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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF EL DORADO

NAOMI HAQQ, on behalf of herself and all
“aggrieved employees” pursuant to Labor Code §
2698 *et seq.*,

Plaintiff,

v.

HAWTHORN SENIOR LIVING, LLC, a
Delaware limited liability company, and DOES 1
through 10, inclusive,

Defendants.

Case No. PC 20210300

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

1 This Class and Representative Action Settlement Agreement and Release of Claims
2 (“Agreement”) is between (1) Plaintiff Naomi Haqq and (2) Defendant Hawthorn Senior Living, LLC
3 (collectively, the “Parties”), subject to judicial approval, as provided below.

4 By this Agreement the Parties intend to settle the Action (defined below) and to fully, finally,
5 and forever resolve, discharge, and settle the Released Claims (defined below), subject to judicial
6 approval of the terms set forth herein. If this Agreement is not finally approved, or is otherwise
7 nullified, then the Parties shall return to their positions preceding this Agreement and Defendant shall
8 retain all rights to challenge the Plaintiff’s claims, trial plan, and/or the certification of any class.

9 1. DEFINITIONS

10 For the purposes of this Agreement, the Parties define the following terms. Each defined term
11 appears throughout in initial capital letters.

12 1.1. “**Action**” refers to the lawsuit entitled *Naomi Haqq, on behalf of herself and all*
13 *“aggrieved employees” pursuant to Labor Code § 2698 v. Hawthorn Senior Living, LLC*, El Dorado
14 County Superior Court Case No. PC 20210300 (“Action”).

15 1.2. “**Administrative Costs**” refers to all costs associated with administration of the
16 settlement contemplated by this Agreement. Administrative Costs include all fees and costs for, among
17 other things, printing, copying, formatting, postage, envelopes, computer searches to locate addresses,
18 calculation of payments to individual class members, calculation of applicable payroll withholdings and
19 payroll taxes, preparation and filing of appropriate IRS Forms, any costs associated with the process for
20 any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to
21 complete the settlement process according to the terms of this Agreement. Administrative Costs are
22 borne in the first instance by the Settlement Administrator.

23 1.3. “**Agreement**” refers to this Class and Representative Action Settlement
24 Agreement and Release of Claims, which includes all its recitals herein and all the attached exhibits.

25 1.4. “**Class Action Complaint**” refers to the operative complaint filed in the Action,
26 which after being amended as outlined below, will contain both class and representative allegations.

27 1.5. “**Class Counsel**” refers to GAINES & GAINES, APLC. For purposes of
28 providing any notices required under this Agreement, Class Counsel shall refer to GAINES & GAINES,

APLC, Daniel F. Gaines, Esq. (daniel@gaineslawfirm.com), 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362, Tel: (818) 703-8985, Fax: (818) 703-8984.

1.6. “Class Counsel Payment” refers to the amount of attorneys’ fees and costs that the Court awards to Class Counsel in connection with the resolution of the Action in accordance with this Agreement.

1.7. “Class Member” refers to any member of the Settlement Class, defined as follows: all non-exempt employees of Defendant who performed work for Defendant in the State of California during the Settlement Period (defined below).

1.8. “Class Representative” refers to Plaintiff Naomi Haqq.

1.9. “Class Representative Service Award” refers to any payment that the Court awards to the Class Representative for efforts in prosecuting the Action on behalf of the Class Members.

1.10. “Consideration Period” refers to the 60 calendar days following the date when the Settlement Administrator mails the Notice of Class Action Settlement. The Consideration Period is the period in which a Class Member can submit an Objection or a Request for Exclusion.

1.11. “Court” refers to the Judge presiding over the Action.

1.12. “Defendant” refers to Hawthorn Senior Living, LLC.

1.13. “Defense Counsel” refers to Seyfarth Shaw LLP. For purposes of providing any notices required under this Agreement, Defense Counsel shall refer to Brian Ashe and Timothy Hoppe, Seyfarth Shaw LLP, 560 Mission Street, Suite 3100, San Francisco, California 94105, (415) 397-2823, bashe@seyfarth.com; thoppe@seyfarth.com.

1.14. “Effective Date” means the later of (a) the Court’s final approval of the Settlement Agreement with issuance of a Final Approval Order, if no objections have been filed, (b) the time of appeal has expired if an objection has been filed and no appeal was filed, or (c) the final resolution of any appeal or other review that has been filed.

1.15. “Eligible Workweek” refers to a workweek in which a Class Member was employed by Defendant during the Settlement Period (defined below), and received any regular pay. Any workweek in which the Class Member received only remuneration other than regular pay (such as Paid Time Off, for example) will not be an Eligible Workweek.

1 **1.16. “Final Approval Hearing”** refers to the hearing at which the Court decides
2 whether the terms of the Agreement are fair, reasonable, and adequate for the Class Members and meet
3 all requirements for final approval.

4 **1.17. “Final Approval Order”** refers to the final order by the Court approving the
5 Settlement following the Final Approval Hearing.

6 **1.18. “FLSA Period”** refers to the period from June 9, 2018 to the last day of the
7 Settlement Period.

8 **1.19. “FLSA Release”** refers to the release of claims the Settlement Class Member
9 may have for violations of the Fair Labor Standards Act, including any and all claims for restitution,
10 back pay, attorneys’ fees and costs, interest, and liquidated damages under the FLSA.

11 **1.20. “FLSA Settlement Subclass”** refers to all FLSA Subclass Members who opt into
12 the FLSA Subclass by timely cashing, depositing, or otherwise negotiating their FLSA Settlement
13 Payment checks.

14 **1.21. “FLSA Settlement Payment”** refers to the amount calculated by the Settlement
15 Administrator to distribute to each Settlement Class Member as consideration for the FLSA Release.
16 The FLSA Settlement Payment shall be paid from the Net Settlement Amount.

17 **1.22. “FLSA Subclass Members”** refers to those individuals who for purposes of this
18 Agreement will be certified as members of the class, defined as follows: all non-exempt employees of
19 Defendant who performed work for Defendant in the State of California during the FLSA Period and
20 who opt-into the FLSA Settlement by timely cashing or otherwise negotiating their FLSA Settlement
21 Payment checks.

22 **1.23. “Gross Settlement Amount”** refers to the payment Defendant is obligated to
23 make in connection with the Agreement: Eight Hundred Fifty Thousand Dollars (\$850,000). In no event
24 shall Defendant be obligated to pay more than this amount. This sum includes all Individual Settlement
25 Payments (including all payroll taxes), FLSA Settlement Payments, any Class Representative Service
26 Award, the PAGA Payment, Administrative Costs, and the Class Counsel Payment.

27 **1.24. “Individual Settlement Payment”** refers to the amount calculated by the
28 Settlement Administrator to distribute to each Class Member as consideration for the Released Claims

1 other than those in the FLSA Release. The Individual Settlement Payment shall be paid from the Net
2 Settlement Amount.

3 **1.25. “Judgment”** refers to the final judgment entered by the Court in the Action
4 following the Final Approval Hearing.

5 **1.26. “LWDA”** refers to the California Labor & Workforce Development Agency,
6 which helps to enforce The Labor Code Private Attorneys General Act, California Labor Code section
7 2698, *et seq.* (“PAGA”) and which will receive the LWDA portion of the PAGA Payment.

8 **1.27. “Net Settlement Amount”** refers to the portion of the Gross Settlement Amount
9 that remains after accounting for any Class Representative Service Award, the portion of the PAGA
10 Payment payable to the LWDA, the PAGA Settlement Fund, Administrative Costs, and the Class
11 Counsel Payment. The Net Settlement Amount shall be distributed to Class Members and the FLSA
12 Subclass Members pursuant to the formulas set forth in this Agreement.

13 **1.28. “Notice of Class Action Settlement”** refers to the Notice of Class Action
14 Settlement, substantially in the form attached as Exhibit A.

15 **1.29. “Objection”** refers to a written statement submitted timely by a Class Member to
16 the Settlement Administrator that contains (1) the name and case number of the Action (or reasonable
17 portion thereof), (2) the full name, last four digits of their social security number, and current address of
18 the Class Member making the Objection, (3) the specific reason(s) for the Objection, and (4) all
19 evidence and supporting papers (including, without limitation, all briefs, written evidence, and
20 declarations) for the Court to consider.

21 **1.30. “Objector”** refers to a Class Member who has submitted an Objection.

22 **1.31. “PAGA Aggrieved Employee Group”** shall be comprised of all Class Members
23 employed during the PAGA Claim Period, irrespective of whether the Class Member files a Request for
24 Exclusion from the Settlement Class.

25 **1.32. “PAGA Payment”** refers to the portion of the Gross Settlement Amount that
26 shall be allocated to claims under PAGA. Seventy-five percent (75%) of the PAGA Payment shall be
27 payable to the LWDA. The remaining twenty-five percent (25%) shall become the PAGA Settlement
28 Fund for distribution to the PAGA Aggrieved Employee Group. The Parties have agreed to allocate

Forty Thousand Dollars (\$40,000.00) of the Gross Settlement Amount to claims under PAGA. Of this, Thirty Thousand Dollars (\$30,000.00) shall be payable to the LWDA and the remaining Ten Thousand Dollars (\$10,000.00) shall become the PAGA Settlement Fund.

1.33. “PAGA Claim Period” refers to the period from March 31, 2020 to the last day of the Settlement Period.

1.34. “PAGA Settlement Fund” refers to the 25% portion of the PAGA Allocation that will be distributed to the PAGA Aggrieved Employee Group pursuant to the formula set forth in Section 5.4.3, below.

1.35. “PAGA Settlement Payment” refers to the amount calculated by the Settlement Administrator to distribute to each member of the PAGA Aggrieved Employee Group. Any Class Member who opts out of the Settlement Class will still be bound by the Released PAGA Claims and shall receive their pro rata share of the PAGA Settlement Fund.

1.36. “Parties” refers collectively to (1) Naomi Haqq, individually and on behalf of the Class, and (2) Hawthorn Senior Living, LLC.

1.37. “Plaintiff” refers to Naomi Haqq, individually and on behalf of the Class.

1.38. “Preliminary Approval Order” refers to the order entered by the Court following a Motion for Preliminary Approval of the Agreement.

1.39. “Qualified Settlement Fund (QSF)” refers to a Qualified Settlement Fund pursuant to U.S. Treasury Regulation Section 468B-1.

1.40. “Released Claims” refers to all claims that will be extinguished by operation of this Agreement and the events it provides for.

1.41. “Released Parties” refers to Hawthorn Senior Living, LLC and all of its predecessors, successors, subsidiaries, parents, corporate affiliates, and assigns, and all of their respective officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

1.42. “Released PAGA Claims” means all claims that this Agreement will extinguish as to all members of the PAGA Aggrieved Employee Group that were raised, or reasonably could have been raised, during the PAGA Claim Period under PAGA and includes the release of all claims in any

1 letter to the LWDA submitted by the Class Representative and all claims alleged under PAGA in any
2 complaint filed in the Action.

3 **1.43. “Request for Exclusion”** refers to a timely, written, opt-out request signed by a
4 Class Member who thereby elects to be excluded from this Agreement.

5 **1.44. “Settlement Administrator”** refers to Simpluris, Inc., the third-party
6 administrator the Parties have selected, subject to Court approval.

7 **1.45. “Settlement Class”** refers to all Class Members who do not file a timely and
8 valid Request for Exclusion. Any Class Member who files a Request for Exclusion is nevertheless
9 bound by the Released PAGA Claims and shall receive his or her pro rata share of the PAGA Settlement
10 Fund.

11 **1.46. “Settlement Period”** refers to the period from June 9, 2017 through the earlier of
12 (i) the date of preliminary approval or (ii) July 1, 2022.

13 **2. RECITALS AND PROCEDURAL HISTORY**

14 **2.1. Allegations in the Action.** On June 9, 2021, Plaintiff Naomi Haqq filed the
15 Action, a representative action in the Superior Court of the State of California for the County of El
16 Dorado, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698. In the
17 Action, Plaintiff sought to recover PAGA penalties for alleged violations of the California Labor Code
18 and California Wage Orders for Defendant’s alleged (1) failure to pay all overtime wages due; (2)
19 failure to provide meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages upon
20 termination; and (5) failure to provide complete and accurate wage statements.

21 **2.2. Further Complaint.** Class Counsel will file a First Amended Class Action
22 Complaint in the Action, in the form attached hereto as Exhibit B, concurrently with the filing of the
23 motion for preliminary approval, adding class action claims consistent with the representative claims
24 currently asserted in the Action on behalf of the Class Members, and adding a claim for failure to pay
25 overtime under the Fair Labor Standards Act (“FLSA”).

26 **2.3. Stipulation to Amend the Action.** Defendant agrees to stipulate to the filing of
27 the First Amended Complaint (Exhibit B) in the Action for settlement purposes.
28

1 **2.4. Defendant's Denials.** Defendant denies (1) all the material allegations in the
2 Action; (2) that it violated any applicable laws, (3) that it is liable for damages, penalties, interest,
3 restitution, attorneys' fees, or costs, or for any other compensation or remedy with respect to anyone on
4 account of the claims asserted in the Action, and (4) that class certification, or representative treatment is
5 appropriate as to any claim in the Action. Defendant contends that its policies, procedures, and practices
6 comply with all applicable laws asserted in the Action. Nonetheless, without admitting any liability or
7 wrongdoing whatsoever and without admitting that class certification or representative treatment is
8 appropriate for any purpose other than for settlement purposes alone, Defendant has agreed to settle the
9 Action on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of
10 litigation. Any statements by Defendant in this Agreement are made for settlement purposes only.

11 **2.5. Class Counsel's Investigation.** Class Counsel represent that they have
12 conducted a sufficiently thorough investigation into the claims of the Action. Based on their own
13 independent investigation and evaluation and all known facts and circumstances, including the risk of
14 significant defenses asserted by Defendant, Class Counsel are of the opinion that the Agreement is fair,
15 reasonable, and adequate and is in the best interests of the Settlement Class.

16 **2.6. Negotiation of Settlement.** Class Counsel engaged in intensive negotiations with
17 Defendant with a view toward achieving substantial benefits for the Class Members, while avoiding the
18 cost, delay, and uncertainty of further litigation. Plaintiff and Class Counsel urge approval of this
19 Agreement after considering (1) the factual and legal defenses to the claims asserted, which render
20 uncertain the ultimate outcome of the Action and class certification, (2) the potential difficulties Plaintiff
21 and Class Members would encounter in establishing their claims and maintaining class or representative
22 treatment, (3) the substantial benefits that Class Members would receive under this Agreement, (4) that
23 this Agreement provides Class Members relief in an expeditious and efficient manner, compared to any
24 manner of recovery possible after litigation and potential appeal, and (5) that this Agreement allows
25 Class Members to opt out of the settlement and individually pursue the claims alleged in the Action.

26 **2.7. Certification of Settlement Class.** This Agreement is contingent upon the
27 Court's certification of the Settlement Class under California Code of Civil Procedure section 382 for
28 settlement purposes only, upon the Court's certification of a collective action under 29 U.S.C. § 216(b)

1 for settlement purposes only, and upon the Court's approval of a PAGA representative action releasing
2 the Released PAGA Claims for settlement purposes only. Defendant does not waive, and instead
3 expressly reserves, the right to challenge the propriety of class certification, collective certification, or
4 representative treatment for any other purpose should the Court not approve the Agreement.

5 **3. NOTICE TO CLASS MEMBERS**

6 **3.1. Content of Class Notice.** The Class Notice shall be substantially in the form
7 attached as Exhibit A and include the amount of the settlement, a calculation of the Class Members'
8 anticipated share of the Net Settlement Amount, PAGA Settlement Fund, and the full amounts of the
9 Class Counsel Payment, Class Representative Service Award, and Administrative Costs to be awarded,
10 the terms of the release, the procedure to opt out of the settlement through a Request for Exclusion, the
11 procedure to Object to the settlement, and the date of the Final Approval Hearing. No claim form will
12 be required to participate in the settlement.

13 **3.2. Settlement Administrator.** The Parties select Simpluris, Inc. as the Settlement
14 Administrator. The duties of the Settlement Administrator shall include, without limitation, mailing
15 notices to Class Members, establishing a QSF, obtaining appropriate tax identification number(s),
16 calculating Individual Settlement Payments, PAGA Settlement Payments, and the FLSA Settlement
17 Payments (including all required tax withholdings and payments), mailing all settlement payments and
18 tax forms to Class Members, remitting all tax payments and requisite reporting documentation to taxing
19 authorities, and the other duties associated with settlement administration, including those specified in
20 this Agreement. Any dispute relating to the settlement administration will, after good-faith efforts by
21 the Parties to resolve the dispute, be referred to the Court.

22 **3.3. Class Data for the Settlement Administrator.** Within 30 calendar days of the
23 later of preliminary approval of this settlement or court approval of the Notice of Class Action
24 Settlement, Defendant shall provide to the Settlement Administrator a confidential class list containing,
25 for each Class Member: (1) the name; (2) employee ID number; (3) last known address and telephone
26 number; (4) number of Eligible Workweeks worked during the class, FLSA, and PAGA periods; and (5)
27 social security number. This information shall be used to facilitate the administration of this Agreement.
28 The Settlement Administrator shall keep the class data provided by Defendant strictly confidential and

1 shall use the class data only for the purposes described in this Agreement. It shall not be shared with
2 Class Counsel.

3 **3.4. Mailing Materials to Class Members.** Within 15 calendar days of the receipt of
4 the class data discussed immediately above in Section 3.3, the Settlement Administrator shall send the
5 Notice of Class Action Settlement to Class Members to their last known address via First Class U.S.
6 Mail. Any mailing returned to the Settlement Administrator as undeliverable shall be sent within five
7 calendar days via First Class U.S. Mail to any available forwarding address. If no forwarding address is
8 available, then the Settlement Administrator shall attempt to determine the correct address by using a
9 computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via First Class U.S.
10 Mail within ten (10) calendar days. If the last known address is not available for a Class Member, then
11 the Notice of Class Action Settlement for that Class Member will be deemed undeliverable. Only one
12 re-mailing is required. If a Class Member cannot be located within two attempts at mailing, then the
13 Notice of Class Action Settlement for that Class Member will be deemed undeliverable. It is the intent
14 of the Parties that reasonable means be used to locate Class Members.

15 **3.5. Proof of Mailing.** At least twenty (20) calendar days prior to the Final Approval
16 Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing
17 with regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defense Counsel,
18 which they shall in turn provide to the Court.

19 **4. CLASS MEMBERS' OPTIONS TO RESPOND**

20 **4.1. Consideration Period.**

21 **4.1.1. Submission of Requests for Exclusions and Objections.** Class
22 Members will have sixty (60) calendar days from the later of the date of the mailing or re-mailing of the
23 Notices to postmark their written Requests for Exclusion or Objections to the Settlement Administrator.
24 The process and requirements for filing Requests for Exclusions and Objections is detailed below. A
25 Class Member who excludes himself or herself from the settlement shall lose standing to object. Except
26 as specifically provided herein, no Class Member response of any kind that is postmarked after the
27 Consideration Period shall be considered absent agreement of the Parties or the Court.
28

1 **4.2. Requests for Exclusion and Opt Out Rights.** Class Members shall be given the
2 opportunity to opt out of the settlement.

3 **4.2.1. Opt Out Procedure.** Class Members may opt out of this Agreement by
4 mailing the Settlement Administrator a Request for Exclusion. A Request for Exclusion, to be valid,
5 must include the Class Member's name, current address, current telephone number, the last four digits of
6 the Class Member's Social Security number, and signature. Any Request for Exclusion that does not
7 include all of the required information or that is not submitted in a timely manner will be deemed
8 ineffective. If there is a dispute regarding the timeliness or validity of a Request for Exclusion, then the
9 Settlement Administrator shall make the determination, after consultation with Class Counsel and
10 Defense Counsel.

11 **4.2.2. Deficiency Notices.** Within ten (10) days after receipt by the Settlement
12 Administrator of each timely-submitted Request for Exclusion, the Settlement Administrator will send a
13 deficiency notice to the Class Members addressing any irregularities in the Request for Exclusion (such
14 as failure to sign or include last four digits of Social Security Number). The deficiency notice will
15 provide the Class Members fourteen (14) calendar days from the mailing of the deficiency notice to
16 postmark a written response to cure all deficiencies. The failure of a Class Member to cure all material
17 deficiencies in a timely manner shall invalidate a Request for Exclusion and will not be subject to cure.

18 **4.2.3. Effect of Request for Exclusion.** Any Class Member who opts out of this
19 Agreement by submitting a Request for Exclusion may not submit an Objection and shall not receive
20 any Individual Settlement Payment, and shall not be bound by the releases set forth in this Agreement,
21 except that any Class Member who submits a Request for Exclusion is nevertheless bound by the
22 Released PAGA Claims and shall receive their pro rata share of the PAGA Settlement Fund. If a Class
23 Member submits both a Request for Exclusion and an Objection, then the Request for Exclusion will be
24 valid and will invalidate the Objection. Each Class Member who does not submit a timely, valid
25 Request for Exclusion shall be bound by the releases for which this Agreement provides.

26 **4.2.4. Tolerance of Opt-Outs—Defendant's Right to Withdraw.** If the
27 number of Class Members who opt out by submitting Requests for Exclusion meets or exceeds 10% of
28 the total number of Class Members, then Defendant may, in the exercise of its sole discretion, abrogate

1 this Agreement. Defendant's right expires 15 calendar days after the expiration of the Consideration
2 Period. In the event Defendant exercises this option, the costs of administration shall be borne by
3 Defendant.

4 **4.3. Objections.** Class Members who do not submit a Request for Exclusion shall be
5 entitled to object to the terms of the Agreement.

6 **4.3.1. Objection Procedures.** Any Objection to this Agreement must contain
7 (1) the name and case number of the Action (or reasonable portion thereof), (2) the full name, last four
8 digits of their social security number, and current address of the Class Member making the Objection,
9 (3) the specific reason(s) for the Objection, and (4) all evidence and supporting papers (including,
10 without limitation, all briefs, written evidence, and declarations) for the Court to consider. Class
11 Members who submit an Objection remain bound by this Agreement if the Agreement is approved by
12 the Court. Class Counsel shall file any and all Objections with the Court. Objections must be sent to the
13 Settlement Administrator. Objections can also be made in person at the Final Approval Hearing. Class
14 Counsel shall be responsible for promptly collecting and filing all objections with the Court.

15 **4.3.2. Waiver of Objection Rights.** Class Members who fail to submit an
16 Objection in the manner specified in the Notice of Class Action Settlement shall be deemed to have
17 waived any Objection and shall be foreclosed from objecting to this Agreement, whether by appeal or
18 otherwise.

19 **4.4. Proof of Class Members' Responses.** At least twenty (20) calendar days prior to
20 the Final Approval Hearing, the Settlement Administrator will prepare a declaration to submit to the
21 Court regarding the mailing of the Notice of Class Action Settlement, the inability to deliver any mailing
22 due to invalid addresses, the number of any Requests for Exclusion, and the number of any Objections
23 and the contents of the Objections.

24 **4.5. FLSA Opt-In**

25 **4.5.1. Issuance of an FLSA Settlement Payments.** The Settlement
26 Administrator will issue one check to all members of the Settlement Class and one check to all potential
27 members of the FLSA Settlement Subclass. As detailed more fully below, the settlement checks sent to
28 potential FLSA Settlement Subclass Members will contain language expressing a consent to opt into an

FLSA collective action. Only those Class Members who timely cash, deposit, or otherwise negotiate a check with language expressing consent to opt into an FLSA collective action will be deemed to have opted in, will become FLSA Subclass Members, and will be subject to the FLSA Release.

4.5.2. Issuance of a List of FLSA Subclass Members. The Settlement Administrator will provide Defendant with copies of the consents (i.e., copies of the endorsement side of settlement checks that contain the FLSA opt-in language), plus a separate list of the names of the opt-ins, which Defendant's counsel shall file with the Court in connection with the Settlement Administrator's declaration as to the satisfactory completion of the obligations of the Settlement Administrator.

4.6. Binding Effect of Settlement. Although a Class Member might not receive the Notice of Class Action Settlement, and might not timely submit an Objection or a Request for Exclusion because of inability to locate the Class Member's current address, that Class Member shall nonetheless be bound by this Agreement.

4.7. No Interference with Class Member Responses. Each Party agrees not to encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to retaliate against any Class Member for participating or not participating in the settlement that this Agreement contemplates.

5. DISTRIBUTION OF SETTLEMENT PROCEEDS

5.1. Administrative Costs. The Parties agree to obtain a reasonable estimate of Administrative Costs of up to Twenty Thousand Dollars (\$20,000.00), and seek approval of Administrative Costs to be drawn from the Gross Settlement Amount. If the Court approves only a lesser amount, then the other terms of this Agreement shall still remain in effect. The amount of Administrative Costs is not a material term of this Agreement. If Defendant exercises its right to abrogate the Agreement under Section 4.2.4, Defendant shall be responsible for payment of all Administrative Costs incurred to date.

5.2. Class Counsel Payment. Class Counsel intend to request—and Defendant agrees not to oppose—that the Court award a Class Counsel Payment, to be drawn from the Gross Settlement Amount, for (a) attorneys' fees of Two Hundred Eighty Three Thousand Three Hundred

Thirty Three Dollars and thirty-three cents (\$283,333.33), which represents one-third of the Gross Settlement Amount and (b) litigation costs actually incurred in representing the interests of the Class Members, supported by adequate documentation, in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00). Defendant shall have no liability for any other attorneys' fees or costs. To the extent that the Court approves less than the amount of Class Counsel Payment that Class Counsel request, the difference between the requested and awarded amounts will be distributed to Class Members on a proportional basis relative to the size of their claims as set forth in Sections 5.5, below.

5.2.1. Approval of Class Counsel Payment Not Material. The Court's approval of the Class Counsel Payment in the amount requested is not a material term of this Agreement. If the Court approves only a lesser amount, then the other terms of this Agreement shall still remain in effect and the difference between the Class Counsel Payment sought by Class Counsel and the amount awarded by the Court will remain part of the Net Settlement Amount.

5.2.2. Timing of Class Counsel Payment. The Settlement Administrator shall issue the Class Counsel Payment within thirty (30) days after the Effective Date. Within ten (10) days after the Effective Date, Class Counsel shall transmit instructions to the Settlement Administrator as to how any approved attorneys' fees and costs shall be paid. The Settlement Administrator shall issue an appropriate Internal Revenue Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all applicable taxes on any Class Counsel payment and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel payment.

5.3. Class Representative Service Award. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court award a Class Representative Service Award to the Class Representative in an amount of Fifteen Thousand Dollars (\$15,000.00) to the Class Representative, to be drawn from the Gross Settlement Amount. Any Class Representative Service Award would be in addition to the Class Representative's Individual Settlement Payment, FLSA Settlement Payment, and PAGA Settlement Payment. To the extent that the Court approves less than the amount of Class Representative Service Award that Class Counsel request, the difference between

1 the requested and awarded amounts will be distributed to Class Members on a proportional basis relative
2 to the size of their claims as set forth in Sections 5.5, below.

3 **5.3.1. Class Representative Service Award Not Material.** The Court's
4 approval of the Class Representative Service Award is not a material term of this Agreement. If the
5 Court does not approve or approves only a lesser amount than that requested for a Class Representative
6 Service Award, then the other terms of this Agreement shall still remain in effect and the difference will
7 remain part of the Net Settlement Amount.

8 **5.3.2. Timing of Class Representative Service Award.** The Settlement
9 Administrator shall pay any Class Representative Service Award within thirty (30) business days after
10 the Effective Date, and shall issue an IRS Form 1099 to the Class Representative. The Class
11 Representative shall be solely responsible for paying all applicable taxes on any Class Representative
12 Service Award and shall indemnify and hold harmless Defendant from any claim or liability for taxes,
13 penalties, or interest arising as a result of the Class Representative Service Award.

14 **5.4. PAGA Payment.** The Parties will seek approval for Forty Thousand Dollars
15 (\$40,000.00) to be allocated to the PAGA Payment. Seventy-five percent of this amount shall be paid to
16 the LWDA. The remaining twenty-five percent shall be allocated to the PAGA Settlement Fund for the
17 purpose of making PAGA Settlement Payments to members of the PAGA Aggrieved Employee Group.

18 **5.4.1. Amount of PAGA Payment Not Material.** Any change in the requested
19 PAGA Payment is not a material term of this Agreement. If the Court approves a lesser or greater
20 amount than that requested, the other terms of this Agreement shall still remain in effect. However,
21 some approval of a PAGA Payment is a material term of the settlement and this Agreement. If the Court
22 does not approve a PAGA Payment, then the entire Agreement will be, at Defendant's sole discretion,
23 void and unenforceable. In the event Defendant exercises this option, the costs of administration shall
24 be borne by Defendant.

25 **5.4.2. Timing of PAGA Payment.** The Settlement Administrator shall pay 75
26 percent of any approved PAGA Payment to the LWDA within thirty (30) days after the Effective Date.

27 **5.4.3. Calculation of PAGA Settlement Payment.** For their PAGA Settlement
28 Payment, each member of the PAGA Aggrieved Employee Group will be eligible to receive a portion of

1 the PAGA Settlement Fund based the following formula: PAGA Aggrieved Employee Group's Eligible
2 Workweeks in PAGA Claim Period ÷ total Eligible Workweeks in the PAGA Claim Period attributable
3 to the Settlement Class * PAGA Settlement Fund.

4 **5.4.4. Distributing the PAGA Settlement Payment to Class Members who**
5 **Do Not Request Exclusion from the Settlement Class.** For members of the PAGA Aggrieved
6 Employee Group who do not submit a Request for Exclusion from the Settlement Class, the Settlement
7 Administrator shall add the Class Member's PAGA Settlement Payment to the Class Member's
8 Individual Settlement Payment and issue the Class Member a single payment with both sums. The
9 PAGA Settlement Payment shall be treated as penalties and interest for tax purposes and reported
10 accordingly pursuant to Section 5.5.5, below.

11 **5.4.5. Distributing the PAGA Settlement Payment to Class Members Who**
12 **Request Exclusion from the Settlement.** For Class Members who submit a Request for Exclusion, the
13 Settlement Administrator shall issue the Class Member a check with only his or her PAGA Settlement
14 Payment. The Settlement Administrator shall issue the PAGA Settlement Payments on the same
15 timeline as outlined in Section 5.5 for the Individual Settlement Payments, below. The PAGA
16 Settlement Payment shall be treated as penalties and interest for tax purposes and reported accordingly
17 pursuant to Section 5.5.5, below.

18 **5.5. Individual Settlement Payments.** Each Class Member shall be entitled to an
19 Individual Settlement Payment consisting of a share of the Net Settlement Amount.

20 **5.5.1. Calculation of Individual Settlement Payments.** For their Individual
21 Settlement Payment, each Class Member will be eligible to receive a portion of the Net Settlement
22 Amount. The Individual Settlement Payment to a Class Member will be calculated by dividing the
23 number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to
24 members of the Settlement Class, multiplied by the Net Settlement Amount, multiplied by 0.95 to
25 account for the portion of the Net Settlement Amount allocated to the FLSA Settlement Payment.
26 Otherwise stated, the formula for a Class Member is: individual's Eligible Workweeks ÷ total
27 Settlement Class Eligible Workweeks * (Net Settlement Amount * 0.95).
28

Defendant's time and payroll records will be used to calculate the number of Eligible Workweeks worked for each Class Member as set forth in Section 1.15 for purposes of calculating Individual Settlement Payments. The Class Notice will include information for each Class Member showing how much the individual Class Member is expected to receive based on this formula and their number of Eligible Workweeks. The Class Notice will also provide the Class Members an opportunity to dispute the number of Eligible Workweeks indicated on the Class Notice. Such dispute must be made no later than thirty (30) calendar days from the later of the date of the mailing or re-mailing of the Class Notices. Defendant and/or the Claims Administrator shall review any documentation provided by the Class Member to determine whether there was an error in the number of Eligible Workweeks calculated, and adjust any payment to be allocated if necessary.

5.5.2. Calculation of the FLSA Settlement Payment. For allocating the portion of the Net Settlement Amount allocated to the FLSA Settlement Payment, the Settlement Administrator shall use the following methodology to calculate the FLSA Settlement Payments: Individual's Eligible Workweeks in FLSA Period ÷ Total Settlement Class Eligible Workweeks in FLSA Period * (Net Settlement Amount * .05).

5.5.3. Distribution of the Net Settlement Amount. The Settlement Administrator shall issue the Individual Settlement Payments and FLSA Settlement Payments no later than thirty (30) days after the Effective Date. Two checks shall be issued to members of the Settlement Class: One check will be for the Individual Settlement Payment and the PAGA Settlement Payment, and one check will be for the FLSA Settlement Payment. Any Class Member who submits a valid Request for Exclusion shall receive one check for the Class Member's respective share of the PAGA Settlement Payment. Any checks from this distribution that are not cashed within one-hundred-eighty (180) calendar days from the date of the mailing of the checks shall be cancelled and said cancellation shall not affect the validity of the Release of claims provided for herein and the Class Member shall be deemed to, nevertheless, be bound by the Release of claims provided herein. As soon as practicable after the 180-day check cashing period, the Settlement Administrator shall prepare for the Parties a Final Report—a document summarizing relevant events to date and advising the total dollar amount paid to Class Members, the status of any uncashed checks, and any amount remaining in the QSF. After one

1 hundred eighty (180) days of issuance, funds from undeposited checks will be held by the Settlement
2 Administrator; if the Class Member to whom the undeposited check is issued does not contact the
3 Settlement Administrator concerning his or her settlement payment within one hundred eighty (180)
4 days of the final distribution, including if a Settlement Payment is returned undeliverable and a valid
5 mailing address cannot be ascertained, the Class Member's claim amount that has remained uncashed or
6 undistributed as of that time, including any accrued interests thereon, shall be distributed to the
7 California Unclaimed Property Fund in the name of the Class Member.

8 **5.5.4. Opt-In Language for the FLSA Settlement Payment.** Opt-in and
9 release language regarding the release of the FLSA claim will be printed on the FLSA Settlement
10 Payment checks, with instructions that endorsing, cashing, or depositing such check constitutes consent
11 under the FLSA to opt into the collective action. The language to be included will be substantially
12 similar to the following:

13 My endorsing, cashing, or depositing of this check constitutes my consent to join the
14 lawsuit entitled *Naomi Haqq v. Hawthorn Senior Living, LLC*, El Dorado County
15 Superior Court Case No. PC 20210300, pursuant to the provisions of the Fair Labor
Standards Act ("FLSA"), 29 U.S.C. Section 216(b).

16 **5.5.5. Allocation of Net Settlement Payments for Tax Purposes.** One-third of
17 each Individual Settlement Payment and each FLSA Settlement Payment shall be allocated to wages,
18 and the rest allocated equally to penalties and interest. PAGA Settlement Payments shall be allocated to
19 penalties. These allocations represent the Parties' good faith allocation based on the claims asserted and
20 potential damages related to wages, liquidated damages, interest and penalties. In accordance with law,
21 the Settlement Administrator will make required tax withholdings of both the employer and employee
22 portion of payroll taxes from each Individual Settlement Payment on the portion designated as wages
23 and will remit the withholding to the appropriate taxing authorities. The Settlement Administrator shall
24 issue any necessary Form W-2 and 1099 statements to Class Members for their respective Individual
25 Settlement Payments and any separate PAGA Settlement Payments. Class Members shall be solely
26 responsible for paying all other applicable taxes on their respective Individual Settlement Payments and
27 shall indemnify and hold harmless Defendant and the Released Parties from any claim or liability for
28 taxes, penalties, or interest arising as a result of Individual Settlement Payments.

1 **5.5.6. Tax Allocations of Individual Settlement Payments Not Material.** The
2 Court's approval of the allocation of Individual Settlement Payments set forth above is not a material
3 term of this Agreement. If the Court does not approve or approves a different allocation, then the other
4 terms of this Agreement shall still remain in effect.

5 **5.6. Final Funding of Gross Settlement Amount.** By fifteen (15) days after the
6 Effective Date, Defendant will deposit all of the Gross Settlement Amount into the QSF established by
7 the Settlement Administrator.

8 **6. RELEASES**

9 **6.1. Releases by Plaintiff and Class Members.** By operation of the entry of the
10 Final Approval Order and Judgment, and except as to rights this Agreement creates, and subject to the
11 occurrence of the Effective Date and Defendant's full payment of the Gross Settlement Amount,
12 Plaintiff and each Class Member who does not opt out of this settlement shall fully release Defendant
13 and the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties,
14 premium pay, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of
15 whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory
16 under federal and state law that were or could have been brought based on the allegations in any version
17 of the complaints filed in the Action and in Plaintiff's PAGA Notice Letter to the LWDA arising during
18 the Settlement Period. The released claims include, but are not limited to, claims for any alleged failure
19 to pay all wages due (including minimum wage and overtime wages), claims arising from Plaintiff's
20 allegations that Defendant did not properly calculate employees' regular rate of pay, failure to provide
21 meal and rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and
22 rest periods, failure to pay or underpayment of meal and rest break premiums, failure to timely pay final
23 wages, failure to furnish accurate wage statements including claims arising out of the same primary right
24 of these claims, liquidated damages, conversion of wages, and unfair business practices, up to and
25 including the final date of the Settlement Period. The released claims include without limitation claims
26 meeting the above definition(s) under any and all applicable statutes, including without limitation any
27 applicable provision of the California Labor Code; Private Attorneys General Act (California Labor
28 Code §§ 2698, et seq.); California Business & Professions Code §§ 17200 et seq.; any provision of the

1 applicable California Industrial Welfare Commission Wage Orders, or the Fair Labor Standards Act,
2 based on the facts or claims alleged in the Complaint(s) in the Action.

3 **6.2. Release by FLSA Settlement Subclass.** Subject to the occurrence of the
4 Effective Date and Defendant's full payment of the Gross Settlement Amount, any Class Member who
5 opts in to the FLSA collective by cashing, depositing, or otherwise negotiating a settlement check for
6 their FLSA Settlement Payment releases all claims under the Fair Labor Standards Act during the FLSA
7 Settlement Period. Class Members who opt into the FLSA collective are subject to the FLSA Release
8 and release all claims the Class Member may have for violations of the Fair Labor Standards Act,
9 including any and all claims for restitution, back pay, attorneys' fees and costs, interest, and liquidated
10 damages under the FLSA.

11 **6.3. PAGA Aggrieved Employee Group Who Submit Requests for Exclusion.**
12 Subject to the occurrence of the Effective Date and Defendant's full payment of the Gross Settlement
13 Amount, each Class Member who properly submits a Request for Exclusion as provided for in this
14 Agreement shall nevertheless fully release the Released Parties from any and all claims, debts,
15 liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorneys' fees,
16 damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent
17 or accrued, that were or could have been brought based on the allegations in any version of the
18 complaints filed in the Action and in Plaintiff's PAGA Notice Letter to the LWDA under the Private
19 Attorneys General Act (California Labor Code §§ 2698, et seq.) arising during the period from March
20 31, 2020, to the last day of the Settlement Period.

21 **6.4. Additional Release by Class Representative.** In addition to the release of
22 Released Claims given by each member of the Settlement Class, and subject to the occurrence of the
23 Effective Date and Defendant's full payment of the Gross Settlement Amount, the Class Representative
24 also generally releases claims against the Released Parties. This general release includes claims arising
25 from the Class Representative's relationship with Defendant. This general release by the Class
26 Representative also includes a waiver of rights under California Civil Code Section 1542, which states:

27 A general release does not extend to claims that the creditor or releasing party does not
28 know or suspect to exist in his or her favor at the time of executing the release and that, if

known by him or her, would have materially affected his or her settlement with the debtor or released party.

The general release from the Class Representative is effective only upon the Court granting approval of the Settlement and apply only to claims that may be released as a matter of law.

6.5. Settlement is Contingent Upon Release of Claims. This Agreement is conditioned upon the releases by the Class and Class Representative as described herein, and upon covenants by the Class and Class Representative that they will not participate in any actions, lawsuits, proceedings, complaints, or charges in any court or before any administrative body related to any claims they have released under this settlement.

6.6. Inadmissibility of Settlement Documents. The Parties agree that this Agreement and all exhibits thereto shall be inadmissible in any proceeding, except an action or proceeding to approve, interpret, or enforce this Agreement. The Parties agree that, to the extent permitted by law, this Agreement will operate as a complete defense to—and may be used as the basis for an injunction against—any action, suit, or other proceeding attempted in breach of this Agreement.

7. SETTLEMENT APPROVAL PROCEDURE

7.1. Preliminary Approval. Plaintiff shall submit to the Court a Motion for Preliminary Approval of Class Action Settlement. This motion shall seek an order to preliminarily approve this Agreement according to the terms in this Agreement and provide for the Notice of Class Action Settlement to be sent to Class Members as specified in this Agreement, substantially in the form attached hereto as Exhibit A, and permits Plaintiff to file the First Amended Complaint in the form attached hereto as Exhibit B. This motion shall include the basis for demonstrating that settlement amounts are reasonable in light of the facts and controlling authorities pertaining to the claims alleged. The motion shall also be accompanied by a declaration of Class Counsel discussing the risks of continued litigation and the decision that the best interests of the Class Members are served by the terms of this Agreement. Defense Counsel shall have the opportunity to review and comment on a draft of the motion before it is filed. Defense Counsel shall have the opportunity to review those documents too before they are submitted, and the Parties will agree on their content.

1 **7.2. Final Approval.** Plaintiff shall submit to the Court a Motion for Final Approval
2 Order, which shall include findings and orders (a) approving the Agreement, (b) adjudging the terms to
3 be fair, reasonable, and adequate, (c) reciting the Released Claims in full, (d) directing that the terms of
4 the Agreement be carried out, (e) retaining jurisdiction to oversee enforcement of this Agreement and
5 the Court's orders. Defense Counsel shall have the opportunity to review and comment on a draft of the
6 motion before it is filed.

7 **7.3. Motion for Class Counsel Payment.** Along with the Motion for Final Approval,
8 Class Counsel may file a motion for Court approval of an attorneys' fees and costs award in the amount
9 of (a) Two Hundred Eighty Three Thousand Three Hundred Thirty Three Dollars and thirty-three cents
10 (\$283,333.33), which represents up to one third of the Gross Settlement Amount, and (b) litigation costs
11 actually incurred in representing the interests of the Class, supported by adequate documentation, in an
12 amount not to exceed Fifteen Thousand Dollars (\$15,000.00).

13 **7.4. Motion for Class Representative Service Award.** Along with the Motion for
14 Final Approval, Class Counsel may file a motion for Court approval of a Class Representative Service
15 Award in the amount of up to Fifteen Thousand Dollars (\$15,000.00) for the Class Representative.

16 **7.5. Timing of Judgment.** After the Final Approval Order, Plaintiff shall request that
17 the Court (a) enter Judgment in accordance with this Agreement in the Action, without further fees or
18 costs, and (b) enter an order permanently enjoining all Class Members from pursuing or seeking to
19 reopen claims that have been released by this Agreement. Notice of Entry of the Judgment may be
20 served on the Settlement Class by posting on the Claims Administrator website.

21 **7.6. Appeal Rights.** Only an Objector has the right to appeal the Judgment, if the
22 Judgment is in accord with this Agreement. The Class Representative and Class Counsel hereby waive
23 any right to appeal any judgment, ruling, or order in the Action, including, without limitation, any Final
24 Approval Order and any Judgment in the Action, unless the Final Approval Order and/or Judgment are
25 inconsistent with this Agreement. This waiver includes all rights to any post-judgment proceeding and
26 appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial,
27 and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is
28

1 entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
2 proceedings, or post-judgment proceedings.

3 **8. MISCELLANEOUS**

4 **8.1. Materiality of Terms.** Except as otherwise stated herein, each substantive term
5 of this Agreement is material and has been relied upon by the Parties in entering into this Agreement. If
6 the Court does not approve any substantive term, or if the Court effects a material change to the
7 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will
8 be, at Defendant’s sole discretion, void and unenforceable.

9 **8.2. No Tax Advice.** Neither Class Counsel nor Defense Counsel intend anything
10 contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this
11 Agreement be relied upon as such within the meaning of United States Treasury Department Circular
12 230 (31 C.F.R. Part 10, as amended) or otherwise.

13 **8.3. No Impact on Employee Benefits.** No payment made under this Agreement
14 shall be considered as compensation or hours worked or hours paid for purposes of determining
15 eligibility, vesting, participation, or contributions with respect to any employee benefit plan. For
16 purposes of this Agreement, the term “benefit plan” means every ERISA “employee benefit plan,” as
17 defined in the Employee Retirement and Income Security Act of 1974 (“ERISA”), 29 U.S.C. section
18 1002(3). The term also includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock
19 appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization,
20 insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or
21 policy, regardless of whether any such plan is considered an ERISA employee benefit plan.

22 **8.4. Language of Settlement Documents.** All Settlement-related documents to be
23 filed with the Court or sent to Class Members must be approved by all Parties before being filed or sent.

24 **8.5. Parties’ Authority.** The signatories hereto represent that they are fully
25 authorized to bind the Parties to all the term of this Agreement. The Parties agree that Class Members
26 are so numerous that it is impossible or impractical to have each Class Member execute this Agreement.
27 This Agreement may be executed on behalf of Class Members by a Class Representative and by Class
28 Counsel.

1 **8.6. Entire Agreement.** This Agreement, which includes its definitions, recitals, and
2 all exhibits attached hereto, constitutes the entire agreement on its subject matter, and supersedes all
3 prior and contemporaneous negotiations and understandings between the Parties on the subject of the
4 Action.

5 **8.7. Counterparts.** This Agreement may be executed in counterparts, and each
6 counterpart signed and delivered shall be deemed an original, and when taken together with other signed
7 counterparts, signed and delivered shall constitute one signed Agreement, which shall be binding upon
8 and effective as to all Parties.

9 **8.8. Facsimile or Scanned Signatures.** A Party may sign and deliver this Agreement
10 by signing on the designated signature block and transmitting that signature page via facsimile or as an
11 attachment to an email to counsel for the other Party. Any such signature shall be deemed an original
12 for purposes of this Agreement and shall be binding upon the Party who transmits the signature page.

13 **8.9. Waivers and Modifications to Be in Writing.** No waiver, modification, or
14 amendment of this Agreement—whether purportedly made before or after the Court’s approval of this
15 Agreement—shall be valid unless it appears in a writing signed by or on behalf of all Parties, and then
16 shall be valid subject to any required Court approval. Any failure by any Party to insist upon the strict
17 performance by the other Party of any provision of this Agreement shall not be deemed a waiver of
18 future performance of the same provisions or of any other provision of this Agreement, and such Party,
19 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
20 any provision of this Agreement. The time periods and dates provided in this Agreement with respect to
21 giving of notices and hearings are subject to Court approval and modification by the Court or by written
22 stipulation of Class Counsel and Defense Counsel.

23 **8.10. Construction.** Each Party participated jointly in the drafting of this Agreement,
24 and its terms are not intended to be, and shall not be, construed against any party by virtue of
25 draftsmanship.

26 **8.10.1. Exhibits Incorporated by Reference.** This Agreement includes the
27 terms set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.
28

1 **8.10.2. Headings.** The headings within this Agreement appear for convenience of
2 reference only and shall have no effect upon the construction or interpretation of any part of this
3 Agreement.

4 **8.10.3. Invalidity of Any Provision.** Before declaring any provision of this
5 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
6 possible so as to render all provisions of this Agreement enforceable.

7 **8.11. Duty to Cooperate.** Each Party, upon the request of another, agrees to perform
8 such acts and to execute and to deliver such documents as are reasonably necessary to carry out this
9 Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid unnecessary
10 Administrative Costs.

11 **8.12. No Prior Assignments or Undisclosed Liens.** The Class Representative and
12 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any
13 Released Claim or claim to attorneys' fees and costs award to be paid under this Agreement. The Class
14 Representative and the Class Counsel further represent and warrant that there are not any liens or claims
15 against any amount that Defendant is to pay under this Agreement. The Class Representative and Class
16 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,
17 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of
18 these representations or from any lien or assignment.

19 **8.13. Waiver of Right to Request Exclusion by Class Representative.** The Class
20 Representative, by signing this Agreement, agrees not to request exclusion from the settlement. The
21 Class Representative, by signing this Agreement, further represents that she has no objection to the
22 terms of the Agreement and they believe the terms to be fair, reasonable and adequate.

23 **8.14. Confidential Information.** Class Counsel will destroy all confidential
24 documents and information provided by Defendant for mediation within 60 calendar days after the
25 completion of the administration of this Agreement. Class Counsel further agree that none of the
26 information provided by Defendant shall be used for any purpose other than prosecution of this Action.

27 **8.15. Publicity.** Neither Plaintiff nor Class Counsel shall cause to be publicized,
28 directly or indirectly, any discussion resulting in or the existence of this Agreement or its terms in any

1 type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews,
2 television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook,
3 Twitter or any other social media. Plaintiff agrees that she shall not make any comments regarding the
4 claims in this matter or settlement thereof unless asked, and, if asked, she shall respond only that the
5 matter has settled. Should any Plaintiff or Class Counsel at any time breach this provision, Plaintiff shall
6 forfeit to Defendant the full amount of their Class Representative Service Awards. Without limitation
7 by the foregoing, Defendant also may enforce this provision through an action for injunctive relief.
8 Plaintiff waives any obligation by Defendant to file a bond in connection with any such action. This
9 provision does not apply to any publications ordered by the Court and will not in any way limit the right
10 and obligation of Plaintiff and Class Counsel to communicate with Class Members about the Settlement
11 upon inquiry.

12 **8.16. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
13 implementation of this Agreement as well as any matter arising out of, or related to, the implementation
14 of this Agreement. The Court shall not have jurisdiction to modify the terms of this Agreement without
15 the consent of all Parties.

16 **8.17. Disputes.** If the Parties dispute the interpretation of this Agreement, they shall
17 first attempt to resolve the dispute informally through good faith negotiations, and, if those efforts are
18 unsuccessful, they agree to mediate any such dispute. The Parties will split the costs of the mediator,
19 and all Parties will bear their own fees and costs.

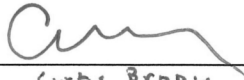
20 **8.18. Escalator Provision.** Defendant has represented that there are no more than 1,400
21 Class Members who worked no more than 59,000 workweeks between June 9, 2017 and March 1, 2022.
22 If either of these numbers increases by more than 10% for this period, Defendant will have the option of
23 (1) increasing the Gross Settlement Amount proportionately with the increase in class members or
24 workweeks, with the larger percentage increase controlling, or (2) ending the Settlement Period on the last
25 date on which the number of class members and workweeks did not exceed these amounts.

26 **8.19. Governing Law.** All terms of this Agreement shall be governed by and
27 interpreted according to California law.

28 [SIGNATURES ON FOLLOWING PAGE]

Hawthorn Senior Living, LLC

By: _____

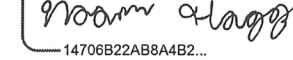

Curtis Brody
CFO

Its: _____

DATE: _____

5/2/2022

Naomi Haqq, on behalf of herself and the
Putative Class and Aggrieved Employees


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Naomi Haqq

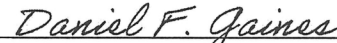
April 21, 2022

DATE: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April 22, 2022

GAINES & GAINES, APLC

By: 

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

Dated: ~~April~~ May 2, 2022

SEYFARTH SHAW LLP

By: _____

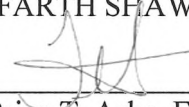

Brian T. Ashe, Esq.
Timothy M. Hoppe, Esq.
Counsel for Defendant

EXHIBIT A

**NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
FOR FINAL APPROVAL**

Naomi Haqq, et al v. Hawthorn Senior Living, LLC,
(California Superior Court, County of El Dorado, Case No. PC 20210300)

As a current or former non-exempt employee for Hawthorn Senior Living, LCC who performed work for Hawthorn in the State of California, you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a settlement payment.

You have received this Notice of Class Action Settlement because the records of Hawthorn Senior Living, LLC (“Defendant” or “Hawthorn”) show you are a “Class Member,” and therefore entitled to a payment from this class action settlement. Class Members are all non-exempt employees of Defendant who performed work for Defendant in the State of California from June 9, 2017 to [DATE of Preliminary Approval or July 1, 2022, whichever is sooner].

- The settlement resolves a class-action lawsuit, *Haqq, et al. v. Hawthorn Senior Living, LLC*, California Superior Court, County of El Dorado, Case No. PC 20210300 (the “Lawsuit”). The Lawsuit asserts claims for (1) failure to pay all overtime wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages upon termination; (5) failure to provide complete and accurate wage statements; and (6) penalties under of Labor Code § 2699, et seq.
- On [REDACTED], the El Dorado County Superior Court granted preliminary approval of this settlement and ordered that all Class Members be notified of the settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contends that it fully complied with all applicable laws.

Why Am I Receiving This Notice?

Defendant’s records show that you currently work, or previously worked, for Defendant in California, and were paid on an hourly basis during the period June 9, 2017 through [DATE of Preliminary Approval or July 1, 2022, whichever is sooner]. You were sent this Notice because you have a right to know about a proposed settlement of the Lawsuit, and about your options, before the Court decides whether to finally approve the settlement. If the Court approves the settlement (and then any objections and appeals are resolved) a Settlement Administrator appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights and options, what payments may be available to you under the settlement, and how to receive the payments.

Your Estimated Settlement Award

As detailed below, Defendant’s records indicate that your **Eligible Workweeks** are:

For the **Settlement Period** [Eligible Workweeks], for the **FLSA Period** [Eligible Workweeks] and for the **PAGA Period** [Eligible Workweeks]

Based on these workweeks, your **Estimated Award** is:

Class Award is [Estimated Award], **FLSA Award** is [Estimated Award], and **PAGA Award** is [Estimated Award]

Questions? Contact the Administrator toll free at [PHONE]

What Is This Case About?

Naomi Haqq was a non-exempt employee for Defendant in California. She is the “Plaintiff” in the Lawsuit and is suing on behalf of herself and Class Members for the claims outlined above. Defendant denies all of the allegations made by Plaintiff and denies that it violated any law. The Court has made no ruling on the merits of Plaintiff’s claims. The Court has only preliminarily approved this settlement. The Court will decide whether to give final approval to the settlement at the Final Approval Hearing.

Summary Of Distribution Formula

Plaintiff and Defendant have agreed to settle the Lawsuit for the Gross Settlement Amount of \$850,000. The Gross Settlement Amount includes: (1) Administration Costs up to \$20,000; (2) a service payment of up to \$15,000 to Plaintiff for her time and effort in pursuing this case; (3) up to \$283,333.33 in attorneys’ fees (one third of the Settlement Amount) to Class Counsel and up to \$15,000 in litigation costs to Class Counsel; and (4) an allocation to PAGA penalties in the amount of \$40,000, seventy-five percent of which will be paid to the LWDA and the remaining twenty-five percent distributed to certain Class Members. The amount left over after deducting these sums is called the “Net Settlement Amount.” It is estimated to be approximately **\$476,666.67**.

Individual Settlement Payment Calculation

Class Members who do not opt out will receive a pro-rata Individual Settlement Payment based on the number of workweeks worked (i.e. performed work and received pay for working) from June 9, 2017 through **[DATE of Preliminary Approval or July 1, 2022, whichever is sooner]** (“Eligible Workweeks”). The Individual Settlement Payment will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by 95 percent of the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: individual’s Eligible Workweeks ÷ total Settlement Class Eligible Workweeks * (Net Settlement Amount * 0.95).

FLSA Settlement Payment Calculation

Class Members who do not opt out will receive a pro-rata FLSA Settlement Payment based on the number of workweeks worked (i.e. performed work and received pay for working) from June 9, 2018 through **[DATE of Preliminary Approval or July 1, 2022, whichever is sooner]** (“FLSA Eligible Workweeks”). The Individual Settlement Payment will be calculated by dividing the number of FLSA Eligible Workweeks attributed to the Class Member by all FLSA Eligible Workweeks attributed to members of the Settlement Class, multiplied by 5 percent of the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: individual’s FLSA Eligible Workweeks ÷ total Settlement Class FLSA Eligible Workweeks * (Net Settlement Amount * 0.05).

PAGA Settlement Payment Calculation

Class Members will receive a pro-rata PAGA Settlement Payment based on the number of Eligible Workweeks worked from March 31, 2020 through **[DATE of Preliminary Approval or July 1, 2022, whichever is sooner]** (“PAGA Eligible Workweeks”). Specifically, these payments will be calculated by dividing the individual’s PAGA Eligible Workweeks by the total of the Class Members’ PAGA Eligible Workweeks, multiplied by the twenty-five percent of the PAGA allocation that goes to the Class Members (\$10,000). Otherwise stated, the formula for a Class Member’s PAGA Settlement Payment is: (individual’s PAGA Eligible Workweeks ÷ total of Class Members’ PAGA Eligible Workweeks) * \$10,000.

Questions? Contact the Administrator toll free at **[PHONE]**

Calculation of Your Settlement Payments

As summarized on page 1 of this Notice, Defendant's records indicate that you worked [Eligible Workweeks] as an hourly non-exempt in California between June 9, 2017 and [DATE], [FLSA Eligible Workweeks] as an hourly non-exempt in California between June 9, 2018 and [DATE], and [PAGA Eligible Workweeks] as an hourly non-exempt employee in California between March 31, 2020 and [DATE]. Based on these records, your estimated Individual Settlement Payment as a Class Member would be [\$Estimated Award], your estimated FLSA Settlement Payments would be [\$Estimated Award], and your estimated PAGA Settlement Payment would be [\$Estimated Award].

If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

One-third of each Individual Settlement Payment and FLSA Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and two-thirds will be allocated as penalties and interest and reported on an IRS Form 1099. One hundred percent of each PAGA Settlement Payment will be allocated as penalties and reported on an IRS Form 1099.

This notice is not intended to provide legal or tax advice regarding any settlement payment. You should consult your own legal counsel or tax professional regarding any taxes you may owe as a result of receiving a payment under this settlement.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you are a Class Member, you do not need to take any action to receive the Individual Settlement Payment, FLSA Settlement Payment, and PAGA Settlement Payment set forth above. You also will be releasing claims if you do not opt out.

Class Release

Unless you Opt Out of the Settlement (Option 2 below), you will be bound by the following release:

“By operation of the entry of the Final Approval Order and Judgment, and except as to rights this Agreement creates, and subject to the occurrence of the Effective Date and Defendant's full payment of the Gross Settlement Amount, Plaintiff and each Class Member who does not opt out of this settlement shall fully release Defendant and the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law that were or could have been brought based on the allegations in any version of the complaints filed in the Action and in Plaintiff's PAGA Notice Letter to the LWDA arising during the Settlement Period. The released claims include, but are not limited to, claims for any alleged failure to pay all wages due (including minimum wage and overtime wages), claims arising from Plaintiff's allegations that Defendant did not properly calculate employees' regular rate of pay, failure to provide meal and rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or underpayment of meal and

Questions? Contact the Administrator toll free at [PHONE]

rest break premiums, failure to timely pay final wages, failure to furnish accurate wage statements including claims arising out of the same primary right of these claims, liquidated damages, conversion of wages, and unfair business practices, up to and including the final date of the Settlement Period. The released claims include without limitation claims meeting the above definition(s) under any and all applicable statutes, including without limitation any applicable provision of the California Labor Code; Private Attorneys General Act (California Labor Code §§ 2698, et seq.); California Business & Professions Code §§ 17200 et seq.; any provision of the applicable California Industrial Welfare Commission Wage Orders, or the Fair Labor Standards Act, based on the facts or claims alleged in the Complaint(s) in the Action.”

FLSA Release

Unless you Opt Out of the Settlement (Option 2 below), and if you negotiate (cash) your FLSA Settlement payment check, you will be bound by the following release:

“Subject to the occurrence of the Effective Date and Defendant’s full payment of the Gross Settlement Amount, any Class Member who opts in to the FLSA collective by cashing, depositing, or otherwise negotiating a settlement check for their FLSA Settlement Payment releases all claims under the Fair Labor Standards Act during the FLSA Settlement Period. Class Members who opt into the FLSA collective are subject to the FLSA Release and release all claims the Class Member may have for violations of the Fair Labor Standards Act, including any and all claims for restitution, back pay, attorneys’ fees and costs, interest, and liquidated damages under the FLSA.”

PAGA Release

If you Opt Out of the Settlement (Option 2 below), you will still be bound by the following release:

“Subject to the occurrence of the Effective Date and Defendant’s full payment of the Gross Settlement Amount, each Class Member who properly submits a Request for Exclusion as provided for in this Agreement shall nevertheless fully release the Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorneys’ fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that were or could have been brought based on the allegations in any version of the complaints filed in the Action and in Plaintiff’s PAGA Notice Letter to the LWDA under the Private Attorneys General Act (California Labor Code §§ 2698, et seq.) arising during the period from March 31, 2020, to the last day of the Settlement Period.”

“Released Parties” means: Hawthorn Senior Living, LLC and all of its predecessors, successors, subsidiaries, parents, corporate affiliates, and assigns, and all of their respective officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded. Your written request must expressly and clearly indicate that you do not want to participate in the settlement, and you desire to be excluded from the settlement. The written request for exclusion must include your first and last name. You must sign your request for exclusion and mail it by U.S. First-Class Mail to the address below.

[ADDRESS]

Questions? Contact the Administrator toll free at [PHONE]

The written request to be excluded from the settlement must be mailed to the Settlement Administrator at the following address and contact information and postmarked no later than **[RESPONSE DEADLINE]**:

If you timely and validly exclude yourself from the Settlement, then you will get no Individual Settlement Payment or FLSA Settlement Payment. You also will not be bound by the *Class Release* set forth in Option 1 above.

The proposed settlement also includes the settlement of claims for civil penalties under PAGA. A Class Member may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the Settlement, you will still receive a PAGA Settlement Payment (if you are eligible), and will be bound by the *PAGA Release* set forth above..

Option 3 – *Make an Objection to the Settlement*

If you wish to object to the settlement you may file an objection in writing stating why you object to the settlement. Your objection must provide your full name, address, the last four digits of your Social Security Number, the case number and name, and your reasons why you think the Court should not approve the Settlement. Your objection must be mailed to the Administrator and postmarked no later than **[RESPONSE DEADLINE]**. You can also attend the final approval hearing (discussed below), and orally present your objection to the Court.

Please note that you cannot both object to the settlement and exclude yourself (pursuant to Option 2 above). If you object, and the Court overrules your objection, you will be bound by the settlement and releases.

Final Approval Hearing

You may, if you wish, also appear at the Final Approval Hearing set for **[DATE]** in **[LOCATION]**, and discuss your objections with the Court. You may also retain an attorney to represent you at the Hearing at your own expense.

Hearings before the judge overseeing this case are again being conducted in person. However, remote appearances are still permitted, and are offered with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the final fairness hearing, class members who wish to appear at the final fairness hearing remotely should contact class counsel to arrange an appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member shall be paid by class counsel.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the settlement. For further information and a more detailed statement of the matters involved in this case and the settlement, you may visit **[Website]** and you may also call the Settlement Administrator at **[PHONE]** or contact Class Counsel as follows:

GAINES & GAINES, APLC
Daniel F. Gaines, Esq.
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Tel: (866) 550-0855

Questions? Contact the Administrator toll free at **[PHONE]**

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of El Dorado County Superior Court, located at [ADDRESS], during regular business hours of each court day.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
HAWTHORN, OR HAWTHORN'S ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Administrator toll free at [PHONE]

EXHIBIT B

DANIEL F. GAINES, ESQ. SBN 251488
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ALEX P. KATOFISKY, ESQ. SBN 202754
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Facsimile: (818) 703-8984

Attorneys for Plaintiff Naomi Haqq, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO**

NAOMI HAQQ, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

HAWTHORN SENIOR LIVING, LLC, a
Delaware limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: PC20210300

*Assigned to the Honorable Dylan Sullivan, Dept.
9*

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

**1. FAILURE TO PAY ALL OVERTIME
WAGES DUE (LABOR CODE §§ 510 AND
1194; FLSA 29 U.S.C. §§ 206 AND 207)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 5-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512, AND 1194; IWC WAGE ORDER 5-
2001)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT
PROVISIONS (LABOR CODE § 226(a), (e))**

**5. FAILURE TO PAY WAGES DUE AT
SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**

**6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), (e), 226.7,
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: June 9, 2021

Plaintiff NAOMI HAQQ (“Plaintiff”), on behalf of herself and all others similarly situated (the “Class” or “Plaintiff’s Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complain of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class, Collective, and Representative Action, pursuant to Code of Civil Procedure § 382, 29 U.S.C. §§ 206 and 207 *et seq.*, and Labor Code §§ 2698 *et seq.*, on behalf of Plaintiff and certain individuals who currently work, or formerly worked for HAWTHORN SENIOR LIVING, LLC, a Delaware limited liability company, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. The Fair Labor Standards Act of 1938, as amended 29 U.S.C. §§ 201 *et seq.*, (hereinafter referred to as “FLSA”) provides for minimum standards for both wages and overtime entitlement, and details administrative procedures by which covered work time must be compensated. The enactment of the provisions of the FLSA provide the Courts with substantial authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well as the overtime pay provisions at issue in this Action.

3. The California Labor Code provides for more protective, more rigid, and more extensive labor standards which apply to all California employees.

4. From June 9, 2017 to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all overtime wages due, provide meal or rest periods or

1 compensation in lieu thereof, timely paying all wages due upon separation of employment, and failing
2 to issue accurately itemized wage statements.

3 5. Plaintiff, on behalf of herself and members of the Class (as defined below), bring this
4 action pursuant to Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 1194, and 2698 *et seq.*, Wage
5 Order 5-2001, and 29 U.S.C. §§ 206 and 207 seeking compensation for all unpaid overtime wages,
6 meal and rest period premium wages, penalties, interest, injunctive and other equitable relief, and
7 reasonable attorneys' fees and costs.

8 6. Plaintiff, on behalf of herself and members of the Class, pursuant to Business &
9 Professions Code §§ 17200-17208, also seek restitution, and disgorgement of all benefits Defendants
10 enjoyed from their failure to pay all overtime and premium wages earned.

11 7. Plaintiff, on behalf of herself and all proposed Class members, pursuant to FLSA §§ 6
12 and 7, 29 U.S.C. §§ 206 and 207, also seek liquidated damages for Defendants' failure to pay all
13 overtime wages due.

14 8. Plaintiff, on behalf of herself and all other aggrieved employees, pursuant to Labor
15 Code § 2699 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

16 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
17 Procedure § 395. Defendants operate within California. The violations alleged herein occurred
18 within El Dorado County, State of California.

19 II.

20 PARTIES

21 A. Plaintiff

22 10. Plaintiff Naomi Haqq was employed by Defendants from February 2020 through July
23 2020 as a non-exempt employee. Plaintiff performed work for Defendants in El Dorado County,
24 California.

25 11. During her work with Defendants, Plaintiff was:

- 26 a. Willfully denied the payment of all overtime wages due during employment;
- 27 b. Willfully denied all meal and rest periods, or compensation in lieu thereof;

- 1 c. Willfully denied the timely payment of all wages due upon separation of her
2 employment; and
3 d. Willfully denied accurately itemized wage statements.

4 **B. Defendants**

5 12. Defendant HAWTHORN SENIOR LIVING, LLC is a Delaware limited liability
6 company that operates in California. Defendant HAWTHORN SENIOR LIVING, LLC employed
7 Plaintiff and similarly situated employees in El Dorado County, California.

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

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

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

22 \\\

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1 **III.**

2 **CLASS ACTION ALLEGATIONS**

3 16. Plaintiff brings this action on behalf of herself, and all others similarly situated as a
4 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the class
5 composed of and defined as follows:

6 **THE CLASS**

7 All non-exempt employees of Defendant who performed work for
8 Defendant in the State of California during June 9, 2017 to the present.

9 17. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
10 modify the class descriptions with greater specificity or further division into subclasses or limitation
11 to particular issues.

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

15 **A. Numerosity**

16 19. The potential members of the Class as defined are so numerous that joinder of all the
17 members of the Class is impracticable. While the precise number of the Class has not been
18 ascertained at this time, Plaintiff is informed and believes, and based thereon allege, that Defendants
19 currently employ, and during the relevant time periods employed, over 75 persons in the State of
20 California who fall within the class definition.

21 20. Accounting for employee turnover during the relevant periods necessarily increases
22 this number. Plaintiff alleges Defendants' employment records would provide information as to the
23 number and location of members of the Class. Joinder of the members of the Class is not practicable.

24 **B. Commonality**

25 21. There are questions of law and fact common to the Class that predominate over any
26 questions affecting only individual class members. These common questions of law and fact include,
27 without limitation:
28

- a. Whether Defendants failed to pay Plaintiff and Class Members all overtime wages due during employment, in violation of Labor Code §§ 510 and 1194 and the FLSA, 29 U.S.C. §§ 206 and 207;
- b. Whether Defendants failed to provide Plaintiff and Class Members with wage statements that fully and accurately itemize the requirements set forth in Labor Code § 226(a) and whether their claims are actionable under Labor Code § 226(e);
- c. Whether Defendants failed to timely pay Plaintiff and Class Members all wages due and owing at the separation of their employment with Defendants, in violation of Labor Code §§ 201-203;
- d. Whether Defendants failed to provide Plaintiff and Class Members all meal and rest periods, or compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512 and 1194; IWC Wage Order 5-2001; and
- e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

23. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

24. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting

1 only individual members of the proposed Class. Each member of the proposed Class has been
2 damaged and is entitled to recovery by reason of Defendants' illegal policies and practices.

3 25. Class action treatment will allow those similarly situated persons to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
6 action that would preclude its maintenance as a class action.

7 **IV.**

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **FAILURE TO PAY ALL OVERTIME WAGES DUE**

12 **(FLSA, 29 U.S.C. §§ 206 AND 207)**

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

15 27. Plaintiff brings this count as a collective action under Section 16(b) of the FLSA.

16 28. This count arises from Defendants' violation of the FLSA, 29 U.S.C. § 201 *et seq.*, for
17 their failure to pay overtime to Plaintiff and Class Members. At all relevant times hereto, Defendants
18 have been an "enterprise engaged in commerce or in the production of goods for commerce," as
19 defined under 29 U.S.C. § 203(s)(1).

20 29. Defendants, individually and collectively, are Plaintiff's "employer" as defined by the
21 FLSA.

22 30. Defendants, individual and collectively, are an "enterprise" as defined by Section
23 3(r)(1) of the FLSA, 29 U.S.C. § 203(r)(1).

24 31. Defendants, individual and collectively, are an enterprise engaged in commerce or in
25 the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the FLSA, 29
26 U.S.C. § 203(s)(1)(A).

27 32. Defendants' annual gross volume of sales made, or business done, individual and
28 collectively, has exceeded \$500,000 in each of the last three calendar years.

1 33. Plaintiff is an “employee” Defendants as defined by the FLSA.

2 34. During the entire course of their employment by Defendants, Plaintiff and Class
3 Members have not been exempt from the overtime provisions of the FLSA.

4 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
5 required, or require, Class Members, as part of their employment, to work without all additional
6 overtime compensation in excess of the forty hours per week maximum under 29 U.S.C § 207(a)(1).
7 That section provides the following:

8 Except as otherwise provided in this section, no employer shall employ
9 any of his employees . . . for a workweek longer than forty hours unless
10 such employee receives compensation for his employment in excess of
11 the hours above specified at a rate which is not less than one and one-
12 half times the regular rate at which he is employed.

13 36. In the performance of their duties for Defendants, Class Members often worked more
14 than forty hours per week and did not receive all overtime compensation for the work, labor and
15 services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§ 206 and 207.
16 Specifically, they have not been paid overtime wages at the rate of one and one-half times their regular
17 rate for all hours worked over 40 in one week.

18 37. The precise amount of unpaid overtime will be proven at trial.

19 38. Plaintiff proposes to undertake appropriate proceedings to have Class Members
20 aggrieved by Defendants’ unlawful conduct notified of the pendency of this action and join this action
21 as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the Court.

22 39. Defendants’ violations of the FLSA were willful within the meaning of the statute and
23 interpretive case law.

24 40. As a result of the foregoing, Plaintiff seeks judgment against Defendants on her own
25 behalf, and on behalf of Class Members similarly situated who file written consents to joinder in this
26 action, for all unpaid overtime wages, owed by Defendants to Plaintiff and Class Members, pursuant
27 to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as liquidated
28 damages, and costs, interest, and reasonable attorneys’ fees, as provided for under 29 U.S.C. § 216(b).

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL OVERTIME WAGES DUE

(LABOR CODE §§ 510 AND 1194)

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

42. During the liability period, Defendants failed to compensate Plaintiff and Class Members with all overtime wages earned during the course of employment, in violation of Labor Code §§ 510 and 1194. Defendants paid Plaintiff and Class Members bonuses and other forms of wages that were not included into their regular rate of pay for purposes of computing the proper overtime rate. They were not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Instead, they were paid overtime at one and one-half the base wage. These failures to pay all overtime wages due constitute violations of Labor Code §§ 510 and 1194.

43. As a result of the unlawful acts of Defendants in willfully failing to pay all overtime wages, Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194.

44. Wherefore, Plaintiff and the Class she 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 REST PERIODS OR COMPENSATION IN LIEU THEREOF****(LABOR CODE § 226.7 AND IWC WAGE ORDER 5-2001)**

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

46. 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 5-2001.

47. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely unable to take a 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. When Plaintiff and Class Members were provided with a rest period, they were not permitted to leave Defendants' premises and thus, were not free from their employer's control. This violates Labor Code § 226.7 and IWC Wage Order 5-2001.

48. Pursuant to Labor Code § 226.7 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed for four years preceding the filing of this complaint, according to proof.

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

VII.**FOURTH CAUSE OF ACTION****PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS****FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM WAGES IN LIEU THEREOF****(LABOR CODE §§ 226.7, 510, 512 AND 1194 AND IWC WAGE ORDER 5-2001)**

49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set forth herein.

50. 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 §§ 226.7 510, 512, and 1194 and IWC Wage Order 5-2001.

51. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. When Plaintiff and Class Members were provided with a meal period, they were late, cut short, or they would be required to work through them. This violates Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 5-2001.

52. Pursuant to Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all meal period compensation which she and Class Members are owed for four years preceding the filing of this complaint, according to proof.

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

VIII.

FIFTH 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))

53. Plaintiff incorporates paragraphs 1 through 52 of this Complaint as though fully set forth herein.

54. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must accurately set forth, among other things, total net and gross wages earned, total hours worked, the inclusive dates of the pay period, the address of the legal entity that is the employer, and all applicable pay rates in effect during

1 the pay period, for Plaintiff and Class Members. Defendants have knowingly and intentionally failed
2 to comply with Labor Code § 226(a).

3 55. Defendants failed to provide Plaintiff and Class Members wage statements that fully
4 and accurately itemize the requirements set forth in Labor Code § 226(a). As Plaintiff and Class
5 Members were not paid all premium wages due during the course of their employment, as detailed
6 above, the wage statements issued by Defendants fail to state the correct gross wages earned, in
7 violation of Labor Code § 226(a)(1), and the net wages earned, in violation of Labor Code § 226(a)(5).

8 56. Separately, the wage statements issued by Defendant to Plaintiff and Class Members
9 failed to set forth all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked, Labor Code § 226(a)(9). When shift differential wages were earned, the
11 applicable hourly rate and hours worked were omitted. Additionally, the wage statements issued by
12 Defendant to Plaintiff and Class Members failed to set forth the inclusive dates of the pay period, in
13 violation of Labor Code §§ 226(a)(6), as they omit the pay period start date.

14 57. As a consequence of Defendants' willful conduct in failing to issue their California
15 employees accurately itemized wage statements, Plaintiff and Class Members have been injured
16 because they were issued wage statements which do not reflect, and fail to state, all information
17 required by Labor Code § 226(a). The missing information cannot be discerned at all from the face
18 of the wage statements themselves. As a result, Plaintiff and members of the Class are entitled to
19 penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 per
20 employee for the initial violation and \$100 per employee for each subsequent violation, not exceeding
21 an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable
22 attorneys' fees pursuant to Labor Code § 226(e)(1).

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

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

58. Plaintiff incorporates paragraphs 1 through 57 of this Complaint as though fully set forth herein.

59. 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.

60. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. Plaintiff and Class Members were not paid all wages due, including overtime wages and meal and rest period premiums, throughout the course of their employment with Defendants as alleged herein, and therefore, at the time of their separation of employment with Defendants they were not timely paid all of their final wages. This violates Labor Code §§ 201-203.

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

62. 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.

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

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X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.

63. Plaintiff incorporates paragraphs 1 through 62 of this Complaint as though fully set forth herein.

64. This is a Representative Private Attorney General Action and Class Action for Unfair Business Practices. Plaintiff, on behalf of herself and on behalf of the general public, and on behalf of others similarly situated, bring 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 members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

65. 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.

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

67. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

68. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair

1 business practices in violation of Business & Professions Code § 17200, *et seq.* depriving Plaintiff,
2 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
3 guaranteed to all employees under law.

4 69. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
5 §§ 17200 *et seq.* of the Business & Professions Code.

6 70. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
7 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §§
8 17200 *et seq.* of the Business & Professions Code.

9 71. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
10 similarly situated have been damaged in a sum as may be proven.

11 72. Unless restrained by this Court, Defendants will continue to engage in the unlawful
12 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
13 make such orders or judgments, including the appointment of a receiver, as may be necessary to
14 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive
15 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
16 disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to the
17 money Defendants have unlawfully failed to pay.

18 **XI.**

19 **EIGHTH CAUSE OF ACTION**

20 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS** 21 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR** 22 **CODE §§ 201, 202, 226(a), (e), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR** 23 **CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

24 73. Plaintiff incorporates paragraphs 1 through 72 of this Complaint as though fully set
25 forth herein.

26 74. As a result of the acts alleged above, Plaintiff seeks penalties and other relief pursuant
27 to Labor Code §§ 2698 *et seq.*

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

- a. With respect to the violation of Labor Code § 2699(f) for violations of Labor Code 201, 202, 226(a), (e), 226.7, 510, 512, and 1194, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period; and
- b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 226.3 and 558.

76. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

77. On March 31, 2021, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and 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, 2021. Plaintiff may therefore commence this action to seek penalties and other relief pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For recovery of all unpaid wages and liquidated damages, pursuant to the FLSA, 29 U.S.C. § 201 *et seq.* with respect to Plaintiff and Class Members;
2. For unpaid wages pursuant to Labor Code §§ 1194, in the amount of all unpaid overtime wages due to Plaintiff and Class Members;
3. For unpaid wages 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;

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1 4. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members who are
2 no longer employed by Defendants;

3 5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;

4 8. For penalties and other relief pursuant to Labor Code §§ 2698 *et seq.* for Plaintiff and
5 all other aggrieved employees;

6 9. For restitution for unfair competition pursuant to Business & Professions Code §
7 17200 *et seq.* for Plaintiff and the members of the Class;

8 10. An award of prejudgment and post-judgment interest;

9 11. An order enjoining Defendants and their agents, servants, and employees, and all
10 persons acting under, in concert with, or for them, from denying all wages due to all employees, from
11 failing to provide meal and rest periods or compensation in lieu thereof, and from failing to provide
12 employees with accurately itemized wage statements;

13 12. An award providing for payment of costs of suit;

14 13. An award of attorneys' fees; and

15 14. Such other and further relief as this Court may deem just and proper.

16 Dated: April 11, 2022

Respectfully submitted,

17 GAINES & GAINES
18 A Professional Law Corporation

19 By: _____
20 DANIEL F. GAINES
21 EVAN S. GAINES
22 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

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

Dated: April 11, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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