

BARVIE LAW, APC

NICOLE BARVIE (State Bar # 282352)

550 West B Street, 4th Floor

San Diego, CA 92101-3598

Telephone: 858.255.0928

Facsimile: 858.357.8592

nicole@barvielaw.com

Attorneys for TAMERA PERKINS

DANIEL F. GAINES, ESQ. SBN 251488

daniel@gaineslawfirm.com

ALEX P. KATOFISKY, ESQ. SBN 202754

alex@gaineslawfirm.com

EVAN S. GAINES, ESQ. SBN 287668

evan@gaineslawfirm.com

GAINES & GAINES, APLC

4550 East Thousand Oaks Boulevard, Suite 100

Westlake Village, CA 91362

Telephone: (818) 703-8985

Facsimile: (818) 703-8984

Attorneys for Plaintiff BRIAN HILDICK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF AMADOR

TAMERA PERKINS, an individual,
BRIAN HILDICK, an individual, on behalf
of themselves, and on behalf of all persons
similarly situated,

Plaintiff,

v.

SUN COMMUNITIES, INC., a Maryland
Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

CLASS ACTION

CASE NO: 22-CV-12673

Assigned to the Honorable Andrea Sexton, Dept. 3

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement”) is made and
3 entered into by and between Plaintiffs Brian Hildick and Tamera Perkins (together, “Plaintiffs” or
4 “Class Representatives,” individually, “Plaintiff Hildick” and “Plaintiff Perkins,” respectively),
5 individually and on behalf of all others similarly situated, and Defendant Sun Communities, Inc., a
6 Maryland corporation (“Defendant”), subject to the terms and conditions herein and the Court’s
7 approval.

8 **A. Definitions.**

9 1. Plaintiffs, the Settlement Class (as defined below), and Defendant are collectively
10 referred to herein as “the Parties.”

11 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
12 record for Plaintiff Brian Hildick, and Nicole Barvié of Barvié Law, APC is counsel of record for
13 Plaintiff Tamera Perkins. For purposes of this Settlement Agreement only, the firms of Gaines &
14 Gaines, APLC and Barvié Law, APC shall be designated as “Class Counsel.”

15 3. The “Actions” means the cases of *Brian Hildick, et al. v. Sun Communities, Inc., et*
16 *al.*, Amador County Superior Court Case. No. 22CV12673 (the “Hildick Action”), and *Tamera*
17 *Perkins, et al. v. Sun Communities, Inc., et al.*, Amador County Superior Court Case No.
18 22CV12888 (the “Perkins Action”).

19 4. The “Settlement Class” shall be defined as “all non-exempt employees of Defendant
20 in California at any time between June 14, 2018 and October 30, 2023” (the “Class Period”).
21 Defendant represents that this Class contains no more than approximately 884 Class Members who
22 worked no more than approximately 69,860 workweeks.

23 5. The “Aggrieved Employees” shall be defined as “all non-exempt employees of
24 Defendant in California at any time between April 6, 2021 and October 30, 2023” (the “PAGA
25 Period”).

26 6. Members of the Settlement Class shall collectively be referred to as a “Class
27 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
28 detailed below, will be excluded from the final Settlement Class.

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

B. General.

1. On April 6, 2022, Plaintiff Hildick exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

2. On June 14, 2023, Plaintiff Hildick initiated his Action in the Amador County Superior Court by filing a complaint, pursuant to PAGA, on behalf of himself and all other aggrieved employees.

3. On November 1, 2022, Plaintiff Perkins exhausted the pre-filing requirements of PAGA.

4. On November 3, 2022, Plaintiff Perkins filed her class action complaint in the Amador County Superior Court. On February 1, 2023, Plaintiff Perkins filed her first amended class and representative action complaint.

5. Together, as set forth in the proposed First Amended Complaint (attached hereto as **Exhibit 3**), which the Parties will seek to file in the Hildick Action as part of the motion for preliminary approval of this Settlement Agreement, the Actions assert claims against Defendant for (1) unfair competition in violation of Business and Professions Code § 17200 for underlying violations of the Labor Code as set forth in the complaints in the Actions; (2) failure to pay overtime wages (Labor Code § 510); (3) failure to pay minimum wages (Labor Code §§ 1194, 1197, and 1197.1); (4) failure to pay sick pay wages (Labor Code § 246); (5) failure to provide required meal periods (Labor Code §§ 226.7 and 512 and applicable IWC Wage Order); (6) failure to provide required rest periods (Labor Code §§ 226.7 and 512 and applicable IWC Wage Order); (7) failure to reimburse for required expenses (Labor Code § 2802); (8) failure to provide accurate itemized wage statements (Labor Code §§ 226 and 226.2); (9) failure to pay wages when due (Labor Code

1 §§ 201-203); and (10) civil penalties pursuant to PAGA for underlying violations of the Labor Code
2 as set forth in the complaints in the Actions.

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

17 7. The Class Representatives contend that Defendant violated the California Labor
18 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
19 certification.

20 8. Class Counsel represent that they have conducted a thorough investigation into the
21 facts and law during the prosecution of this class action case, including the exchange of extensive
22 informal discovery and the review and verification of statistical data and other facts and information
23 provided by Defendant. Counsel for the Parties also represent that they have investigated the
24 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
25 potential defenses thereto, and the damages and other losses claimed by Plaintiffs.

26 9. On August 24, 2023, following their exchange of information and documents
27 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
28 engaged in arm's-length negotiations with the assistance of an experienced wage and hour

mediator, Brandon McKelvey, Esq., where the Parties were able to reach the resolution of the Actions set forth herein following their acceptance of a mediator's proposal.

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

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

C. Terms of Settlement.

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

(a) **Gross Settlement Amount:** The Parties agree to settle the Actions for a Gross Settlement Amount of Seven Hundred Thousand Dollars (\$700,000) ("the Gross Settlement Amount"), subject to any increase based on the escalator provision in paragraph H(16) herein. The Gross Settlement Amount includes the attorneys' fees of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the Service Payments to the Class Representatives, as approved by the Court; the payment to the California Labor and Workforce Development Agency ("LWDA"); and all costs of

1 administration, including, without limitation, settlement administration fees and expenses. All
2 employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds
3 shall be paid by Defendant separate and apart from, and in addition to, the Gross Settlement
4 Amount.

5 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
6 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees
7 and documented litigation costs and expenses incurred or advanced by Class Counsel; the Service
8 Payments to the Class Representatives; the payment to the LWDA pursuant to PAGA; and the costs
9 of administering the settlement.

10 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
11 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
12 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
13 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
14 to participating Class Members, the class portion of the Individual Payment Amount will be
15 determined by dividing the Net Settlement Proceeds, less the \$17,500 PAGA allocation, by the
16 total number of weeks worked by the entire Settlement Class during the Class Period, net of opt
17 outs, resulting in the class workweek value; and then multiplying the class workweek value by the
18 number of weeks worked by each participating Class Member during the Class Period. As to the
19 Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined
20 by dividing the PAGA settlement amount (\$17,500) by the total number of weeks worked by all
21 Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then
22 multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved
23 Employee during the PAGA Period.

24 (d) For tax purposes, the class portion of each Individual Payment Amount will
25 be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
26 withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if
27 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as
28 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to

1 Class Members and Aggrieved Employees will be subject to any applicable wage garnishments,
2 liens, or other legally mandated treatment as required by law.

3 (e) **PAGA Payments:** The Parties agree that Seventy Thousand Dollars
4 (\$70,000) shall be allocated to settle Plaintiffs' claims brought pursuant to PAGA. Of this amount,
5 Seventy-Five percent (75%), or Fifty-Two Thousand Five Hundred Dollars (\$52,500), shall be paid
6 to the LWDA, and the remaining Twenty-Five percent (25%), or Seventeen Thousand Five
7 Hundred Dollars (\$17,500), shall be paid to Aggrieved Employees as part of the Net Settlement
8 Proceeds.

9 (f) **Service Payments and General Release Payments to Class**
10 **Representatives:** The amount awarded to each Class Representative as a "Service Payment" and
11 in exchange for a general release, as set forth in Paragraph D(2), below, will be set by the Court in
12 its discretion, not to exceed Ten Thousand Dollars (\$10,000) each (\$20,000 total). This amount
13 will be deducted from the Gross Settlement Amount. An IRS Form 1099 will be issued to each
14 Class Representative for their Service Payment. Defendant agrees not to dispute or otherwise
15 object to the Service Payments if Plaintiffs each request up to \$10,000.

16 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
17 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
18 the settlement award that has been made available for the Settlement Class by the efforts of Class
19 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e., Two
20 Hundred Forty-Five Thousand Dollars (\$245,000) and it will be paid 75% to Gaines & Gaines,
21 APLC and 25% to Barvié Law, APC, pursuant to an attorney fee sharing agreement signed by
22 Plaintiffs. An IRS Form 1099 will be issued to Class Counsel with respect to the award of
23 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
24 requested by Class Counsel so long as the request does not exceed 35% of the Gross Settlement
25 Amount.

26 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
27 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
28 litigation costs and expenses, not to exceed Thirty Thousand Dollars (\$30,000). An IRS Form 1099

will be issued to Class Counsel with respect to its award of costs and expenses. Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel so long as the request does not exceed \$30,000.

(i) **Settlement Administration Costs:** The fees and other charges of the Settlement Administrator to administer the Settlement are expected to total no more than Twenty Thousand Dollars (\$20,000.00) and will be paid from the Gross Settlement Amount. These fees shall include any costs associated with the required tax reporting on any Individual Payment Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties have agreed that Phoenix Settlement Administrator will serve as a neutral third-party claims' administrator ("Settlement Administrator") to perform all acts related to providing notice to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b) administering the settlement; (c) processing exclusions, objections, and field inquiries from Class Members; (d) resolving disputes; (e) calculating the Individual Payment Amount each Participating Class Members is eligible to receive; (f) distributing the Gross Settlement Amount as directed by the Court and set forth herein; (g) tax reporting; (h) providing necessary weekly status reports; and (i) other duties and responsibilities set forth herein.

(j) **No Warranty by Defendant:** Plaintiffs understand and agree that Defendant is not providing Plaintiffs or Class Members with tax or legal advice and that Defendant makes no representations regarding tax obligations or consequences, if any, related to this Settlement Agreement.

D. Release of Claims.

1. Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiffs and all Settlement Class Members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged Defendant Sun Communities, Inc. and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or

1 assignees (“Released Parties”) from any and all Released Class Claims which arose during their
2 employment in a non-exempt position in California during the Class Period.

3 2. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
4 Settlement Amount and all associated employer payroll tax obligations, Plaintiffs and all Aggrieved
5 Employees will be deemed to have fully released and discharged the Released Parties from any and
6 all Released PAGA Claims which arose during their employment in a non-exempt position in
7 California during the PAGA Period.

8 3. “Released Class Claims” means any and all claims and/or causes of action which
9 accrued during the Class Period during employment in a non-exempt position in California, that
10 are alleged, or that could have been alleged in the Actions based on the facts set forth in the First
11 Amended Complaint to-be-filed in the Hildick Action as part of the preliminary approval process
12 (which will include direct class action claims under Labor Code §§ 201, 202, 203, 204, 210, 226,
13 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800,
14 2802, and 2698, *et seq.* and under Business & Professions Code section 17200 *et seq.* predicated
15 on the underlying Labor Code claims alleged). No PAGA claims are encompassed in the Released
16 Class Claims.

17 4. “Released PAGA Claims” means any and all PAGA claims and/or causes of action
18 which accrued during the PAGA Period during employment in a non-exempt position in
19 California, that are alleged in the to-be-filed First Amended Complaint on file in the Hildick
20 Action, or that could have been alleged in the Actions based on the facts set forth in the First
21 Amended Complaint, or the PAGA letters filed with the LWDA. No Aggrieved Employee may
22 opt out of the PAGA portion of the Settlement.

23 5. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
24 Settlement Amount and all associated employer payroll tax obligations, Plaintiffs Hildick and
25 Perkins shall be deemed to have fully, finally, and forever released the Released Parties from any
26 and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the
27 Released Parties, of whatever kind and nature, character, and description, whether in law or equity,
28 whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation,

1 common law, or other source of law, whether known or unknown, and whether anticipated or
2 unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the
3 date of their signatures hereon, for any type of relief, including, without limitation, claims for
4 wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest,
5 attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not
6 limited to, the Released Class Claims and Released PAGA Claims, as well as any other claims
7 under any provision of the California Labor Code or any applicable California Industrial Welfare
8 Commission Wage Orders, and claims under local, state, or federal discrimination statutes,
9 including, without limitation, the California Fair Employment and Housing Act, California
10 Government Code §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et
11 seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et
12 seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement
13 Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; and all of their implementing regulations
14 and interpretive guidelines. With respect to these Released Claims as described in this Section,
15 Plaintiffs Hildick and Perkins shall be deemed to have expressly waived and relinquished, to the
16 fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had
17 pursuant to Section 1542 of the California Civil Code, which provides as follows:

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

22 Notwithstanding Section 1542, Plaintiffs understand and agree that this Agreement shall act
23 as a release of all future claims that may arise from Plaintiffs Hildick's and Perkins's employment
24 or separation from employment with Defendant, or any other matters that existed between Plaintiffs
25 Hildick and Perkins and the Released Parties up to the date of this Agreement, whether such claims
26 are currently known or unknown, and that Plaintiffs intentionally waive any rights they may have
27 under the provisions of Section 1542, as well as under any other statutes or common law principles
28 of similar effect in the State of California or in any other state.

1 **E. Notice and Exclusion Process.**

2 1. Within fifteen (15) calendar days after entry of the order granting preliminary
3 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all
4 Class Members, including their last known addresses, telephone numbers, social security numbers,
5 and their dates of employment in a non-exempt position in California during the Class Period
6 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
7 numbers will only be disclosed to the Settlement Administrator and not to Plaintiffs’ Counsel. All
8 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
9 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
10 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
11 storage, custody, use, and/or dissemination of the confidential information. Such information must
12 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

13 2. A notice of pendency of class action, proposed settlement, and hearing date for
14 Court approval (“Class Notice”) in the form attached hereto as **Exhibit 1**, and as approved by the
15 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
16 within twenty-five (25) calendar days after entry of the order granting preliminary approval.
17 Attached to the Class Notice will be a request for exclusion form (“Request for Exclusion Form”)
18 in the form attached hereto as **Exhibit 2**.

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

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

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

9 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
10 to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive
11 a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them
12 if and when the Effective Date occurs.

13 7. In order to elect not to participate in the Settlement, a Class Member must submit a
14 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
15 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
16 Class Members, unless the Court requires a longer period, in which case the Court ordered
17 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
18 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
19 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
20 next day on which the U.S. Postal Service is open.

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

25 9. The Settlement Administrator will search for additional addresses on returned mail
26 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
27 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
28 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not

1 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
2 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
3 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
4 Settlement Administrator will search using the social security number for a more current address.
5 If no address is found within 10 days, no further action is required.

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

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

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

24 13. Defendant shall deposit the Gross Settlement Amount and all employer payroll tax
25 obligations with the Settlement Administrator no later than fifteen(15) calendar days after the
26 Effective Date.

27 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
28 fifteen (15) calendar days after its receipt thereof. Class Members and Aggrieved Employees must

1 cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar
2 days after they are mailed by the Settlement Administrator. The value of any checks uncashed
3 more than one hundred eighty (180) days after mailing shall be paid to the State of California
4 Controller's Office – Unclaimed Property Fund, to be held in the name of the respective Class
5 Member or Aggrieved Employee.

6 **F. Duties of the Parties Prior to Court Approval.**

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

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

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

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

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

17 (e) preliminarily approving the PAGA payment of \$52,500 to the LWDA;

18 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;

19 (g) preliminarily setting the Service Payments to the Class Representatives;

20 (h) preliminarily approving Phoenix Settlement Administration as the
21 Settlement Administrator and its estimated fees and costs of \$20,000; and

22 (i) permitting Plaintiffs to file the First Amended Complaint in the Hildick
23 Action.

24 2. The Parties shall submit this Settlement Agreement to the Court and the LWDA
25 in support of Plaintiffs' unopposed motion for preliminary approval of the settlement.
26
27
28

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

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

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

7 (b) approving Class Counsel's application for an award of attorneys' fees and
8 reimbursement of documented litigation costs and expenses, the service payments to the Class
9 Representatives, the PAGA Payment to the LWDA, and the costs of administering the settlement;
10 and

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

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

16 3. After entry of judgment in the Hildick action, the Parties shall request dismissal
17 of the Perkins Action without prejudice.

18 **H. Miscellaneous Provisions:**

19 1. **Voiding the Agreement.**

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

24 2. **Parties' Authority.**

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

27 ///

28 ///

1 **3. Mutual Full Cooperation.**

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

11 **4. No Prior Assignments.**

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

16 **5. No Admission.**

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

25 **6. Construction.**

26 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
27 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
28

Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement.

7. Captions and Interpretations.

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

8. Modification.

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

9. Integration Clause.

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

10. Binding on Assigns.

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

11. Governing Law.

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

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

It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,

1 attached hereto as **Exhibit 1**, will advise all Class Members of the binding nature of the release
2 provided herein and such shall have the same force and effect as if this Settlement Agreement was
3 executed by each Class Member.

4 **13. Counterparts.**

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

9 **14. Confidentiality**

10 Until Plaintiffs file their motion for preliminary approval of the class action settlement of
11 the Actions, the Parties and their Counsel agree to maintain confidentiality as to the Settlement,
12 including the amount and terms of the Settlement, except as to spouses, tax or financial advisors,
13 attorneys, taxing agencies, or as otherwise required by law.

14 **15. No Publicity**

15 Plaintiffs and their Counsel will not contact the media about the Settlement Agreement or
16 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
17 was amicably settled, and the Court did not find Defendant liable. Plaintiffs and their Counsel also
18 will not post any information about the Settlement Agreement on social media or their firms'
19 websites.

20 **16. Representation Regarding Class Size.**

21 Defendant has represented that there are approximately 884 Class Members who worked
22 approximately 69,860 workweeks during the Class Period. Should the number of workweeks
23 increase by more than 10% (76,846), Defendant has the option to either: (1) increase the Gross
24 Settlement Amount on a proportional basis (i.e., if there was 11% increase in the number
25 workweeks during the Class Period, Defendants would agree to increase the Gross Settlement
26 Amount by 1%); or (2) end the Class Period and PAGA Period as of the last date on which the
27 workweeks do not exceed 76,846.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. Continuing Jurisdiction.

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

[SIGNATURES ON NEXT PAGE]

1 Dated: 10 / 10 / 2023

By: B. H.
BRIAN HILDICK
Plaintiff and Class Representative

2
3
4 Dated: 10 / 12 / 2023

By: Tamera Perkins
TAMERA PERKINS
Plaintiff and Class Representative

5
6
7 Dated: _____

SUN COMMUNITIES, INC.
By: _____
MARC FARRUGIA
Chief Administrative Officer

8
9
10
11 **APPROVED AS TO FORM AND CONTENT:**

12 Dated: 10/11/2023

GAINES & GAINES, APLC
By: [Signature]
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiffs and Class
Representative

13
14
15
16 Dated: 10 / 12 / 2023

BARVIÉ LAW, APC
By: Nicole Barvié
Nicole Barvié, Esq.
Counsel for Plaintiffs and Class
Representative

17
18
19
20
21 Dated: _____

CASTLE LAW: CALIFORNIA
EMPLOYMENT COUNSEL, PC
By: _____
Timothy B. Del Castillo, Esq.
Counsel for Defendant

1 Dated: 10 / 10 / 2023

By:



BRIAN HILDICK
Plaintiff and Class Representative

4 Dated: _____

By:

TAMERA PERKINS
Plaintiff and Class Representative

7 Dated: 10/13/2023 | 5:19 PM EDT

SUN COMMUNITIES, INC.

DocuSigned by:

By:



503E882E2BA84E5...

MARC FARRUGIA
Chief Administrative Officer

11 **APPROVED AS TO FORM AND CONTENT:**

12 Dated: _____

GAINES & GAINES, APLC

By:

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

17 Dated: _____

BARVIÉ LAW, APC

By:

Nicole Barvié, Esq.
Counsel for Plaintiffs and Class
Representative

21 Dated: October 11, 2023

CASTLE LAW: CALIFORNIA
EMPLOYMENT COUNSEL, PC

By:



Timothy B. Del Castillo, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF AMADOR**

TAMERA PERKINS, an individual, BRIAN
HILDICK, an individual, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

SUN COMMUNITIES, INC., a Maryland
Corporation; and DOES 1 through 50, Inclusive;

Defendants.

CASE NO: 22-CV-12673

Assigned to the Hon. Andrea Sexton, Dept. 3

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$700,000 to pay claims to all individuals who worked for Sun Communities, Inc. ("Defendant") as a non-exempt employee in California at any time between June 14, 2018 and October 30, 2023 (the "Class Period").
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages due, including sick pay; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse all business-related expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit, pays money to employees, and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$245,000 as attorneys' fees and \$30,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you will receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Sun Communities, Inc. about the legal claims that were brought in this case. Even if you exclude yourself, you will still be an Aggrieved Employee subject to the PAGA settlement.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On June 14, 2022, Plaintiff Brian Hildick ("Plaintiff Hildick"), a former employee of Sun Communities, Inc. ("Defendant"), filed this lawsuit in the Amador County Superior Court. In a separate action, Plaintiff Tamera Perkins ("Plaintiff Perkins"), a former employee of Defendant, filed her lawsuit in the Amador County Superior Court on November 3, 2022 (hereinafter Plaintiffs Hildick and Perkins are collectively referred to as "Plaintiffs"). The lawsuits allege violations of the California Labor Code and California Business and Professions Code. The lawsuits seek to certify a class of all current and former non-exempt California employees of Defendant at any time between June 14, 2018 and October 30, 2023. ("Class Period"). Specifically, the lawsuits allege that members of the Class were not paid all wages due, including minimum wages, overtime wages, and sick pay; provided compliant meal and rest periods or premium compensation in lieu thereof; reimbursed for all business-related expenses; timely issued final wages upon separation of employment; or issued accurate and complete itemized wage statements. The lawsuits seek recovery of wages, expense reimbursement, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all the material allegations in the lawsuits and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiffs' Attorneys

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

Nicole Barvié, Esq.
Barvié Law, APC
550 West B Street, 4th Floor
San Diego, CA 92101-3598
Phone: (858) 255-0928

Defendant's Attorneys

Timothy B. Del Castillo, Esq.
Lisa L. Bradner, Esq.
Daniel Richardson, Esq.
Castle Law: California Employment Counsel, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661

John F. Wymer, Esq.
Thompson Hine LLP
Two Alliance Center
3560 Lenox Road, Suite 1600
Atlanta, GA 30326

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Plaintiffs believe they would have prevailed on their claims at a trial. Defendant does not believe that Plaintiffs would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiffs and Plaintiffs' Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

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

The Settlement encompasses a class composed of all individuals who worked for Defendant Sun Communities, Inc. as a non-exempt employee in California at any time between June 14, 2018 and October 30, 2023 (the "Class Period"). It also encompasses Aggrieved Employees, who are all individuals who worked for Defendant as a non-exempt employee in California at any time between April 6, 2021 and October 30, 2023 (the "PAGA Period").

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$700,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion and Aggrieved Employees in exchange for the release of their class claims. The Net Settlement Proceeds is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval

Hearing and are subject to comment or objection by Participating Class Members. The Court will set these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$245,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$30,000;

(c) **Service Payments to the Class Representatives** in an amount set by the Court, not to exceed \$10,000 to each Plaintiff for their service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$20,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$70,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$52,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$17,500, shall be included in the Net Settlement Proceeds for payment to Aggrieved Employees.

3. Individual Payment Amount.

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

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

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiffs and all Settlement Class Members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged Defendant Sun Communities, Inc. and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees ("Released Parties") from any and all Released Class Claims which arose during their employment in a non-exempt position in California during the Class Period.

The "Released Class Claims" include any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Actions based on the facts set forth in the First Amended Complaint in the Hildick Action (which includes direct class action claims under Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, et seq. and under Business & Professions Code section 17200 et seq. predicated on the underlying Labor Code claims alleged). No PAGA claims are encompassed in the Released Class Claims.

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiffs and all Aggrieved Employees will be deemed to have fully released and discharged the Released Parties from any and all Released PAGA Claims which arose during their employment in a non-exempt position in California during the PAGA Period.

The "Released PAGA Claims" include any and all PAGA claims and/or causes of action which accrued during the PAGA Period during employment in a non-exempt position in California, that are

alleged in the First Amended Complaint on file in the Hildick Action, or that could have been alleged in the Actions based on the facts set forth in the First Amended Complaint, or the PAGA letters filed with the LWDA. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form), and a PAGA portion of the Individual Payment Amount, which is distributable to each Aggrieved Employees regardless of whether they participate in the Settlement (Aggrieved Employees will receive the PAGA portion of the Individual Payment Amount even if they exclude themselves from the Settlement).

“Individual Payment Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$17,500 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member during the Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount (\$17,500) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee during the PAGA Period.

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

Settlement Class Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from June 14, 2018 through October 30, 2023. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from April 6, 2021 through October 30, 2023. Based on these weeks worked, you are entitled to a PAGA Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2024. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on _____, at 8:30 a.m., in the Courtroom of Judge J.S. Hermanson of the Amador County Superior Court, Department 1, located at 500 Argonaut Lane, Jackson, CA 95642. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiffs’ Attorneys; and (v) the amount that should be awarded to Plaintiffs as service payments. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

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

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a class judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. If you exclude yourself, you will still be bound by the Released PAGA Claims and receive a share of the PAGA Settlement. You can opt out of the Class by completely filling

out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Amador County Superior Court, located at 500 Argonaut Lane, Jackson, CA 95642.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or the attorneys at Gaines & Gaines, APLC at (866) 550-0855.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Brian Hildick, et al. v. Sun Communities, Inc., et al.*, Amador County Superior Court, Case No. 22-CV-12673. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Sun Communities, Inc. as a non-exempt employee in California between June 14, 2018 and October 30, 2023.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Sun Communities, Inc. Claims Administrator
c/o Phoenix Settlement Administration

EXHIBIT 3

1 **BARVIE LAW, APC**

2 NICOLE BARVIE (State Bar # 282352)

3 550 West B Street, 4th Floor

4 San Diego, CA 92101-3598

5 Telephone: 858.255.0928

6 Facsimile: 858.357.8592

7 nicole@barvielaw.com

8 Attorneys for Plaintiff TAMERA PERKINS

9 DANIEL F. GAINES, ESQ. SBN 251488

10 daniel@gaineslawfirm.com

11 ALEX P. KATOFISKY, ESQ. SBN 202754

12 alex@gaineslawfirm.com

13 EVAN S. GAINES, ESQ. SBN 287668

14 evan@gaineslawfirm.com

15 **GAINES & GAINES, APLC**

16 4550 East Thousand Oaks Boulevard, Suite 100

17 Westlake Village, CA 91362

18 Telephone: (818) 703-8985

19 Facsimile: (818) 703-8984

20 Attorneys for Plaintiff BRIAN HILDICK

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **FOR THE COUNTY AMADOR**

23 TAMERA PERKINS, an individual, BRIAN
24 HILDICK, an individual, on behalf of
25 themselves, and on behalf of all persons
26 similarly situated,

27 Plaintiffs,

28 v.

29 SUN COMMUNITIES, INC., a Maryland
30 Corporation; and DOES 1 through 50,
31 Inclusive;

32 Defendants.

Case No. 22CV12673

Assigned to the Hon. Andrea Sexton, Dept. 3

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

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200,
et seq.;
2. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
4. FAILURE TO PAY SICK PAY WAGES
IN VIOLATION OF CAL. LAB. CODE §
246;
5. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF

- 1 CAL. LAB. CODE §§ 226.7 & 512 AND
2 THE APPLICABLE IWC WAGE ORDER;
3 6. FAILURE TO PROVIDE REQUIRED
4 REST PERIODS IN VIOLATION OF
5 CAL. LAB CODE §§ 226.7 & 512 AND
6 THE APPLICABLE IWC WAGE ORDER;
7 7. FAILURE TO REIMBURSE PLAINTIFF
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE §
10 2802;
11 8. FAILURE TO PROVIDE ACCURATE
12 ITEMIZED STATEMENTS IN
13 VIOLATION OF CAL. LAB. CODE §§
14 226 & 226.2;
15 9. FAILURE TO PAY WAGES WHEN DUE
16 IN VIOLATION OF CAL. LABOR CODE
17 §§ 201, 202 AND 203.; AND
18 10. Civil Penalties Pursuant to Labor Code
19 §2699, *et seq.*, for violations of Labor Code
20 §§ 201, 202, 203, 204, 226(a), 226.3, 226.7,
21 246, 510, 512, 558, 1194, 1197, 1197.1,
22 1198, 2802, and the California Code of
23 Regulations

24 **DEMAND FOR JURY TRIAL**

25 *Complaint Filed: June 14, 2022*

26 Plaintiffs TAMERA PERKINS and BRIAN HILDICK ("PLAINTIFFS") individuals, on
27 behalf of themselves and all other similarly situated current and former employees, and others as
28 an aggrieved employee, allege on information and belief, except for their own acts and knowledge
which are based on personal knowledge, the following:

THE PARTIES

1. Defendant SUN COMMUNITIES, INC. ("DEFENDANT") is a Maryland Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, including the County of Amador. Defendant provides manufactured home communities.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

1 unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant
2 to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege
3 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
4 PLAINTIFFS are informed and believe, and based upon that information and belief allege, that
5 the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
6 collectively with "DEFENDANTS"), are responsible in some manner for one or more of the
7 events and happenings that proximately caused the injuries and damages hereinafter alleged.

8 3. The agents, servants and/or employees of the DEFENDANTS and each of them
9 acting on behalf of the DEFENDANTS acted within the course and scope of her, her or its
10 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
11 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
12 conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally
13 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF
14 and those similarly situated, for the loss sustained as a proximate result of the conduct of the
15 DEFENDANTS' agents, servants and/or employees.

16 4. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of
17 PLAINTIFFS' employer, within the meaning of California Labor Code § 558, who violated or
18 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
19 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
20 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
21 at all relevant times.

22 5. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of
23 PLAINTIFFS' employer either individually or as an officer, agent, or employee of another
24 person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to
25 any employee a wage less than the minimum fixed by California state law, and as such, are subject
26 to civil penalties for each underpaid employee.

1 6. PLAINTIFF TAMERA PERKINS was employed by DEFENDANTS as a non-
2 exempt employee, paid on an hourly basis and entitled to minimum wages, overtime pay, and
3 legally compliant meal and rest periods from July 2022 through November 2022.

4 7. PLAINTIFF BRIAN HILDICK was employed by DEFENDANTS as a non-exempt
5 employee, paid on an hourly basis and entitled to minimum wages, overtime pay, and legally
6 compliant meal and rest periods from approximately May 2019 through May 2022.

7 8. PLAINTIFFS bring this Class Action under California Code of Civil Procedure §
8 382 on behalf of themselves and on behalf of all of DEFENDANTS current and former non-
9 exempt California employees (the "CALIFORNIA CLASS") at any time during the period
10 beginning four years from the date of the filing of this Complaint and ending on a date determined
11 by the Court (the "CLASS PERIOD").

12 9. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
13 members is under five million dollars (\$5,000,000.00). PLAINTIFFS reserve the right to amend
14 the following class definitions before the Court determines whether class certification is
15 appropriate, or thereafter upon leave of Court.

16 10. PLAINTIFFS brings this Class Action on behalf of themselves and on behalf of the
17 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
18 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
19 which (1) failed to provide PLAINTIFFS and the CALIFORNIA CLASS with legally compliant
20 meal and rest periods or an additional hour of pay at the regular rate of compensation in lieu
21 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
22 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFFS and the
23 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
24 Sections 510, 1194, 1197, and 1197.1, (3) failed to pay PLAINTIFFS and the CALIFORNIA
25 CLASS sick pay wages in violation of California Labor Code Section 246, (4) failed to reimburse
26 PLAINTIFFS and the CALIFORNIA CLASS for required expenses in violation for California
27 Labor Code Section 2802, (5) failed to provide accurate itemized wage statements in violation of
28

1 California Labor Code Sections 226 and 226.2, and (6) failed to pay PLAINTIFFS and the
2 CALIFORNIA CLASS wages when due in violation of California Labor Code Sections 201-203.

3 11. PLAINTIFFS bring this lawsuit seeking monetary relief against Defendants on
4 behalf of themselves and all others similarly situated in California to recover, among other things,
5 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to
6 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174,
7 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, *et seq.*

8 12. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
9 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
10 wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

11 13. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an
12 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
13 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically
14 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
15 and equitable relief.

16 **JURISDICTION AND VENUE**

17 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
19 action is brought as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, and Representative
20 Action, pursuant to Labor Code § 2698 *et. seq.*, on behalf of PLAINTIFFS and similarly situated
21 employees of DEFENDANTS.

22 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANTS,
24 and/or DEFENDANTS (i) currently maintain and at all relevant times, maintained offices and
25 facilities in this County and/or conducts substantial business in this County, and (ii) committed
26 the wrongful conduct herein alleged in this County against members of the CALIFORNIA
27 CLASS.

28 ///

1 **THE CONDUCT**

2 16. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFFS for off-the-clock work, failed to pay PLAINTIFFS
9 and other members of the CALIFORNIA CLASS sick pay wages, failed to reimburse
10 PLAINTIFFS and the members of the CALIFORNIA CLASS for required expenses and failed
11 to issue to PLAINTIFFS, and the members of the CALIFORNIA CLASS with accurate itemized
12 wage statements showing, among other things, all applicable hourly rates in effect during the pay
13 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
14 uniform policies and practices are intended to purposefully avoid the accurate and full payment
15 for all time worked as required by California law which allows DEFENDANTS to illegally profit
16 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
17 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS
18 PERIOD should be adjusted accordingly.

19 **A. Meal Period Violations**

20 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
21 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including
23 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
24 PERIOD, DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS members to work
25 without paying them for all the time they were under DEFENDANTS' control. Specifically, as
26 a result of, among other reasons, PLAINTIFFS' demanding work requirements, and
27 DEFENDANTS' under staffing, from time-to-time, DEFENDANTS required PLAINTIFFS to
28 work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break.

1 Additionally, PLAINTIFFS were from time-to-time interrupted by work assignments while
2 clocked out for what should have been PLAINTIFFS' off-duty meal break. As a result, the
3 PLAINTIFFS and other CALIFORNIA CLASS members forfeited minimum wage and overtime
4 wages by regularly working without their time being accurately recorded and without
5 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
6 policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS members for all
7 time worked is evidenced by DEFENDANTS' business records.

8 18. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
9 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other
10 CALIFORNIA CLASS members were from time-to-time unable to take thirty (30) minute off
11 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
12 other members of the CALIFORNIA CLASS were required from time-to-time to perform work
13 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
14 a meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFFS and
15 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which
16 these employees were required by DEFENDANTS to work ten (10) hours of work from time-to-
17 time. The nature of the work performed by the PLAINTIFFS and the members of the
18 CALIFORNIA CLASS does not qualify for limited and narrowly construed "on-duty" meal
19 period exception. When they were provided with meal periods, PLAINTIFFS and other
20 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises,
21 on duty and/or on call. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore
22 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
23 strict corporate policy and practice.

24 **B. Rest Period Violations**

25 19. From time-to-time during the CLASS PERIOD, PLAINTIFFS and other
26 CALIFORNIA CLASS members were also required from time-to-time to work in excess of four
27 (4) hours without being provided ten (10) minute rest periods as a result of, among other reasons,
28 their rigorous work schedules, and DEFENDANTS' inadequate staffing. Further, for the same

1 reasons these employees were denied their first rest periods of at least ten (10) minutes for some
2 shifts worked of at least two (2) to four (4) hours from time-to-time, a first and second rest period
3 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from
4 time-to-time, and a first, second, and third rest period of at least ten (10) minutes for some shifts
5 worked of ten (10) hours or more from time-to-time. PLAINTIFFS and other CALIFORNIA
6 CLASS members were also not provided with one-hour wages in lieu thereof. When they were
7 provided with rest periods, PLAINTIFFS and other CALIFORNIA CLASS Members were, from
8 time to time, required to remain on the premises, on duty and/or on call. As a result of their
9 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and other
10 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
11 DEFENDANTS and DEFENDANTS' managers.

12 **C. Unreimbursed Business Expenses**

13 20. DEFENDANTS as a matter of corporate policy, practice and procedure,
14 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFFS and
15 the members of the CALIFORNIA CLASS for required business expenses they incurred in direct
16 consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor
17 Code Section 2802, employers are required to indemnify employees for all expenses incurred in
18 the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
19 employer shall indemnify his or her employee for all necessary expenditures or losses incurred
20 by the employee in direct consequence of the discharge of his or her duties, or of his or her
21 obedience to the directions of the employer, even though unlawful, unless the employee, at the
22 time of obeying the directions, believed them to be unlawful."

23 21. From time-to-time during the CLASS PERIOD, PLAINTIFFS and members of the
24 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular
25 phones, as a result of and in furtherance of their job duties as employees for DEFENDANTS.
26 Specifically, Plaintiffs and members of the CALIFORNIA CLASS, used their personal cellular
27 phones to execute their job duties. But for the use of their personal cell phones, PLAINTIFFS
28 and the members of the CALIFORNIA CLASS could not complete their essential job duties.

1 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFFS or the members
2 of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones
3 for DEFENDANTS' benefit. As a result, in the course of their employment with
4 DEFENDANTS, PLAINTIFFS and the members of the CALIFORNIA CLASS incurred
5 unreimbursed business expenses which included, but were not limited to, costs related to the use
6 of their personal cellular, all on behalf of and for the benefit of DEFENDANTS.

7 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

8 22. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed and
9 continue to fail to accurately pay PLAINTIFFS and the other members of the CALIFORNIA
10 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFFS
11 and the other members of the CALIFORNIA CLASS to perform off-the-clock work.
12 Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFFS and other members
13 of the CALIFORNIA CLASS necessary wages for performing work at DEFENDANTS' direction,
14 request and benefit, while off-the clock pre-shift, post-shift, and during meal periods.

15 23. During the CLASS PERIOD, from time-to-time DEFENDANTS required
16 PLAINTIFFS and other members of the CALIFORNIA CLASS to perform pre-shift work,
17 including but not limited to, cleaning a patient's home and preparing food for the patient before
18 clocking in to start her shift. Further, as discussed *supra*, PLAINTIFFS and other members of the
19 CALIFORNIA CLASS were from time to time interrupted with work assignments during their off-
20 duty meal periods without additional compensation from DEFENDANTS.

21 24. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to properly
22 compute commission wages, shift differential wages, and other non-base hourly wages earned by
23 PLAINTIFFS and other members of the CALIFORNIA CLASS into their regular rate of pay for
24 purposes of paying them meal and rest period premiums, overtime wages, and sick pay at the correct
25 rates, in violation of Labor Code §§ 226.7, 510, 512, 558 and 1194. DEFENDANTS failed to
26 properly blend commission wages, shift differential wages, and other non-base hourly wages and
27 instead paid PLAINTIFFS and other members of the CALIFORNIA CLASS meal and rest period
28 premiums, overtime wages, and sick pay based only on the base hourly rate of pay, thus depriving

1 them of all meal and rest period premiums, overtime wages, and sick pay earned. This violates Labor
2 Code §§ 226.7, 510, 512, 558 and 1194.

3 25. DEFENDANTS directed and directly benefited from the uncompensated off-the-
4 clock work performed by PLAINTIFFS and the other members of the CALIFORNIA CLASS.

5 26. DEFENDANTS controlled the work schedules, duties, protocols, applications,
6 assignments and employment conditions of PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS.

8 27. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
10 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed, including off-the-clock work.

12 28. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-
13 exempt employees, subject to the requirements of the California Labor Code.

14 29. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
15 members of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the
16 off-the-clock work activities and their required meal periods. Because PLAINTIFFS and the other
17 members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more
18 than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
19 pay.

20 30. DEFENDANTS knew or should have known that PLAINTIFFS and the other
21 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

22 31. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
23 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for
24 the time spent working off-the-clock pre-shift, and during meal periods. DEFENDANTS' uniform
25 policy and practice to not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages
26 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
27 records.

28 ///

1 **E. Split-Shift Premium and Overtime Violations**

2 32. During the CLASS PERIOD, DEFENDANT also systematically failed to record and
3 pay PLAINTIFFS and CALIFORNIA CLASS Members the correct amount of wages due for split-
4 shift premiums. The applicable Industrial Welfare Commission Wage Orders define a “split-shift”
5 as a “work schedule, which is interrupted by non-paid, non-working, periods established by the
6 employer, other than bona fide rest or meal periods.” The Industrial Welfare Commission Wage
7 Orders further provide, “When an employee works a split shift, one (1) hour’s pay at the minimum
8 wage shall be paid in addition to the minimum wage for that workday, except when the employee
9 resides at the place of employment.” DEFENDANT, from time-to-time, required PLAINTIFFS and
10 CLASS Members to work split-shifts throughout the CLASS PERIOD, but intentionally and
11 unlawfully failed to pay PLAINTIFFS and the CLASS Members split-shift premium wages and
12 failed to pay PLAINTIFFS and CLASS Members the correct overtime compensation for hours
13 worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result, PLAINTIFFS
14 and the CLASS Members were underpaid during their employment with DEFENDANT.

15 **F. Sick Pay Violations**

16 33. During the CLASS PERIOD, DEFENDANT also systematically failed to pay
17 PLAINTIFFS and CALIFORNIA CLASS Members sick pay wages, as required by the California
18 Healthy Workplaces/Healthy Families Act of 2014 (the “Act”), codified at California Labor Code
19 § 246(d). Pursuant to the Act, at a minimum, employers must provide employees with 24 hours or
20 three days of accrued sick leave for each year of employment. DEFENDANT failed to provide any
21 paid sick leave, in violation of the Act, resulting in a failure to pay all wages due.

22 **G. Wage Statement Violations**

23 34. California Labor Code Section 226 requires an employer to furnish its employees
24 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
25 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
26 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
27 the employee and only the last four digits of the employee’s social security number or an employee
28 identification number other than a social security number, (8) the name and address of the legal

entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

35. From time-to-time during the CLASS PERIOD, when PLAINTIFFS and other CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

36. In addition to the violations described above, DEFENDANTS, from time-to-time, failed to provide PLAINTIFFS and the CALIFORNIA CLASS members with wage statements that comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

37. DEFENDANTS also failed to timely pay PLAINTIFFS and the CALIFORNIA CLASS members in compliance of Cal. Lab. Code §204. DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

CLASS ACTION ALLEGATIONS

38. PLAINTIFFS bring the First through Eighth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS, defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court ("CLASS PERIOD").

39. PLAINTIFFS and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid sick pay, unpaid meal and rest

1 period premiums, illegal meal and rest period policies, failure to separately compensate rest
2 periods, failure to separately compensate, failure to provide accurate itemized wage statements,
3 failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs,
4 and expenses.

5 40. The members of the class are so numerous that joinder of all class members is
6 impractical.

7 41. Common questions of law and fact regarding DEFENDANTS' conduct, including
8 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide
9 legally compliant meal and rest periods, failing to reimburse business expenses, failure to provide
10 accurate itemized wage statements accurate, and failure ensure they are paid at least minimum
11 wage and split shift premiums and overtime, exist as to all members of the class and predominate
12 over any questions affecting solely any individual members of the class. Among the questions of
13 law and fact common to the class are:

14 a. Whether DEFENDANTS maintained legally compliant meal
15 period policies and practices;

16 b. Whether DEFENDANTS maintained legally compliant rest
17 period policies and practices;

18 c. Whether DEFENDANTS failed to pay PLAINTIFFS and the
19 CALIFORNIA CLASS members accurate premium payments for
20 missed meal and rest periods;

21 d. Whether DEFENDANTS failed to pay PLAINTIFFS and the
22 CALIFORNIA CLASS members accurate overtime wages and sick
23 pay;

24 e. Whether DEFENDANTS failed to pay PLAINTIFFS and the
25 CALIFORNIA CLASS members at least minimum wage for all hours
26 worked;

27 f. Whether DEFENDANTS failed to pay PLAINTIFFS and the
28 CALIFORNIA CLASS members sick pay wages;

1 g. Whether DEFENDANTS reimbursed PLAINTIFFS and the
2 CALIFORNIA CLASS members for required business expenses;

3 h. Whether DEFENDANTS issued legally compliant wage
4 statements;

5 i. Whether DEFENDANTS committed an act of unfair
6 competition by systematically failing to record and pay PLAINTIFFS
7 and the other members of the CALIFORNIA CLASS for all time
8 worked;

9 j. Whether DEFENDANTS committed an act of unfair
10 competition by systematically failing to record all meal and rest
11 breaks missed by PLAINTIFFS and other CALIFORNIA CLASS
12 members, even though DEFENDANTS enjoyed the benefit of this
13 work, required employees to perform this work and permits or suffers
14 to permit this work;

15 k. Whether DEFENDANTS committed an act of unfair
16 competition in violation of the UCL, by failing to provide the
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS
18 with the legally required meal and rest periods.

19 42. PLAINTIFFS is a member of the CALIFORNIA CLASS and suffered damages as
20 a result of DEFENDANTS' conduct and actions alleged herein.

21 43. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have
22 the same interests as the other members of the class.

23 44. PLAINTIFFS will fairly and adequately represent and protect the interests of the
24 CALIFORNIA CLASS members.

25 45. PLAINTIFFS retained able class counsel with extensive experience in class action
26 litigation.

27 46. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
28 interests of the other CALIFORNIA CLASS members.

1 47. There is a strong community of interest among PLAINTIFFS and the members of
2 the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
3 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
4 sustained;

5 48. The questions of law and fact common to the CALIFORNIA CLASS members
6 predominate over any questions affecting only individual members, including legal and factual
7 issues relating to liability and damages.

8 49. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy because joinder of all class members is impractical. Moreover,
10 since the damages suffered by individual members of the class may be relatively small, the expense
11 and burden of individual litigation makes it practically impossible for the members of the class
12 individually to redress the wrongs done to them. Without class certification and determination of
13 declaratory, injunctive, statutory and other legal questions within the class format, prosecution of
14 separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

15 a. Inconsistent or varying adjudications with respect to individual members of the
16 CALIFORNIA CLASS which would establish incompatible standards of conduct
17 for the parties opposing the CALIFORNIA CLASS; and/or,

18 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
19 which would as a practical matter be dispositive of the interests of the other
20 members not party to the adjudication or substantially impair or impeded their
21 ability to protect their interests.

22 50. Class treatment provides manageable judicial treatment calculated to bring an
23 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
24 conduct of DEFENDANTS.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 51. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 52. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 53. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
13 as follows:

14 Any person who engages, has engaged, or proposes to engage in
15 unfair competition may be enjoined in any court of competent
16 jurisdiction. The court may make such orders or judgments,
17 including the appointment of a receiver, as may be necessary to
18 prevent the use or employment by any person of any practice which
19 constitutes unfair competition, as defined in this chapter, or as may
20 be necessary to restore to any person in interest any money or
21 property, real or personal, which may have been acquired by means
22 of such unfair competition.

23 Cal. Bus. & Prof. Code § 17203.

24 54. By reason of this uniform conduct applicable to PLAINTIFFS and all
25 CALIFORNIA CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of
26 unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code
27 §§ 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which
28 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the

1 California Code of Regulations and the California Labor Code including Sections 201, 202, 203,
2 204 *et seq.*, 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1182.12, 1194, 1194.2,
3 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other equitable relief
4 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
5 held to constitute unfair competition, including restitution of wages wrongfully withheld.

6 55. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
7 in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
8 substantially injurious to employees, and were without valid justification or utility for which this
9 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
10 Business & Professions Code, including restitution of wages wrongfully withheld.

11 56. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
12 fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the
13 legally mandated meal and rest periods, the required accurate amount of compensation for missed
14 meal and rest periods, split shift premiums, overtime and minimum wages owed, provide accurate
15 itemized wage statements, due to a systematic business practice that cannot be justified, pursuant
16 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
17 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
18 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
19 withheld.

20 57. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
21 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANTS.

24 58. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
25 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to,
26 *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of
27 compensation for missed meal and rest periods, overtime and minimum wages owed, provide
28 accurate itemized wage statements, to PLAINTIFFS and the other members of the CALIFORNIA

1 CLASS as required by Cal. Labor Code.

2 59. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
3 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
4 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
5 workday in which a second off-duty meal period was not timely provided for each ten (10) hours
6 of work.

7 60. PLAINTIFFS further demand on behalf of themselves and on behalf of each
8 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty paid
9 rest period was not timely provided as required by law.

10 61. PLAINTIFFS further demands on all wages due to PLAINTIFFS and the members
11 of the CALIFORNIA CLASS as a result of working while off the clock on meal periods,
12 inaccurately calculated overtime and missed meal and rest periods premiums.

13 62. By and through the unlawful and unfair business practices described herein,
14 DEFENDANTS has obtained valuable property, money and services from PLAINTIFFS and the
15 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and
16 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
17 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
18 to unfairly compete against competitors who comply with the law.

19 63. All the acts described herein as violations of, among other things, the Industrial
20 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
21 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
22 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
23 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

24 64. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to,
25 and do, seek such relief as may be necessary to restore to them the money and property which
26 DEFENDANTS has acquired, or of which PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
28 business practices, including earned but unpaid wages for all overtime worked.

1 65. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and
3 deceptive, and that injunctive relief should be issued restraining DEFENDANTS from engaging in
4 any unlawful and unfair business practices in the future.

5 66. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
6 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
7 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
8 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
9 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
10 and economic harm unless DEFENDANTS is restrained from continuing to engage in these
11 unlawful and unfair business practices.

12 **SECOND CAUSE OF ACTION**

13 **For Failure to Pay Overtime Compensation**

14 **[Cal. Lab. Code §§ 510, *et seq.*]**

15 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

16 67. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
18 Complaint.

19 68. PLAINTIFFS and the other members of the CALIFORNIA CLASS for the period
20 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring
21 a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and
22 the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these
23 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
24 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

25 69. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
26 policy, an employer must timely pay its employees for all hours worked.

27 70. Cal. Lab. Code § 510 further provides that employees in California shall not be
28 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek

1 unless they receive additional compensation beyond their regular wages in amounts specified by
2 law.

3 71. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
4 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
5 Code § 1198 further states that the employment of an employee for longer hours than those fixed
6 by the Industrial Welfare Commission is unlawful.

7 72. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS members
8 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
9 they worked or were not accurately compensated for all overtime hours worked.

10 73. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
12 a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFFS
13 and other CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFFS
14 and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime
15 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
16 and/or forty (40) hours in any workweek.

17 74. In committing these violations of the California Labor Code, DEFENDANTS
18 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
19 consequently underpaid the actual time worked by PLAINTIFFS and other members of the
20 CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all
21 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
22 Commission requirements and other applicable laws and regulations.

23 75. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
25 compensation for all overtime worked.

26 76. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
27 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
28 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and the other

1 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
2 that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFFS
3 bring this Action on behalf of themselves and the CALIFORNIA CLASS based on
4 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
5 California.

6 77. During the CLASS PERIOD, PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
8 failure to pay all earned wages.

9 78. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
10 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
11 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
12 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to work,
13 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay
14 using the applicable overtime rate as evidenced by DEFENDANTS' business records and
15 witnessed by employees.

16 79. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
17 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
18 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
19 suffered and will continue to suffer an economic injury in amounts which are presently unknown
20 to them and which will be ascertained according to proof at trial.

21 80. DEFENDANTS knew or should have known that PLAINTIFFS and the other
22 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
23 DEFENDANTS systematically elected, either through intentional malfeasance or gross
24 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
25 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked.

27 81. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

1 and provide them with the requisite overtime compensation, DEFENDANTS acted and continues
2 to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of
3 the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of
6 these employees.

7 82. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
8 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
9 statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a
10 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
11 overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have
12 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
13 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
14 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members.
15 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,
16 PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to seek and recover statutory
17 costs.

18 **THIRD CAUSE OF ACTION**

19 **For Failure to Pay Minimum Wages**

20 **[Cal. Lab. Code §§ 1194, 1194.2, 1197 and 1197.1]**

21 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

22 83. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 84. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
26 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
27 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record,
28 calculate and pay minimum and reporting time wages to PLAINTIFFS and CALIFORNIA CLASS

1 members during the CLASS PERIOD.

2 85. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
3 policy, an employer must timely pay its employees for all hours worked.

4 86. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
5 commission is the minimum wage to be paid to employees, and the payment of a less wage than
6 the minimum so fixed is unlawful.

7 87. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
8 including minimum wage compensation and interest thereon, together with the costs of suit.

9 88. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFFS and the
10 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
11 work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required
12 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty
13 meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy
14 and practice was to unlawfully and intentionally deny timely payment of wages due to
15 PLAINTIFFS and the other members of the CALIFORNIA CLASS.

16 89. DEFENDANTS failed to properly compute commission wages, shift differential
17 wages, and other non-base hourly wages earned by PLAINTIFFS and other members of the
18 CALIFORNIA CLASS into their regular rate of pay for purposes of paying them meal and rest
19 period premiums, overtime wages, and sick pay at the correct rates, in violation of Labor Code §§
20 226.7, 510, 512, 558 and 1194. DEFENDANTS failed to properly blend commission wages, shift
21 differential wages, and other non-base hourly wages and instead paid PLAINTIFFS and other
22 members of the CALIFORNIA CLASS meal and rest period premiums, overtime wages, and sick
23 pay based only on the base hourly rate of pay, thus depriving them of all meal and rest period
24 premiums, overtime wages, and sick pay earned. This violates Labor Code §§ 226.7, 510, 512, 558
25 and 1194.

26 90. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
28 a uniform policy and practice that denies accurate compensation to PLAINTIFFS and the other

1 members of the CALIFORNIA CLASS in regard to minimum wage pay.

2 91. In committing these violations of the California Labor Code, DEFENDANTS
3 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
4 by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an
5 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
6 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
7 and regulations.

8 92. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
9 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
10 minimum wage compensation for their time worked for DEFENDANTS.

11 93. During the CLASS PERIOD, PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
13 failure to pay all earned wages.

14 94. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
15 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
16 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
17 suffered and will continue to suffer an economic injury in amounts which are presently unknown
18 to them and which will be ascertained according to proof at trial.

19 95. DEFENDANTS knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA CLASS were under compensated for their time worked.
21 DEFENDANTS systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
23 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages
25 for their time worked.

26 96. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
28 and provide them with the requisite compensation, DEFENDANTS acted and continues to act

1 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
3 consequences to them, and with the despicable intent of depriving them of their property and legal
4 rights, and otherwise causing them injury in order to increase company profits at the expense of
5 these employees.

6 97. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
7 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
8 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
9 California Labor Code and/or other applicable statutes. To the extent minimum wage
10 compensation is determined to be owed to the CALIFORNIA CLASS members who have
11 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
12 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
13 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members.
14 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,
15 PLAINTIFFS and other CALIFORNIA CLASS members are entitled to seek and recover statutory
16 costs.

17 98. Pursuant to Labor Code § 1194.2, PLAINTIFFS and CALIFORNIA CLASS are
18 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
19 interest thereon.

20 **FOURTH CAUSE OF ACTION**

21 **For Failure to Pay Sick Pay Wages**

22 **[Cal. Lab. Code § 246]**

23 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

24 99. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 100. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to pay
28 PLAINTIFFS and CALIFORNIA CLASS Members sick pay wages, as required by the California

1 Healthy Workplaces/Healthy Families Act of 2014 (the “Act”), codified at California Labor Code
2 § 246(d). Pursuant to the Act, at a minimum, employers must provide employees with 24 hours or
3 three days of accrued sick leave for each year of employment. DEFENDANT failed to provide
4 any paid sick leave, in violation of the Act, resulting in a failure to pay all wages due.

5 101. As a proximate result of the aforementioned violations, PLAINTIFFS and
6 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial, and
7 seek all wages earned and due, interest, penalties, expenses and costs of suit.

8 **FIFTH CAUSE OF ACTION**

9 **For Failure to Provide Required Meal Periods**

10 **[Cal. Lab. Code §§ 226.7 & 512]**

11 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

12 102. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
14 Complaint.

15 103. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to provide
16 all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA CLASS
17 members as required by the applicable Wage Order and Labor Code. The nature of the work
18 performed by PLAINTIFFS and CALIFORNIA CLASS members did not prevent these employees
19 from being relieved of all of their duties for the legally required off-duty meal periods. As a result
20 of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS members were
21 from time-to-time not fully relieved of duty by DEFENDANTS for their meal periods.
22 Additionally, DEFENDANTS’ failure to provide PLAINTIFFS and the CALIFORNIA CLASS
23 members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
24 DEFENDANTS’ business records from time-to-time. Further, DEFENDANTS failed to provide
25 PLAINTIFFS and CALIFORNIA CLASS members with a second off-duty meal period in some
26 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of
27 work. As a result, PLAINTIFFS and other members of the CALIFORNIA CLASS therefore
28 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’

1 strict corporate policy and practice.

2 104. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable
3 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS members
4 who were not provided a meal period, in accordance with the applicable Wage Order, one
5 additional hour of compensation at each employee's regular rate of compensation for each workday
6 that a meal period was not provided.

7 105. As a proximate result of the aforementioned violations, PLAINTIFFS and
8 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial, and
9 seek all wages earned and due, interest, penalties, expenses and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 **For Failure to Provide Required Rest Periods**

12 **[Cal. Lab. Code §§ 226.7 & 512]**

13 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

14 106. PLAINTIFFS, and other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 107. During the CLASS PERIOD, PLAINTIFFS and other members of the
18 CALIFORNIA CLASS were from time-to-time required to work in excess of four (4) hours without
19 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
20 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
21 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
22 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
23 shifts worked of ten (10) hours or more from time-to-time. PLAINTIFFS and other members of
24 the CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result
25 of their rigorous work schedules, PLAINTIFFS and other members of the CALIFORNIA CLASS
26 were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
27 managers.

28 108. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFFS and other members of the CALIFORNIA
2 CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one
3 additional hour of compensation at each employee's regular rate of compensation for each workday
4 that rest period was not provided.

5 109. As a proximate result of the aforementioned violations, PLAINTIFFS and other
6 members of the CALIFORNIA CLASS have been damaged in an amount according to proof at
7 trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

8 **SEVENTH CAUSE OF ACTION**

9 **For Failure to Reimburse Employees for Required Expenses**

10 **[Cal. Lab. Code §§ 2800 and 2802, and the Applicable IWC Wage Order § 9]**

11 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

12 110. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
14 Complaint.

15 111. Cal. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
16 indemnify his employee for losses caused by the employer's want of ordinary care."

17 112. Cal. Lab. Code § 2802 provides, in relevant part, that:

18 An employer shall indemnify his or her employee for all necessary expenditures or losses
19 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
20 her obedience to the directions of the employer, even though unlawful, unless the employee, at the
21 time of obeying the directions, believed them to be unlawful.

22 113. Further, Cal. Labor Code §2902 additionally provides, in pertinent part: "(c) ... the
23 term 'necessary expenditures or losses' shall include all reasonable costs, including but not limited
24 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

25 114. The Applicable IWC Wage Order §9 provides that "When tools or equipment are
26 required by the employer or are necessary to the performance of a job, such tools and equipment
27 shall be provided and maintained by the employer..."

28 115. California Labor Code section 2804 mandates that this statutory right cannot be

1 waived.

2 116. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
3 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
4 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
5 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the members of
6 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
7 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
8 Specifically, PLAINTIFFS and the members of the CALIFORNIA CLASS were required by
9 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
10 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
11 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
12 their personal cellular phones for DEFENDANTS within the course and scope of their employment
13 for DEFENDANTS. These expenses were necessary to complete their principal job duties.
14 DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
15 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the
16 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
17 PLAINTIFFS and the members of the CALIFORNIA CLASS for these expenses as an employer
18 is required to do under the laws and regulations of California.

19 117. PLAINTIFFS therefore demands reimbursement on behalf of the members of the
20 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on
21 behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at
22 the statutory rate and costs under Cal. Lab. Code § 2802.

23 **EIGHTH CAUSE OF ACTION**

24 **For Failure to Provide Accurate Itemized Statements**

25 **[Cal. Lab. Code §§ 226 and 226.2]**

26 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

27 118. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
28 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 119. Cal. Labor Code § 226 provides that an employer must furnish employees with an
3 “accurate itemized” statement in writing showing:

- 4 1. Gross wages earned;
- 5 2. Total hours worked by the employee, except for any employee
6 whose compensation is solely based on a salary and who is exempt
7 from payment of overtime under subdivision (a) of Section 515 or any
8 applicable order of the Industrial Welfare Commission;
- 9 3. The number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis;
- 11 4. All deductions, provided that all deductions made on written
12 orders of the employee may be aggregated and shown as one item;
- 13 5. Net wages earned;
- 14 6. The inclusive dates of the period for which the employee is
15 paid;
- 16 7. The name of the employee and his or her social security
17 number, except that by January 1, 2008, only the last four digits of his
18 or her social security number or an employee identification number
19 other than a social security number may be shown on the itemized
20 statement;
- 21 8. The name and address of the legal entity that is the employer;
22 and
- 23 9. All applicable hourly rates in effect during the pay period and
24 the corresponding number of hours worked at each hourly rate by the
25 employee.

26 120. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFFS
27 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
28 which failed to accurately show, among other things, (1) total number of hours worked, (2) net

1 wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee in
3 violation of California Labor Code Section 226.

4 121. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code
5 § 226, causing injury and damages to the PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS may
7 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
8 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
9 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
10 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more
11 than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
12 CALIFORNIA CLASS herein.

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN DUE**

15 **(Cal Lab. Code §§ 201, 202, 203, and 204)**

16 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 122. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 123. Cal. Lab. Code § 200 provides that:

21 As used in this article: (a) "Wages" includes all amounts for
22 labor performed by employees of every description, whether
23 the amount is fixed or ascertained by the standard of time,
24 task, piece, Commission basis, or other method of calculation.
25 (b) "Labor" includes labor, work, or service whether rendered
26 or performed under contract, subcontract, partnership, station
27 plan, or other agreement if the labor to be paid for is
28 performed personally by the person demanding payment.

1 124. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

3 125. Cal. Lab. Code § 202 provides, in relevant part, that:

4 If an employee not having a written contract for a definite
5 period quits his or her employment, his or her wages shall
6 become due and payable not later than 72 hours thereafter,
7 unless the employee has given 72 hours previous notice of his
8 or her intention to quit, in which case the employee is entitled
9 to his or her wages at the time of quitting. Notwithstanding
10 any other provision of law, an employee who quits without
11 providing a 72-hour notice shall be entitled to receive payment
12 by mail if he or she so requests and designates a mailing
13 address. The date of the mailing shall constitute the date of
14 payment for purposes of the requirement to provide payment
15 within 72 hours of the notice of quitting.

16 126. There was no definite term in PLAINTIFFS’ or any CALIFORNIA CLASS
17 Members’ employment contract.

18 127. Cal. Lab. Code § 203 provides:

19 If an employer willfully fails to pay, without abatement or
20 reduction, in accordance with Sections 201, 201.5, 202, and
21 205.5, any wages of an employee who is discharged or who
22 quits, the wages of the employee shall continue as a penalty
23 from the due date thereof at the same rate until paid or until an
24 action therefor is commenced; but the wages shall not
25 continue for more than 30 days.

26 128. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members
27 terminated, and DEFENDANTS has not tendered payment of wages, to these employees who
28 missed meal and rest breaks, as required by law.

1 129. Cal. Lab. Code § 204 provides in part:

2 All wages, ...earned by any person in any employment are due and payable
3 twice during each calendar month, on days designated in advance by the
4 employer as the regular paydays.

5 130. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
6 members of the CALIFORNIA CLASS whose employment has, PLAINTIFFS demands up to
7 thirty days of pay as penalty for not paying all wages due at time of termination for all employees
8 who terminated employment during the CLASS PERIOD, and demands an accounting and
9 payment of all wages due, plus interest and statutory costs as allowed by law.

10 **TENTH CAUSE OF ACTION**

11 **For Violation of the Private Attorneys General Act**

12 **[Cal. Lab . Code §§ 2698 ET SEQ. ("PAGA")]**

13 **(By PLAINTIFFS and Against All DEFENDANTS)**

14 131. PLAINTIFFS hereby re-allege and incorporate by reference the previous
15 paragraphs as though fully set forth herein.

16 132. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
18 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
21 of "deputizing" citizens as private attorney generals to enforce the Labor Code. In enacting PAGA,
22 the California Legislature specified that "it was ... in the public interest to allow aggrieved
23 employees, acting as private attorneys general to recover civil penalties for Labor Code
24 violations..."Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

25 133. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
28 violation of the Labor Code may, as an alternative, be recovered through civil action brought by

1 an aggrieved employee on behalf of himself or herself and other current or former employees
2 pursuant to the procedures specified in Labor Code § 2699.3.

3 134. For all provisions of the Labor Code except those for which a civil penalty is
4 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
5 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
6 dollars (\$200) for each aggrieved employee per pay period for each subsequent pay period in
7 which Defendants violated these provisions of the Labor Code.

8 135. Defendants' conduct violates numerous Wage Orders and Labor Code sections
9 including, but not limited to, the following:

- 10 c. Violation of Labor Code § 201, 202, 203, 204, 210, 221, 226, 226(a), 226.2, 226.3,
11 226.7, 227.3, 246, 510, 512, 1182.12, 1194, 1197, 1198, 2802, 2698 for failure to
12 timely pay all earned wages (including, but not limited to, sick pay wages,
13 minimum wages, and overtime wages) owed to Plaintiff and other aggrieved
14 employees during employment and upon separation of employment as herein
15 alleged;
- 16 d. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
17 Plaintiff and other aggrieved employees failure to pay premium wages for missed
18 meal periods and herein alleged;
- 19 e. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
20 other aggrieved employees and failure to pay premium wages for missed rest
21 periods as herein alleged;
- 22 f. Violation of Labor Code § 226 for failure to provide accurate itemized wage
23 statements to Plaintiff and other aggrieved employees as herein alleged;
- 24 g. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
25 complete records showing, among other things, the hours worked daily by and
26 the wages paid to aggrieved employees; and
- 27 h. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and
28 other aggrieved employees as herein alleged.

1 i. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§
2 226.3 and 558.

3 136. PLAINTIFFS are “AGGRIEVED EMPLOYEE” because they were employed by
4 the alleged violator and had one or more of the violations committed against them, and therefore
5 is properly suited to represent the interest of all the other AGGRIEVED EMPLOYEES.

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

8 138. Both PLAINTIFFS have exhausted the procedural requirements under Labor Code
9 § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of
10 themselves and all other aggrieved employees under PAGA.

11 139. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, PLAINTIFFS are entitled
12 to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
13 cited above.

14 140. For bringing this action, PLAINTIFFS are entitled to attorney’s fees and costs
15 incurred herein.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFFS, on their own behalf and on behalf of all other similarly
18 situated, prays for judgment against each DEFENDANTS, jointly and severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

20 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh,
21 Eighth, Ninth, and Tenth by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of
22 Civ. Proc. § 382;

23 B) An order temporarily, preliminarily and permanently enjoining and restraining
24 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

25 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully
26 withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
27 CLASS;
28

1 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFFS and to
3 the other members of the CALIFORNIA CLASS; and,

4 E) Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation due PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest
7 thereon at the statutory rate;

8 F) For economic and/or special damages in an amount according to proof with interest
9 thereon;

10 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
11 which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
12 CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
13 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

14 H) Meal and rest period compensation pursuant to California Labor Code Sections
15 226.7, 512 and the applicable IWC Wage Order; and

16 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197.

18 J) For Statutory penalties to the extent permitted by law, including those pursuant to
19 the Labor Code and IWC Wage Orders;

20 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

21 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
22 General Act of 2004; and

23 b. An Award of penalties, attorneys' fees and costs of suit, as allowable under the law.

24 3. On all claims:

25 A) An award of interest, including prejudgment interest at the legal rate;

26 B) Such other and further relief as the Court deems just and equitable; and,

27 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
28 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

1 D) For prejudgment and post judgment interest on each of the foregoing at the legal
2 rate from the date the obligation became due through the date of judgment in this matter.

3 E) For any other relief that is just and proper.

4 Dated: October 10, 2023

5 **GAINES & GAINES, APLC**

6
7 By _____

8 Daniel F. Gaines, Esq.
9 Attorneys for Plaintiffs

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby demand a trial by jury in this action.

12 Dated: October 10, 2023

13 **GAINES & GAINES, APLC**

14
15 By _____

16 Daniel F. Gaines, Esq.
17 Attorneys for Plaintiffs