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*Attorneys for Defendants Goya Foods, Inc.
and A.N.E. Services, Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----	:	
MADELINE HERRERA, individually and	:	Civil Action No. _____
on behalf of all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	DEFENDANTS'
	:	NOTICE OF REMOVAL
GOYA FOODS, INC., and A.N.E.	:	
SERVICES, INC.,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
	:	
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**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEW JERSEY:**

Defendants Goya Foods, Inc. (“Goya”), and A.N.E. Services, Inc. (“A.N.E.”) (collectively, “Defendants”) hereby notice the removal of this action from the Superior Court of New Jersey, Law Division, Essex County, in which it is pending, to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and as grounds therefore show as follows:

I. INTRODUCTION

1. Plaintiff Madeline Herrera (“Plaintiff”) commenced this civil action on or about May 13, 2021, by filing a putative class action complaint (the “Complaint”) against Defendants in the Superior Court, Law Division, Essex County, captioned *Madeline Herrera v. Goya Foods, Inc. and A.N.E. Services, Inc.*, ESX-L-003861-21 (hereinafter referred to as the “State Court Action”). (See Exhibit A attached hereto).

2. The Complaint asserts two counts against Defendants: (1) Violation of the Connecticut Minimum Wage Act, and (2) Breach of Contract.

3. To date, Plaintiff has not served Defendants with the Complaint.

II. VENUE

4. The New Jersey Superior Court, Essex County is located within the District of New Jersey, Newark Vicinage. See 28 U.S.C. § 110. Therefore, venue is proper in this Court because the State Court Action is being removed to the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

III. BASIS FOR REMOVAL - DIVERSITY

5. This action is properly removable under 28 U.S.C. § 1441(a), because the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a), which provides, “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States. . . .”

6. In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549 (2005), the Supreme Court held that 28 U.S.C. § 1367 permits a federal court to exercise supplemental

jurisdiction over the claims of all class members so long as the named plaintiff has a claim in excess of \$75,000.

A. The Amount in Controversy Exceeds \$75,000.00

7. This is an action to recover damages for alleged violations of the Connecticut Minimum Wage Act (“CMWA”), and Breach of Contract.

8. Plaintiff purports to bring her CMWA claim on behalf of herself, and a class consisting of “all persons who worked, on a full time basis, for Defendants in the State of Connecticut during the Class period, as sales representatives and signed a Broker Agreement, directly or on behalf of a business entity.” (Compl ¶ 42).

9. Plaintiff seeks to recover, among other things, alleged deductions from her commissions during the time period she performed services for ANE, which she claims were unlawful under the CMWA, as well as liquidated damages, costs and expenses of this action, and reasonable attorneys’ fees. (Compl. ¶¶ 60-61). Defendants deny Plaintiff’s allegations and further deny that she is entitled to any damages she seeks in her Complaint.

10. In an action under the CMWA, liquidated damages can be twice the amount of recovered wages. Conn. Gen. Stat. § 31-72. Courts routinely consider liquidated or multiple damages in assessing the amount-in-controversy where, as here, such damages are provided for by the pertinent statute. *See, e.g., Talalai v. Cooper Tire & Rubber Co.*, 2001 WL 1877265, *3 (D.N.J. Jan. 8, 2001) (considering statutory treble damages in assessing amount in controversy); *Lucas v. Ultima Framingham LLC*, 973 F.Supp.2d 98, 102 (D. Mass. 2013) (“[I]f the defendants can now show that if plaintiff prevails he is likely to be entitled to actual damages of more than \$25,000 – which would become more than \$75,000 after the statutory trebling – they will have shown that this case meets the amount-in-controversy requirement.”).

11. Likewise, when mandated or allowed by statute, reasonable attorney's fees may be included in the amount in controversy for purposes of diversity jurisdiction. *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007). In a successful action under the CMWA, "reasonable attorney's fees as may be allowed by the court." Conn. Gen. Stat. § 31-72.

12. Plaintiff's costs and expenses and attorneys' fees relating to her CMWA claim are accruing and will likely contribute at least tens of thousands of additional dollars to the actual amount in controversy.

13. In addition to her CMWA claim on behalf of herself and the putative class, Plaintiff also asserts a breach of contract claim on behalf of herself, alleging "Defendants breached its contract of employment with Plaintiff, specifically ¶ 19 and its 'Best Efforts' provision entered into with Plaintiff, when it terminated her despite her performance being in accord with the 'Best Efforts' as she provided a legitimate explanation (her medical leave) for not providing services for a duration of time and therefore did not commit a non-curable breach." (Compl. ¶ 64)

14. In 2019, as an independent contractor sales broker performing services for ANE, Plaintiff received approximately \$75,000.00 in commissions and other income. *See* Declaration of Ryan T. Warden ¶ 2, attached hereto as Exhibit B. In 2020, Plaintiff had already received approximately \$55,000.00 in commissions and other income as of her termination in June 2020. *Id.* at ¶ 3. Had the contract not been terminated, and had Plaintiff continued to perform services for ANE from June 2020 until the present, it is reasonable to assume, based on her track record, she would have received at least \$75,000.00 in commissions and other income, thus satisfying the amount-in-controversy requirement based on lost commissions and other income due to the alleged breach of contract, alone. This is to say nothing of the "common law punitive damages" Plaintiff also seeks to recover on her breach of contract claim. (Compl., Prayer for Relief (c)). *See Packard*

v. Provident Nat. Bank, 994 F.2d 1039, 1046 (3d Cir. 1993) (citing *Bell v. Preferred Life Assur. Soc’y*, 320 U.S. 238, 240 (1943)) (“When both actual and punitive damages are recoverable, punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied.”).

15. Accordingly, the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

B. Complete Diversity of Citizenship Exists

16. Upon information and belief, Plaintiff is a citizen of the State of Connecticut. (Compl. ¶ 3).

17. A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). A corporation has its principal place of business where its high level officers direct, control, and coordinate the corporation’s activities, i.e., its “nerve center,” which will typically be found at its corporate headquarters. *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010).

18. Defendant Goya is a Delaware corporation and has its principal place of business in New Jersey. Defendant Goya is therefore a citizen of Delaware and New Jersey within the meaning of 28 U.S.C. § 1332.

19. Defendant A.N.E. is a Delaware corporation and has its principal place of business in New Jersey. Defendant A.N.E. is therefore a citizen of Delaware and New Jersey within the meaning of 28 U.S.C. § 1332.

20. Complete diversity of citizenship therefore exists, and this case is removable under 28 U.S.C. § 1441(b).

IV. DEFENDANTS TIMELY REMOVED PLAINTIFF'S COMPLAINT AND THE FORUM DEFENDANT RULE DOES NOT BAR REMOVAL

21. Although Defendants are citizens of New Jersey, they have not yet been served, and the “forum-defendant rule” of 28 U.S.C. § 1441(b)(2) does not bar removal. That provision states that:

A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed *if any of the parties in interest properly joined and served as defendants* is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(b)(2) (emphasis added).

22. By its plain text, the rule precludes removal by an in-state defendant based on diversity jurisdiction only if the defendant has been properly joined and served with the complaint. 28 U.S.C. § 1441(b)(2). Thus, the rule does not preclude an in-state defendant's removal of an action before being properly served with a complaint.

23. That is precisely the result reached by the U.S. Court of Appeals for the Third Circuit in *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147 (3d Cir. 2019). There, the court reviewed the district court's denial of the plaintiff's motion to remand after the in-state defendant removed the case before being properly served with the complaint. *Encompass Ins. Co.*, 902 F.3d at 149. The court affirmed the district court's denial of remand, holding that the text of 28 U.S.C. § 1441(b)(2) is “unambiguous” and does not preclude an otherwise “forum defendant” from removing an action before that defendant has been properly served with the complaint. *Id.* at 152-153.

24. At the time Defendants removed this action to this Court, Plaintiff had not served Defendants with the Complaint.

25. In accordance with controlling Third Circuit precedent in *Encompass*, the Forum Defendant Rule that is set forth in 28 U.S.C. § 1441(b)(2) is inapplicable because Plaintiff did not serve Defendants with the Complaint at the time Defendants removed the action to this Court.

V. ALL OTHER STATUTORY PREREQUISITES HAVE BEEN MET

26. Written notice of the filing of this Notice of Removal will be promptly served upon Plaintiff's counsel of record in accordance with 28 U.S.C. § 1446(d).

27. A true and correct copy of this Notice of Removal will also be promptly filed with the Superior Court of New Jersey, Essex County, Law Division, in accordance with 28 U.S.C. § 1446(d). A true and correct copy of Defendants' notice to the state court is attached as Exhibit "C."

28. All pleadings filed in the state court are attached as Exhibit "A."

29. This case also meets the requirements for removal to this Court under 28 U.S.C. § 1441(a) because this civil action is one in which the district courts of the United States have original jurisdiction, and this Court is the district court embracing the place where the state court action was pending.

WHEREFORE, Defendants Goya Foods, Inc. and A.N.E. Services, Inc. request that the above action be removed to this Court.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Date: May 21, 2021

By: s/Ryan T. Warden
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*Attorneys for Defendants Goya
Foods, Inc. and A.N.E. Service, Inc.*

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

The undersigned counsel for Defendants certifies that the matter in controversy is not the subject of any other action pending in any court and Defendants knows of no other action pending in any court, or of any pending arbitration or administrative proceeding.

s/Ryan T. Warden
Ryan T. Warden

Dated: May 21, 2021

EXHIBIT A

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Attorneys for Plaintiffs

**MADELINE HERRERA, individually
and on behalf of all others similarly
situated,**

Plaintiffs,

v.

**GOYA FOODS, INC., and A.N.E.
SERVICES, INC.**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
ESSEX DIVISION
LAW DIVISION**

Docket No. _____

**Civil Action
Class Action**

**COMPLAINT, JURY DEMAND, RULE 4:5-1
CERTIFICATION, DESIGNATION OF TRIAL
COUNSEL & DEMAND FOR DISCOVERY**

Plaintiff Madeline Herrera, by way of this Complaint against Defendants, alleges as follows:

INTRODUCTION

1. Plaintiff worked for Defendants as a sales representative in Connecticut and was misclassified by Defendants as an independent contractor. Pursuant to Connecticut law, Plaintiff and Defendants' other sales representatives are employees of Defendants and, as a result of their misclassification, Defendants' practice of making unlawful deductions from the sales representatives compensation violates Connecticut's wage payment laws, C.G.S. § 31-58 *et seq.*

2. Plaintiff brings this lawsuit on behalf of herself and all other current and former sales representatives who worked for Defendants Goya Foods, Inc. and A.N.E. Services, Inc. in New Jersey as a class action pursuant to Federal Rule of Civil Procedure 23, asserting claims for violations of Connecticut's wage payment laws, C.G.S. § 31-58 *et seq.*

PARTIES

3. Plaintiff Madeline Herrera is an adult resident of Wethersfield, Connecticut. From approximately 2010 to June 2020, Herrera worked full-time as a "Sales Representative" (or "Sales Broker") servicing Goya's customers in a geographic area set by Goya in Connecticut.

4. Defendant, Goya Foods, is a Delaware corporation with its principal office in Jersey City, Hudson County, New Jersey.

5. Defendant, A.N.E. Services, Inc. is a Delaware corporation, LLC, business entity or unincorporated association that is unregistered in the State of New Jersey despite having its principal office in Goya's Jersey City, New Jersey headquarters. A.N.E. Services, Inc. is a wholly controlled subsidiary of Goya and exists for the sole purpose of providing another corporate

intermediary in an effort by Goya to attempt to avoid the requirements of state and federal wage and worker protection laws.

6. There exists, and at all times mentioned herein existed, a unity of interest between Goya and A.N.E. such that any individuality or separateness between them is fictional and A.N.E. is the agent/alter ego of Goya.

JURISDICTION AND VENUE

7. This Court has jurisdiction over each of the parties in this state action pursuant to the New Jersey Constitution, Art. VI, Sec. III, par. 2.

8. This Court has personal jurisdiction over the parties because both Defendants have places of business in New Jersey and a forum selection clause included in Plaintiff's contract with Defendants states that all disputes shall be subject to the exclusive jurisdiction of the federal or state courts of the state of New Jersey.

9. Venue is further appropriate pursuant to New Jersey Superior Court R. 4:3-2 given that Defendants perform regular business in Essex County, New Jersey.

STATEMENT OF FACTS

10. Defendant Goya, directly and through its subsidiary/alter ego A.N.E., is a national company employing individual sales representatives to sell Goya food products to retailers and other Goya customers throughout the United States.

11. During the time relevant to this action, Goya/A.N.E. retained what is believed to be more than 300 "Sales Representatives" or "Sales Brokers," for the purpose of selling its products and wares to various businesses and facilities. Approximately a dozen of these individuals perform services at any given time, on behalf of Defendants in Connecticut.

12. Plaintiff and the class members have signed versions of a contract with Defendants that are called a “Broker Agreement” and which contains various non-negotiable terms imposed upon sales representatives by the Defendants.

13. As a Sales Broker, Plaintiff and other sales representatives are responsible for servicing Goya’s customers, the various super-markets and retailers that purchase Goya’s products wholesale directly from Goya and then sell those products to the public. This work includes traveling to the stores and communicating with Goya’s customers regarding their product orders.

14. Plaintiff and other sales representatives are work full-time performing these tasks for Defendants.

15. Plaintiff and other sales representatives are prohibited from providing similar services to any entity other than Defendants.

16. Although Goya purports to classify all sales representatives as independent contractors, under the Connecticut employment relationship test, Plaintiff should have been classified as an employees of Defendants and provided the protections of the Connecticut’s wage payment laws.

17. Defendants exercise substantial control over Plaintiff and other sales representatives’ work.

18. For example, Defendants sets all prices paid by customers and all commission rates paid to them.

19. Defendants also employ individuals who are responsible for supervising the sales representatives’ work, including riding along with the sales representatives while they perform their work and checking on the sales representatives’ job performance. This supervision includes email and telephone communications instructing Plaintiff and other sales representatives, about

the manner in which they must perform their work and monitoring sales representatives' performance in the field.

20. Defendants also required Plaintiff and other sales representatives to attend periodic meetings, for which they received no compensation and at which Defendants provided Plaintiff and other sales representatives with instructions regarding how to perform their work.

21. Defendants regularly required Plaintiff and other sales representatives to submit reports of every detail of their work activity.

22. In addition, Defendants require male sales representatives to wear a suit and tie.

23. Plaintiff and other sales representatives do not have authority to reject sales or customers.

24. Plaintiff and other sales representatives are required to form business entities as a condition of working for Defendants.

25. Plaintiff and other sales representatives were required to increase their sales by three percent each year.

26. Goya retained the power to terminate Plaintiff and other sales representatives if it was dissatisfied with their work.

27. Moreover, Plaintiff and other sales representatives' work is integral to Goya's business, as they are directly responsible for servicing Goya's customers and without their work, Goya would have no means to communicate with its customers to arrange product orders.

28. Indeed, because Plaintiff and other sales representatives' work is integral to Defendants' business, Plaintiff and other sales representatives are provided two weeks off for vacation each year and Defendants pay for the services of a replacement to fill in as a temporary

sales representative for those two weeks. Plaintiff and other sales representatives need Goya's approval to schedule the vacation.

29. Plaintiff and the other sales representatives perform work within Defendants places of business. Defendants assign the sales representatives to specific geographical areas. Each workday, the sales representatives perform work on routes approved by Defendants within their assigned areas. In addition, Defendants routinely designate the time the sales representatives are required to arrive at stores.

30. Plaintiff and the other sales representatives were not engaged in independent businesses and as in fact economically reliant on Defendants for their livelihood, as they were prohibited from performing their sales representative services for any other company, worked full-time for Defendants without any additional time to engage in other economic pursuits, and had no control over the prices or commissions that determined her earnings.

31. Indeed, when Plaintiff was terminated by Defendants in June of 2020, she did not have any work.

32. Defendants compensated Plaintiff and the other sales representatives for their work based upon a commission structure. Earned commissions constituted Plaintiff and the other sales representatives' wages.

33. Defendants made deductions from the wages of Plaintiff and the other sales representatives that are illegal under Connecticut law. These include deductions from earned commissions for Worker's Compensation insurance.

34. In addition, Defendants made deductions from Plaintiff and the other sales representatives' earned commissions for a "reserve account," which Goya uses to pay itself if one of the customers in sales representatives territory does not timely pay its invoice, and.

35. Furthermore, in the event that customer does not timely pay its invoice, Defendants retained the power to make additional deductions from Plaintiff and the other sales representatives' earned commissions, and not from the "reserve account," at Defendants' discretion.

36. The deductions made by Defendants from Plaintiff and the other sales representatives unlawfully shift the costs of doing business (including insuring its employees and protecting against non-payment of customers) to its employees.

37. Defendants also require Plaintiff and the other sales representatives to pay for the purchase or lease of a vehicle, as well as for its maintenance and upkeep of the vehicle, which is necessary to perform their work. Other work-related costs required to be paid by Plaintiff and the other sales representatives include fuel, oil, tires, repairs, taxes, insurance coverage, licenses, vehicle registration fees and tolls.

38. On or about January 26, 2020, Plaintiff took leave from her position with Defendants, in order to undergo medical treatment for Stage 4 endometriosis. She provided Defendants with medical documentation. She underwent physical and occupational therapy and home treatment.

39. While on leave, Defendants deducted approximately \$670 to \$770 from Plaintiff's commission earnings each week (to pay for the services of a replacement to fill in as a temporary sales representative).

40. Defendants located photos of Plaintiff on vacation via social media and questioned Plaintiff regarding these photos, accusing her of requesting time off for a vacation overseas, rather than for medical reasons. Plaintiff clarified the photos were from the previous year and that she was still undergoing medical treatment.

41. Nevertheless, on or about June 12, 2020, Defendants terminated Plaintiff. Defendants cited the “Best Efforts” provision and ¶ 19 of the Broker Agreement, which provides for termination of the contract upon the occurrence of a non-curable breach; Defendants stated that Plaintiff had committed a non-curable breach of this provision by taking leave to go on vacation overseas and for providing false and dishonest information.

CLASS ACTION ALLEGATIONS

42. Plaintiff brings this class action on behalf of herself and other similarly situated sales representatives who were classified by Defendants as independent contractors. Specifically, Plaintiff brings this action as a class action on behalf of all persons who worked, on a full time basis, for Defendants in the State of Connecticut during the Class period, as sales representatives and signed a Broker Agreement, directly or on behalf of a business entity (the “Proposed Class”).

43. Upon information and belief, the number of members of the Plaintiff Class exceeds 40 during the Class Period.

44. The Plaintiff Class is so numerous that their individual joinder into a single action is impracticable. Although the exact number of Class Members cannot be properly determined without further discovery, the number and identity of the Class Members can easily be ascertained from Defendants’ records.

45. Each member of the Proposed Class signed materially identical Broker Agreements.

46. Under Connecticut law, every Goya sales representative in Connecticut is, as a matter of law, a Goya employee.

47. The Defendants’ actions have inflicted the same types of harm upon every member of the Proposed Class.

48. There are questions of law and fact that affect and are common to all Members of the Proposed Class.

49. Common legal and factual issues predominate over any questions affecting only individual members of the Proposed Class. Among the common questions of law and fact are the following:

- a. Whether the sales representatives are Defendants' employees;
- b. Whether Defendants unlawfully forced Plaintiffs to pay for business expenses that rightfully should have been paid for by their employer;
- c. Whether Defendants, by making unlawful deductions from the pay of sales representatives, violated the Connecticut's wage payment laws;

50. The claims of the named representative Plaintiff are typical of the claims of other members of the Proposed Class.

51. Plaintiff is committed to vigorously prosecuting this action on behalf of all Members of the Proposed Class who have suffered losses as a result of Defendants' actions described herein.

52. Plaintiff has retained qualified counsel, experienced in class action practice, to represent them in this matter.

53. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class Members may be relatively small in comparison with the expense and burden of individual litigation, it is impracticable for members of the Class to seek redress individually for the wrongful conduct herein alleged.

54. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court. The prosecution of separate actions would also create the risk of inconsistent rulings, which may be dispositive of the interest of Class Members who are not parties to the adjudication and/or may substantially impede Class Members' ability to protect their interests, and therefore would be contrary to the interest of justice and equity.

COUNT I
CONNECTICUT MINIMUM WAGE ACT
(UNLAWFUL WITHHOLDING AND DEDUCTIONS FROM WAGES)

55. Plaintiffs repeat and reallege each and every allegation above as if restated herein verbatim.

56. Plaintiff and other putative class members are employees of Defendants, and therefore entitled to the protections of Connecticut wage payment laws, C.G.S. § 31-58 *et seq.*

57. Defendants have paid Plaintiff and other sales representatives compensation for their services that are wages pursuant to C.G.S. § 31-73. This is true even where Defendants paid Plaintiff through a business entity that Plaintiff and the sales representatives was required to form to work for Defendants.

58. Defendants made deductions from the compensation they paid to Plaintiff and other sales representatives for worker's compensation, for a "reserve account," and for failure of Goya customers to pay the full amount for products delivered.

59. Defendants' requirement that Plaintiff and the other sales representatives pay for their own expenses, such as mileage, operated as a further deduction from wages.

60. The deductions made by Defendants from their sales representatives' compensation violate the C.G.S. § 31-71e, which prohibits employers from withholding or diverting any portion

of an employee's wages unless the employer obtains written authorization from the employee for the deductions on a form approved by the commissioner of the Department of Labor.

61. As a direct and proximate result of Defendants' illegal conduct as set forth above, Plaintiff and putative class members have suffered damages, including but not limited to lost wages. This claim is brought pursuant to Conn. Gen. Stat. § 31-72, which entitles Plaintiff and putative class members to recover twice the full amount of such wages, with costs and reasonable attorneys' fees.

COUNT II BREACH OF CONTRACT

62. Plaintiff repeats and realleges each and every allegation above as if restated herein verbatim.

63. Defendants breached its contract of employment with Plaintiff, specifically ¶ 19 and its "Best Efforts" provision entered into with Plaintiff, when it terminated her despite her performance being in accord with the "Best Efforts", as she provided a legitimate explanation (her medical leave) for not providing services for a duration of time and therefore did not commit a non-curable breach.

64. Defendants conduct in unilaterally terminating Plaintiff's contract also violates the implied covenant of good faith and fair dealing because Defendants acted in bad faith and/or reckless disregard of the truth in order to terminate the Agreement and deprive Plaintiff of its benefits. Defendants accused Plaintiff of lying about her medical leave without adequate cause and then continued to use its own accusations as the sole basis for a non-curable breach even after Plaintiff clarified that she in fact was on medical leave (and not on vacation).


PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this honorable Court to enter the following relief:

- a. An Order certifying the Proposed Class defined above, for the purposes of adjudicating Count I;
- b. An award of damages for all unpaid wages, expenditures, costs, deductions, benefits, or other losses resulting from Defendants' misclassification, as described above;
- c. An award of damages permitted by common law, including common law punitive damages, for Counts I and II;
- d. Attorneys' fees and costs; and
- e. Such other legal and equitable relief as the Court deems just and proper.

Dated: May 13, 2021

MARCHETTI LAW, P.C.
Attorneys for Plaintiffs


/s/ Anthony L. Marchetti, Jr.
ANTHONY L. MARCHETTI, JR.

SATTIRAJU & THARNEY, LLP
Attorneys for Plaintiffs

RAVI SATTIRAJU, ESQ.

LICHTEN LISS-RIORDAN, P.C.
Attorneys for Plaintiffs


HAROLD L. LICHTEN, ESQ.
BENJAMIN J. WEBER, ESQ.
ANASTASIA DOHERTY, ESQ.
(pro hac vice anticipated)

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury as to all issues so triable.

MARCHETTI LAW, P.C.
Attorneys for Plaintiffs

/s/ Anthony L. Marchetti, Jr.
ANTHONY L. MARCHETTI, JR.



DESIGNATION OF TRIAL COUNSEL

Anthony L. Marchetti, Jr., Ravi Sattiraju and Harold Lichten are hereby designated as trial attorney in the above captioned litigation on behalf of the Plaintiffs.

MARCHETTI LAW, P.C.
Attorneys for Plaintiffs

/s/ Anthony L. Marchetti, Jr.
ANTHONY L. MARCHETTI, JR.

SATTIRAJU & THARNEY, LLP
Attorneys for Plaintiffs
RAVI SATTIRAJU, ESQ.

LICHTEN LISS-RIORDAN, P.C.
Attorneys for Plaintiffs

HAROLD L. LICHTEN, ESQ.
BENJAMIN J. WEBER, ESQ.
ANASTASIA DOHERTY, ESQ.
(pro hac vice anticipated)

CERTIFICATION PURSUANT TO RULE 4:5-1

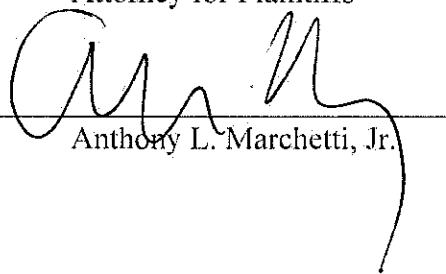
I hereby certify that to my knowledge the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. There is a potentially-related matter currently pending in this Court, styled Collina v. Goya Foods, ESX-L-4309-20.

I know of no other parties who should be joined in this action at this time, except that if certification is denied Plaintiff may seek to add additional Plaintiffs.

MARCHETTI LAW, P.C.
Attorney for Plaintiffs

Dated: May 13, 2021

BY: _____



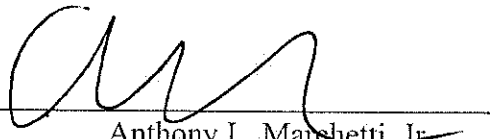
Anthony L. Marchetti, Jr.

NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17-4(c)

Take notice that the undersigned attorney, counsel for Plaintiffs, hereby demands pursuant to Rules 1:5-1(a) and 4:17-4(c) and any amendments thereto, that each party herein serving pleadings and interrogatories and receiving any answers thereto, serve copies of all such pleadings and answered interrogatories received from any party, including any documents, papers and other materials referred to therein, upon the undersigned attorney and take notice that this is a continuing demand.

MARCHETTI LAW, P.C.
Attorney for Plaintiffs

Dated: May 13, 2021

By: 
Anthony L. Marchetti, Jr.

ESSEX COUNTY - CIVIL DIVISION
SUPERIOR COURT OF NJ
465 MARTIN LUTHER KING JR BLVD
NEWARK NJ 07102

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 776-9300
COURT HOURS 8:30 AM - 4:30 PM

DATE: MAY 13, 2021
RE: HERRERA MADELINE VS GOYA FOODS, INC.
DOCKET: ESX L -003861 21

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON BRUCE BUECHLER

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (973) 776-9300 EXT 57395.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: ANTHONY L. MARCHETTI
MARCHETTI LAW, PC
317 DELSEA DR
P.O. BOX 656
SEWELL NJ 08080

ECOURTS

EXHIBIT B

Ryan T. Warden
Kevin P. Hishta (*pro hac vice* to be filed)
Margaret Santen (*pro hac vice* to be filed)
OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.
10 Madison Avenue, Suite 400
Morristown, New Jersey 07960
(973) 656-1600
ryan.warden@ogletreedeakins.com
Attorneys for Defendants Goya Foods, Inc.
and A.N.E. Services, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----	:	
MADELINE HERRERA, individually and	:	Civil Action No. _____
on behalf of all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	DECLARATION OF RYAN T. WARDEN
	:	
GOYA FOODS, INC., and A.N.E.	:	
SERVICES, INC.,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
	:	
-----	:	

Ryan T. Warden, being of full age, hereby declares as follows:

1. I am an attorney at law in the State of New Jersey and a Shareholder in the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., attorneys for Defendant Goya Foods, Inc. (“Goya”) and A.N.E. Service, Inc., incorrectly identified as “A.N.E. Services, Inc.” (“ANE,” and together with Goya “Defendants”) in the above captioned matter. As such, I have personal

knowledge of the matters stated herein. I make this declaration in support of Defendants' Notice of Removal.

2. I have reviewed ANE's records and they show that Plaintiff received approximately \$75,000.00 in commissions and other income in 2019.

3. The records also show that Plaintiff received more than \$55,000.00 in commissions and other income from January through June 2020.

I declare that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 21, 2021

/s/ Ryan T. Warden
Ryan T. Warden

EXHIBIT C

Ryan T. Warden (I.D. # 044322006)
Kevin P. Hishta (pro hac vice to be filed)
Margaret Santen (pro hac vice to be filed)
**OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.**
10 Madison Avenue, Suite 400
Morristown, New Jersey 07960
(973) 656-1600
ryan.warden@ogletreedeakins.com
*Attorneys for Defendants Goya Foods, Inc.
and A.N.E. Services, Inc.*

MADELINE HERRERA, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

GOYA FOODS, INC., and A.N.E. SERVICES,
INC.,

Defendants.

:
: SUPERIOR COURT OF NEW JERSEY
: ESSEX DIVISION
: LAW DIVISION
:
: Docket No. ESX-L-003861-21
:
:
: **DEFENDANTS' NOTICE OF FILING NOTICE**
: **OF REMOVAL**
:
:
:
:
:
:

Defendants Goya Foods, Inc, and A.N.E. Service, Inc. (incorrectly identified as “A.N.E. Services, Inc.”), hereby give notice that, by the filing of a Notice of Removal, a copy of which is attached hereto as Exhibit “1” in the United States District Court for the District of New Jersey, this case has been removed to said District Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Date: May 21, 2021

By: s/Ryan T. Warden
Ryan T. Warden
10 Madison Avenue, Suite 400

Morristown, New Jersey 07960
(973) 656-1600
ryan.warden@ogletreedeakins.com
*Attorneys for Defendants Goya
Foods, Inc. and A.N.E. Service, Inc.*

PROOF OF SERVICE

I am over the age of 18 and not a party to this action. On this date, I served a true copy of the attached:

NOTICE OF REMOVAL & LOCAL CIVIL RULE 11.2 CERTIFICATION

on the party listed below, via prepaid first class mail upon her attorney of record:

Anthony L. Marchetti, Jr.
MARCHETTI LAW, P.C.
317 Delsea Drive
Sewell, NJ 08080

Ravi Sattiraju
SATTIRAJU & THARNEY, LLP
50 Millstone Rd.
Building 300, Suite 202
East Windsor, NJ 08520

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

Dated: May 21, 2021

s/Ryan T. Warden
Ryan T. Warden

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Madeline Herrera

(b) County of Residence of First Listed Plaintiff Hartford, CT (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Marchetti Law, P.C., 317 Delsea Drive Sewell, NJ 08080, 856-824-1001

DEFENDANTS

Goya Foods, Inc.

A.N.E. Service, Inc.

County of Residence of First Listed Defendant Hudson (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Ogletree Deakins, Nash, Smoak & Stewart P.C., 10 Madison Ave, #400, Morristown, NJ 07960, 973-656-1600

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Rights, and Tax Suits.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sections 1332, 1441, and 1446.

Brief description of cause: Plaintiff alleges that she and Defendants' other sales representatives are employees of Defendants and have been misclassified.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Buechler DOCKET NUMBER ESX-L-003861-21

DATE 5/21/21 SIGNATURE OF ATTORNEY OF RECORD /s/ Ryan T. Warden

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Goya Foods Misclassified Sales Reps as Contractors, Took Unlawful Deductions from Commissions](#)
