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

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

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

Plaintiff,

v.

ALL IN ONE AUTOMATION ALARMS
L.L.C., a California limited liability company,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 23CV-02030

*Assigned to the Honorable Brian McCabe,
Courtroom 8*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 203.1, 226(a), 226.7, 510, 512,
1174, 1174.5, 1175, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

Complaint Filed: June 12, 2023

1 Plaintiff DENNIS XIONG (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of ALL IN ONE
3 AUTOMATION ALARMS L.L.C., a California limited liability company, and any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

14 a. Failing to pay all overtime wages earned during the course of employment, in
15 violation of Labor Code §§ 510, 558, and 1194. Defendants paid Plaintiff and non-exempt
16 Aggrieved Employees straight time wages only, with no adjustment for premium overtime
17 wages. Specifically, Plaintiff and non-exempt Aggrieved Employees would work in excess of
18 eight (8) hours per day and forty (40) hours per week, but were not properly compensated for
19 all work performed in excess of eight (8) hours in a workday and work performed in excess
20 of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
21 rate of pay. This violates Labor Code §§ 510, 558, and 1194;

22 b. Failing to pay premium wages to Plaintiff and non-exempt Aggrieved
23 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
24 Order No. 7-2001. Plaintiff and non-exempt Aggrieved Employees were routinely unable to
25 take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but
26 were not paid premium wages of one hour’s pay for each missed rest period. Plaintiff was
27 simply denied and not authorized to take his legally entitled rest periods and was never paid
28

1 premium wages for missed rest periods. This violates Labor Code § 226.7 and IWC Wage
2 Order No. 7-2001;

3 c. Failing to pay premium wages to Plaintiff and non-exempt Aggrieved
4 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
5 and 558 and IWC Wage Order 7-2001. Plaintiff and non-exempt Aggrieved Employees were
6 routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period
7 for every shift worked that exceeded five hours in duration, or a second timely, uninterrupted,
8 30-minute meal period for every shift worked that exceeded ten hours in duration, but were
9 not paid premium wages of one hour's pay for each missed first or second meal period. This
10 violates Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 7-2001;

11
12 d. Failing to fully reimburse Plaintiff and other Aggrieved Employees for all
13 reasonable and necessary business expenses incurred in direct consequence of the discharge
14 of their duties, in violation of Labor Code § 2802, including, but not limited to, the use of their
15 personal cars and cell phones while working for Defendants. Labor Code § 2802 states that
16 an employer must indemnify its employees for all necessary expenditures or losses incurred
17 by the employee in direct consequence of the discharge of their duties, and Defendants' failure
18 to do so has violated this section;

19 e. Issuing wages to Plaintiff and other Aggrieved Employees on checks with
20 insufficient funds, in violation of Labor Code § 203.1. Defendants frequently paid Plaintiff
21 and Aggrieved Employees with paychecks that were subsequently refused payment as
22 Defendants had insufficient funds in their account upon which the paychecks were drawn at
23 the time of payment;

24
25 f. Failing to maintain and produce records in accordance with Labor Code §§
26 1174, 1174.5, and 1175. Plaintiff requested his employee file and Defendant refused to timely
27 produce it. This violates Labor Code §§ 1174, 1174.5, and 1175;

1 g. Failing to provide Plaintiff and other Aggrieved Employees with wage
2 statements that fully and accurately itemized the requirements set forth in Labor Code §§
3 226(a) and 226.3. The wage statements omit nearly all information required by Labor Code §
4 226(a); they failed to accurately state all gross wages earned, in violation of Labor Code §§
5 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3,
6 all (or any) deductions, in violation of Labor Code §§ 226(a)(4) and 226.3, net wages earned,
7 in violation of Labor Code §§ 226(a)(5) and 226.3, the inclusive dates of the period for which
8 the employee is paid, in violation of Labor Code §§ 226(a)(6) and 226.3, the name of the
9 employee and the last four digits of his or her social security number or an employee
10 identification number other than a social security number, in violation of Labor Code §§
11 226(a)(7) and 226.3, the name and address of the legal entity that is the employer, in violation
12 of Labor Code §§ 226(a)(8) and 226.3, and all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked, in violation of Labor Code §§
14 226(a)(9) and 226.3; and

15
16 h. Failing to pay Plaintiff and certain non-exempt Aggrieved Employees all
17 wages due at the separation of their employment based on the time frames required by Labor
18 Code §§ 201 and 202. As stated above, Plaintiff and other non-exempt Aggrieved Employees
19 were not paid all wages due during the course of their employment and, as a result of this
20 failure, they were not timely paid all wages due at the separation of their employment.
21 Furthermore, when Plaintiff resigned, he was not issued his final wages within three days—
22 instead, he was issued his final wages more than a month later. Plaintiff alleges that
23 Defendants maintain a policy to untimely pay final wages to their former non-exempt
24 Aggrieved Employees. This violates Labor Code §§ 201-202 and is alleged on behalf of
25 Plaintiff and certain non-exempt Aggrieved Employees no longer employed by Defendants.
26

27 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
28 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

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

III. PARTIES

A. Plaintiff

5. Plaintiff DENNIS XIONG was employed by Defendants from July 2021 through March 2023 as a non-exempt employee in Merced County, California.

B. Defendant

6. Defendant ALL IN ONE AUTOMATION ALARMS L.L.C., is a California limited liability company that employed Plaintiff and Aggrieved Employees in Merced County, California.

7. 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.

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

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

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 203.1, 226(a), 226.7, 510, 512, 1174, 1174.5, 1175, 1194, AND 2802
AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

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

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

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 203.1, 226(a), 226.7, 510, 512, 1174, 1174.5, 1175, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

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

14. On March 31, 2023 and June 13, 2023, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 31, 2023 or June 13, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

V.

WHEREFORE, Plaintiff prays for the following relief:

- Dated: August 18, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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

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

On August 18, 2023, I served the foregoing document described as **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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

____ (BY FACSIMILE TRANSMISSION) On _____, at _____, at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (916) 920-4402. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

Executed on August 18, 2023, at Westlake Village, California.

JEREMY REYES