeding.

11 **C. Terms of Settlement.**

12 1. The financial terms of the Settlement Agreement are as follows:

13 (a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross
14 Settlement Amount of Three Hundred Thousand Dollars (\$300,000) (the "Gross Settlement
15 Amount"), which shall only be subject to increase based on the escalator provision in paragraph
16 H(16) herein. The Gross Settlement Amount includes the attorney's fees of Class Counsel;
17 litigation costs and expenses (which includes, without limitation, all such fees and costs incurred
18 to date, as well as such fees and costs to be incurred in documenting the settlement, providing any
19 notices required as part of the settlement, securing Court approval of the settlement, and obtaining
20 judgment in the Action); the Incentive Award to the Class Representative, as approved by the Court;
21 the payment to the California Labor and Workforce Development Agency ("LWDA"); and all costs
22 of administration, including, without limitation, settlement administration fees and expenses. All
23 employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds
24 shall be paid by Defendant separate and apart from, and in addition to, the Gross Settlement
25 Amount.

26 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
27 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorney's fees
28 and documented litigation costs and expenses incurred or advanced by Class Counsel; the Incentive

1 Award to the Class Representative; the payment to the LWDA pursuant to PAGA; and the costs of
2 administering the settlement.

3 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
4 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
5 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
6 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
7 to participating Class Members, the class portion of the Individual Payment Amount will be
8 determined by dividing the Net Settlement Proceeds, less the \$5,000 PAGA allocation, by the total
9 number of weeks worked by the entire Settlement Class in a non-exempt position in California
10 during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying
11 the class workweek value by the number of weeks worked by each participating Class Member in
12 a non-exempt position in California during the Class Period. As to the Aggrieved Employees, the
13 PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA
14 settlement amount (\$5,000) by the total number of weeks worked by all Aggrieved Employees in
15 a non-exempt position in California during the PAGA Period, resulting in the PAGA workweek
16 value; and then multiplying the PAGA workweek value by the number of weeks worked by each
17 Aggrieved Employee in a non-exempt position in California during the PAGA Period.

18 (d) For tax purposes, the class portion of each Individual Payment Amount will
19 be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
20 withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if
21 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as
22 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to
23 Class Members and Aggrieved Employees will be subject to any applicable wage garnishments,
24 liens, or other legally mandated treatment as required by law.

25 (e) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
26 (\$20,000) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount,
27 Seventy-Five percent (75%), or Fifteen Thousand Dollars (\$15,000), shall be paid to the LWDA,
28

1 and the remaining Twenty-Five percent (25%), or Five Thousand Dollars (\$5,000), shall be paid to
2 Aggrieved Employees as part of the Net Settlement Proceeds.

3 (f) **Incentive Award and General Release Payment to Class Representative:**

4 The amount awarded to the Class Representative as a "Incentive Award" and in exchange for a
5 general release, as set forth in Paragraph D(2), below, will be set by the Court in its discretion, not
6 to exceed Ten Thousand Dollars (\$10,000). This amount will be deducted from the Gross
7 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his Incentive
8 Award. Defendant agrees not to dispute or otherwise object to the Incentive Award if Plaintiff
9 requests \$10,000 or less.

10 (g) **Attorney's Fees:** An award to Class Counsel of attorney's fees will be

11 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
12 the settlement award that has been made available for the Settlement Class by the efforts of Class
13 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e., One
14 Hundred Five Thousand Dollars (\$105,000). An IRS Form 1099 will be issued to Class Counsel
15 with respect to its award of attorney's fees. Defendant agrees not to dispute or otherwise object to
16 the attorneys' fee award requested by Class Counsel so long as the request does not exceed 35% of
17 the Gross Settlement Amount.

18 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from

19 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
20 litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000). An IRS Form
21 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
22 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
23 so long as the request does not exceed \$15,000.

24 (i) **Settlement Administration Costs:** The fees and other charges of the

25 Settlement Administrator to administer the Settlement are expected to total no more than Nine
26 Thousand Dollars (\$9,000) and will be paid from the Gross Settlement Amount. These fees shall
27 include any costs associated with the required tax reporting on any Individual Payment Amounts,
28 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties

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

10 (j) **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. Upon the Effective Date, and subject to Defendant's full payment of the Gross
16 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement
17 Class Members who do not timely opt-out of the Settlement will release the Released Class Claims
18 against Duncan Industries, Inc., all entities affiliated with it, and all officers, directors,
19 representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients, joint
20 employer, predecessors, managers, servants, successors-in-interest, assigns, current and former
21 employees of Defendant, including but not limited to agents, insurers, attorneys and all persons or
22 entities acting in concert with or affiliated with any of them ("Released Parties"), which arose
23 during employment by Defendant in a non-exempt position in California during the Class Period.

24 2. Upon the Effective Date, and subject to Defendant's full payment of the Gross
25 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Aggrieved
26 Employees, including those who opt out of the Class Settlement, will release all Released PAGA
27 claims against the Released Parties alleged in the operative complaint which arose during
28 employment by Defendant in a non-exempt position in California during the PAGA Period.

1 3. “Released Class Claims” means any and all claims and/or causes of action which
2 accrued during the Class Period during employment in a non-exempt position in California, that
3 are alleged, or that could have been alleged in the Action based on the facts set forth in the First
4 Amended Complaint to be filed in the Action, including Labor Code §§ 201-203, 226(a), 226.7,
5 246, 510, 512, 1194, and 1194.2, and Business & Professions Code § 17200 *et seq.* predicated on
6 the underlying Labor Code claims alleged. No PAGA claims are encompassed in the Released
7 Class Claims.

8 4. “Released PAGA Claims” means any and all PAGA claims and/or causes of action
9 which accrued during the PAGA Period during employment in a non-exempt position in
10 California, that are alleged in the First Amended Complaint to be filed in the Action, or that could
11 have been alleged in the Action based on the facts set forth in the First Amended Complaint. No
12 Aggrieved Employee may opt out of the PAGA portion of the Settlement.

13 5. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
14 Settlement Amount and all associated employer payroll tax obligations, Plaintiff Oun shall be
15 deemed to have fully, finally, and forever released the Released Parties from any and all claims,
16 obligations, demands, Action, rights, causes of action, and liabilities against the Released Parties,
17 of whatever kind and nature, character, and description, whether in law or equity, whether
18 sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common
19 law, or other source of law, whether known or unknown, and whether anticipated or unanticipated,
20 including unknown claims covered by Civil Code Section 1542, arising through the date of his
21 signature hereon, for any type of relief, including, without limitation, claims for wages, damages,
22 unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney’s fees, litigation
23 costs, restitution, or equitable relief. These claims include, but are not limited to, the Released
24 Class Claims and Released PAGA Claims, as well as any other claims under any provision of the
25 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders,
26 and claims under local, state, or federal discrimination statutes, including, without limitation, the
27 California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the
28 Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII

1 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act,
2 42 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
3 §§ 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines. With respect
4 to these Released Claims as described in this Section, Plaintiff Oun shall be deemed to have
5 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
6 and benefits he may otherwise have had pursuant to Section 1542 of the California Civil Code,
7 which provides as follows:

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

12 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
13 act as a release of all future claims that may arise from Plaintiff's employment or separation from
14 employment with Defendant, or any other matters that existed between Plaintiff and the Released
15 Parties up to the date of this Agreement, whether such claims are currently known or unknown, and
16 that Plaintiff intentionally waives any rights he may have under the provisions of Section 1542, as
17 well as under any other statutes or common law principles of similar effect in the State of California
18 or in any other state.

19 **E. Notice and Exclusion Process.**

20 1. Within ten (10) calendar days after entry of the order granting preliminary approval
21 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
22 Members, including their last known addresses, telephone numbers, social security numbers, and
23 their dates of employment in a non-exempt position in California during the Class Period
24 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
25 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
26 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
27 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
28 Settlement Administrator. The Settlement Administrator shall use due care with respect to the

1 storage, custody, use, and/or dissemination of the confidential information. Such information must
2 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

3 2. A notice of pendency of class action, proposed settlement, and hearing date for
4 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
5 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
6 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
7 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
8 attached hereto as **Exhibit 2**.

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

15 4. Each Class Member will be fully advised of the settlement, the ability to object to
16 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
17 inform the Class Members of the Court-established deadlines for filing objections and a Request
18 for Exclusion Form.

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

27 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
28 to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive

1 a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them
2 if and when the Effective Date occurs.

3 7. In order to elect not to participate in the Settlement, a Class Member must submit a
4 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
5 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
6 Class Members, unless the Court requires a longer period, in which case the Court ordered
7 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
8 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
9 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
10 next day on which the U.S. Postal Service is open.

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

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

24 10. The Settlement Administrator will notify the Parties of the total number of valid
25 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
26 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
27 and Request for Exclusion Forms to Class Members).

1 11. In order to object to the settlement, a Class Member must mail his or her objection
2 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
3 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
4 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
5 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
6 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
7 extended for any reason.

8 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
9 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
10 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
11 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least Twelve
12 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
13 listing the amount of all payments to be made to each Class Member without names or personal
14 identifying information.

15 13. Defendant shall deposit the Gross Settlement Amount, plus applicable employer
16 payroll taxes, with the Settlement Administrator as follows:

17 (1) One Hundred Fifty Thousand Dollars (\$150,000), plus a proportionate share of
18 employer payroll taxes due, no later than thirty (30) days after the Effective Date;
19 and

20 (2) One Hundred Fifty Thousand Dollars (\$150,000), plus a proportionate share of
21 employer payroll taxes due, no later than 180 days after the Effective Date.

22 14. The Settlement Administrator will issue pro rata payments for the obligations due
23 for attorneys' fees and costs to Class Counsel, cost of administration, Incentive Award to Class
24 Representative, Individual Settlement Payments to Class Members and Aggrieved Employees, and
25 the payment to the LWDA promptly after each installment payment by Defendant of the Gross
26 Settlement Amount. The value of any checks uncashed more than one hundred eighty (180) days
27 after mailing shall be paid to the State of California Controller's Office – Unclaimed Property Fund,
28 to be held in the name of the respective Class Member or Aggrieved Employee.

F. Duties of the Parties Prior to Court Approval.

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

(a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the Class Members;

(b) approving as to form and content the proposed Class Notice;

(c) approving as to form and content the proposed Request for Exclusion Form;

(d) preliminarily certifying the Settlement Class for purposes of approving the Settlement Agreement;

(e) preliminarily approving the PAGA payment of \$15,000 to the LWDA;

(f) preliminarily setting attorney's fees and costs payable to Class Counsel;

(g) preliminarily setting the Incentive Award to the Class Representative;

(h) preliminarily approving Phoenix Settlement Administrators as the Settlement Administrator and its estimated fees and costs of \$9,000; and

(i) permitting Plaintiff to file the First Amended Complaint attached hereto as **Exhibit 3.**

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

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

1. In connection with the hearing on final approval of the settlement, the Parties will submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

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

(b) approving Class Counsel's application for an award of attorney's fees and reimbursement of documented litigation costs and expenses, the Incentive Award to the Class

Representative, the PAGA payment to the LWDA, and the costs of administering the settlement;
and

(c) Entering judgment in the Action in accordance with this Settlement Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h).

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

H. Miscellaneous Provisions:

1. Voiding the Agreement.

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or materially modified on appellate review, shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of any Party.

2. Parties' Authority.

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

3. Mutual Full Cooperation.

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement.

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1 **4. No Prior Assignments.**

2 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
3 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
4 entity any portion of any liability, claim, demand, action, cause of action or rights released and
5 discharged by this Settlement Agreement.

6 **5. No Admission.**

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

15 **6. Construction.**

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

20 **7. Captions and Interpretations.**

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

25 **8. Modification.**

26 This Settlement Agreement may not be changed, altered, or modified, except in writing and
27 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
28 discharged except by performance in accordance with its terms or by a writing signed by each of

1 the Parties hereto on their attorneys.

2 **9. Integration Clause.**

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

8 **10. Binding on Assigns.**

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

11 **11. Governing Law.**

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

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

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

21 **13. Counterparts.**

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

26 **14. Confidentiality**

27 Until Plaintiff files his motion for preliminary approval of the class action settlement of the
28 Action, the Parties and Counsel agree to maintain confidentiality as to the Settlement, including the

1 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
2 agencies, or as otherwise required by law.

3 **15. No Publicity**

4 Plaintiff and his Counsel will not contact the media about the Settlement Agreement.
5 Plaintiff and his counsel shall respond to any inquiries by the media regarding the Settlement only
6 by stating that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff
7 and his Counsel also will not post any information about the Settlement Agreement on social media
8 or their firm's websites.

9 **16. Representation Regarding Class Size.**

10 Defendant has represented that there are 50 Class Members who worked approximately
11 5,987 workweeks during the Class Period. Should either of these numbers increase by more than
12 10%, the Gross Settlement Amount will increase proportionately above the 10% threshold. For
13 example, if there are 6,885 workweeks (i.e., a 15% increase) and 55 Class Members (i.e., a 10%
14 increase), the Gross Settlement Amount shall increase by 5%.

15 **17. Continuing Jurisdiction.**

16 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
17 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code
18 of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive
19 and continuing equity jurisdiction of this Action over all Parties and Class Members to interpret
20 and enforce the terms, conditions and obligation of the Agreement.

21 **18. Default; Notice; Cure; Acceleration; Time is of the Essence.**

22 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
23 to timely make the payment due hereunder, it shall be in default of its obligations. Plaintiff shall
24 thereafter give notice of default and Defendant must cure said default within ten (10) calendar days
25 thereof. In the event of an uncured default, all unpaid amounts shall be due and payable with interest
26 at the legal rate from the date of default.

27 [SIGNATURES ON NEXT PAGE]

1 Dated: 09 / 06 / 2023

2 By: 

3 PETER OUN
4 Plaintiff and Class Representative

5 Dated: _____

DUNCAN INDUSTRIES, INC.

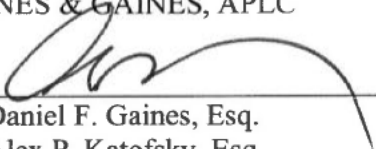
6 By: _____

7 Its: _____

8
9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: 9/20/23

GAINES & GAINES, APLC

11 By: 

12 Daniel F. Gaines, Esq.
13 Alex P. Katofsky, Esq.
14 Counsel for Plaintiff and Class
15 Representative

16 Dated: _____

SMITH LC

17 By: _____

18 Stephanie P. Alexander, Esq.
19 Celeste S. Levin, Esq.
20 Counsel for Defendant

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Dated: _____

By: _____

PETER OUN
Plaintiff and Class Representative

Dated: 9/1/2023

DUNCAN INDUSTRIES, INC.
By: [Signature]
Its: Chairwoman Tower

APPROVED AS TO FORM AND CONTENT:

Dated: _____

GAINES & GAINES, APLC

By: _____

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: 9/1/23

SMITH LC

By: _____

[Signature]
Stephanie P. Alexander, Esq.
Celeste S. Levin, Esq.
Counsel for Defendant

EXHIBIT 1

**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.*,

Plaintiffs,

v.

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

Defendants.

CASE NO: 23NWCV00280

Assigned to the Hon. Olivia Rosales, Dept. F

**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.

- The proposed settlement will provide \$300,000 to pay claims to all individuals who worked for Duncan Industries, Inc. (“Defendant”) as a non-exempt employee in California at any time between April 19, 2019 and August 31, 2023.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages due, including all 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 releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$105,000 as attorney’s fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on whether and how much money, if any, could have been awarded if employees won at trial.

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, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you will receive no money from the class settlement. This is the only option that allows you to ever be part of any other lawsuit against Duncan Industries, Inc. about the legal claims that were brought in this case. Even if you exclude yourself, you will still be an Aggrieved Employee subject to the PAGA settlement
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 action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On January 26, 2023, Plaintiff Peter Oun ("Plaintiff"), a former employee of Defendant Duncan Industries, Inc., filed this lawsuit in the Los Angeles 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 at any time between April 19, 2019 and August 31, 2023 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages due, including overtime wages; not provided compliant meal and rest periods or premium compensation in lieu thereof; not timely issued final wages upon separation of employment; or not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, liquidated damages, damages, interest, statutory and civil penalties, restitution, attorney's 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

Stephanie P. Alexander, Esq.
Celeste S. Levin, Esq.
SMITH LC
4 Park Plaza, Suite 1050
Irvine, CA 92614

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 have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), 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.

B. Who is in the Settlement Class? Who is an Aggrieved Employee?

The Settlement encompasses a class composed of all current and former employees of Defendant who were employed in California as a non-exempt employee between April 19, 2019 and August 31, 2023. It also encompasses Aggrieved Employees composed of all current and former employees of Defendant who were employed in California as a non-exempt employee between November 17, 2021 and August 31, 2023.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$300,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion. The Net Settlement Proceeds is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will set these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorney's Fees** in an amount set by the Court, not to exceed \$105,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;

(c) **Incentive Award Payment to the Class Representative** in an amount set by the Court, not to exceed \$10,000 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$9,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$20,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Of that amount, 75% or \$15,000, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25%, or \$5,000, shall be included in the Net Settlement Proceeds for payment to Aggrieved Employees.

3. **Individual Payment Amount.**

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

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

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement Class Members who do not timely opt-out of the Settlement will release the Released Class Claims against Duncan Industries, Inc., all entities affiliated with it, and all officers, directors, representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients, joint employer, predecessors, managers, servants, successors-in-interest, assigns, current and former employees of Defendant, including but not limited to agents, insurers, attorneys and all persons or entities acting in concert with or affiliated with any of them ("Released Parties"), which arose during employment by Defendant in a non-exempt position in California during the Class Period.

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Aggrieved Employees, including those who opt out of the Class Settlement, will release all Released PAGA claims against the Released Parties alleged in the operative complaint which arose during employment by Defendant in a non-exempt position in California during the PAGA Period.

"Released Class Claims" means any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint, including Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 1194, and 1194.2, and Business & Professions Code § 17200 *et seq.* predicated on the underlying Labor Code claims alleged. No PAGA claims are encompassed in the Released Class Claims.

"Released PAGA Claims" means any and all PAGA claims and/or causes of action which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the First Amended Complaint to be filed in the Action, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) 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 a PAGA portion of the Individual Payment Amount, which is distributable to each Aggrieved Employee regardless of whether they participate in the Settlement (Aggrieved Employees will receive the PAGA portion of the Individual Payment Amount even if they exclude themselves from the Settlement).

“Individual Payment Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or not.

As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$5,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class in a non-exempt position in California during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member in a non-exempt position in California during the Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount (\$5,000) by the total number of weeks worked by all Aggrieved Employees in a non-exempt position in California during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee in a non-exempt position in California during the PAGA Period.

For tax purposes, the class portion of each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Settlement Class Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from April 19, 2019 through August 31, 2023. 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.

PAGA Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from November 17, 2021 through August 31, 2023. Based on these weeks worked, you are entitled to a PAGA 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 an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 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.

F. When Will I Be Paid?

After the Court grants approval of the settlement, you will receive your Individual Payment Amount in two installments, which are expected to take place in [REDACTED] [approximately 45 days after Final Approval Hearing] and [REDACTED] [approximately 195 days after Final Approval Hearing].

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Olivia Rosales of the Los Angeles County Superior Court, Department F, located at 12720 Norwalk Blvd., Norwalk, CA 90650. 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 attorney's fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an incentive award 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 [REDACTED]. 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 [redacted].

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement except you will participate in the PAGA portion thereof and be paid a share of the PAGA settlement. With that exception, 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 [redacted].

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 Los Angeles County Superior Court, located at 12720 Norwalk Blvd., Norwalk, CA 90650.

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 ACTION KNOWN AS *Peter Oun v. Duncan Industries, Inc.*, Los Angeles County Superior Court Case. No. 23NWCV00280. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Duncan Industries, Inc. in California between April 19, 2019, and August 31, 2023.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed 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 **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Duncan Industries, Inc. Claims Administrator
c/o _____

EXHIBIT 3

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

7 Attorneys for Plaintiff Peter Oun, on behalf of himself, the general public, and all "aggrieved
8 employees" pursuant to Labor Code § 2698 *et seq.*

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

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

13 Plaintiff,

14 v.

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

18 Defendants.

CASE NO: 23NWCV00280

*Assigned to the Hon. Olivia Rosales,
Department F*

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

**1. FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 226.7, 246, 510, 512, 1194,
AND 1194.2; IWC WAGE ORDER 4-2001)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 4-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 4-2001)**

**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,
246, 510, 512, AND 1194 AND PURSUANT
TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: January 26, 2023

Plaintiff PETER OUN ("Plaintiff"), on behalf of himself and on behalf of all similarly situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and under the Labor Code Private Attorneys General Act of 2004, complains of DUNCAN INDUSTRIES, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") 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 all other employees who work or formerly worked for Defendants within the State of California.

2. Since January 26, 2019 and continuing to the present (the "liability period"), Defendants have had a consistent policy of failing to pay all wages due to Class Members (as defined below); provide legally compliant rest and meal periods or compensation in lieu thereof to Class Members; provide accurately itemized wage statements to Class Members; and timely pay certain Class Members all wages due at the separation of their employment.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1194, and 1194.2 seeking compensation for all unpaid wages, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of himself and Class Members, and 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 and Class Members in Los Angeles County.

II.

PARTIES

A. Plaintiff

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

8. During his work with Defendants, Plaintiff was:

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

B. Defendants

9. Defendant DUNCAN INDUSTRIES, INC. is a California corporation that employed Plaintiff and Class Members throughout the State of California, including Los Angeles County, California.

10. 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.

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

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

8 III.

9 CLASS ACTION ALLEGATIONS

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

13 THE CLASS

14 All current and former employees of Defendants who were employed
15 in California as a non-exempt employee between April 19, 2019 and
16 August 31, 2023.

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

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

23 A. Numerosity

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

1 17. 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 18. 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 wages due to Plaintiff and Class
9 Members, in violation of Labor Code §§ 226.7, 246, 510, 512, 1194, and
10 1194.2 and IWC Wage Order 4-2001;
- 11 b. Whether Defendants failed to properly provide rest periods or compensation in
12 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
13 and IWC Wage Order 4-2001;
- 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 and 512 and IWC Wage Order 4-2001;
- 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 pay Plaintiff and Class Members all
21 wages due and owing at the separation of their employment, in violation of
22 Labor Code §§ 201-203; and
- 23 f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
24 to Business & Professions Code § 17200 *et seq.*

25 **C. Typicality**

26 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
27 Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants'
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1 common course of conduct in violation of laws, regulations that have the force and effect of law, and
2 statutes as alleged herein.

3 **D. Adequacy of Representation**

4 20. 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 21. 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 22. 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 are 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 WAGES DUE**

22 **(LABOR CODE §§ 226.7, 246, 510, 512, 1194, AND 1194.2**

23 **AND IWC WAGE ORDER 4-2001)**

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

26 24. During the liability period, Defendants failed to properly compute bonuses earned by
27 Plaintiff and Class Members into their regular rate of pay for purposes of paying them meal period
28 premiums, rest period premiums, overtime wages, and sick pay at the correct rates of pay, in violation

1 of Labor Code §§ 226.7, 246, 510, 512, and 1194 and IWC Wage Order No. 4-2001. Defendants paid
2 Plaintiff and other Class Members meal period premiums, rest period premiums, overtime wages, and
3 sick pay based only on the base hourly rate of pay, thus depriving Plaintiff and other Class Members
4 of all meal period premiums, rest period premiums, overtime wages, and sick pay earned. This
5 violates Labor Code §§ 226.7, 246, 510, 512, and 1194 and IWC Wage Order No. 4-2001.

6 25. Defendant also improperly rounded down the hours recorded by employees such that
7 Plaintiff and Class Members were not fully compensated for all of their time. These instances
8 deprived Plaintiff and Class Members of significant hours worked and minimum and overtime wages
9 due, and constitute violations of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order No. 4-
10 2001.

11 26. Defendants paid Plaintiff and Class Members straight time wages only, with no
12 adjustment for premium overtime wages. Specifically, Plaintiff and Class Members would work in
13 excess of eight (8) hours per day and forty (40) hours per week, but were never properly compensated
14 for work performed in excess of eight (8) hours in a workday and work performed in excess of forty
15 (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay.

16 27. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
17 Plaintiff and members of the Class have been deprived of wages in amounts to be determined at trial
18 and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
19 costs, pursuant to Labor Code § 1194, and liquidated damages as authorized by Labor Code § 1194.2.

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

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V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)

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

29. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 4-2001.

30. Defendants failed to pay proper premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Plaintiff and Class Members were completely denied the ability to take an off-duty 10-minute rest period for every four (4) hours of work or major fraction thereof but were not paid premium wages of one hour's pay for each missed rest period. They were simply denied and not authorized to take their legally entitled rest periods and/or were interrupted during their rest period if one was provided, and were not paid correct premium wages for missed rest periods. These instances violate Labor Code § 226.7 and IWC Wage Order No. 4-2001.

31. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation that he and Class Members are owed, according to proof.

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

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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 AND 512 AND IWC WAGE ORDER 4-2001)

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

33. 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 4-2001.

34. Defendants failed to pay proper premium wages to Plaintiff and other Class Members who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay at the correct rate for each missed first or second meal period. If a meal period was taken at all, it was typically late (after the fifth hour of work). This violates Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001

35. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all meal period compensation and unpaid wages that 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))

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

37. 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).

38. 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 Plaintiff and Class Members were not paid all wages due, as stated above, 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 at each hourly rate, in violation of Labor Code § 226(a)(9).

39. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and members of the Class 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 himself. 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)

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

41. 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.

42. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor

Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Class Members no longer employed by Defendants.

43. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ.

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

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

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

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

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

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

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

1 49. 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 50. 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 51. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 52. 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 53. 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 54. 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
22 should make such orders or judgments, including the appointment of a receiver, as may be necessary
23 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
24 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
25 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
26 money Defendants have unlawfully failed to pay.

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1 X.

2 SEVENTH CAUSE OF ACTION

3 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
4 CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
5 LABOR CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, AND 1194 AND PURSUANT TO
6 LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

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

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

11 57. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
12 civil penalties 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, 246, 510,
15 512, 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 58. Civil penalties recovered will be allocated 75% to the Labor and Workforce
19 Development Agency, and 25% to the affected employees.

20 59. On November 17, 2022, 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 17, 2022. 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 pursuant to Labor Code §§ 510, 558, and 1194, in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2, in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
3. 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 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
7. An award of prejudgment and post-judgment interest;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
9. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and other applicable law;
10. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and other applicable law; and
11. Such other and further relief as this Court may deem just and proper.

Dated: September 1, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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

DEMAND FOR JURY TRIAL

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

Dated: September 1, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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

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EXHIBIT C