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

DAVID FERGONISE, on behalf of himself
and on behalf of all similarly situated
individuals,

Plaintiff,

v.

TRI-ROTOR, L.L.C., an Arizona limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: ECU002469

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: July 7, 2022

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 Plaintiff David Fergonise (“Fergonise” or “Plaintiff” or “Class
4 Representative”), individually and on behalf of all others similarly situated, and Defendant Tri-
5 Rotor, L.L.C. (“Defendant”), subject to the terms and conditions herein and the Court’s approval.

6 **A. Definitions.**

7 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
8 referred to herein as “the Parties.”

9 2. Daniel F. Gaines, Alex P. Katofsky and Evan S. Gaines of Gaines & Gaines, APLC
10 are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines &
11 Gaines, APLC shall be designated as “Class Counsel.”

12 3. The “Action” means the case entitled *David Fergonise, Plaintiff, v. Tri-Rotor,*
13 *L.L.C., an Arizona limited liability company, and Does 1 Through 10, Inclusive, Defendants,* Case
14 No. ECU002469, pending before the Superior Court of the State of California for the County of
15 Imperial.

16 4. The “Settlement Class” shall be defined as “all non-exempt employees employed
17 by Defendant in California at any time between July 7, 2018 and January 14, 2023 (the “Class
18 Period”). Defendant represents that this Class contains no more than 14 members who worked no
19 more than 350 workweeks during the Class Period.

20 5. Members of the Settlement Class shall collectively be referred to as a “Class
21 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
22 detailed below, will be excluded from the final Settlement Class.

23 The “Aggrieved Employees” are “all non-exempt employees employed by Defendant in
24 California at any time between November 17, 2021 and January 14, 2023 (the “PAGA Period”).
25 All Aggrieved Employees shall be bound by the release of PAGA claims herein, whether or not
26 they opt out of the class settlement.

1 **B. General.**

2 1. On or about July 7, 2022, Plaintiff initiated the Action by filing a class action
3 complaint, on behalf of himself and all other putative class members. Plaintiff asserts class claims
4 for violations of Labor Code sections 201-202, 226(a), 226.3, 226.7, 510, 512, 1194, and 2802 and
5 the Business and & Professions Code related to the Labor Code violations set forth above.

6 2. On November 15, 2022, following their exchange of information regarding the
7 Settlement Class and the claims and defenses asserted by the Parties, counsel for the Parties
8 engaged in arm's-length negotiations with the help of mediator Brandon McKelvey, Esq., to reach
9 the basic terms of this Settlement.

10 3. On November 17, 2022, Plaintiff filed a letter with the Labor & Workforce
11 Development Agency ("LWDA") asserting the violation of the Private Attorneys General Act,
12 Labor Code section 2698 *et seq.*, "PAGA") based on Defendant's alleged failure to pay all wages
13 due, failure to provide meal and rest periods or premium wages in lieu thereof, failure to issue
14 accurate wage statements, failure to reimburse expenses, and failure to timely pay wages, including
15 vacation wages, at separation of employment, premised on the violation of Labor Code sections
16 201-202, 226(a), 226.3, 226.7, 510, 512, 1194, and 2802. As part of Plaintiff's Motion for
17 Preliminary Approval, and no earlier than sixty-five days following the date of the LWDA letter,
18 Plaintiff will seek to file a First Amended Complaint in the form attached hereto as Exhibit 3, which
19 adds a cause of action pursuant to PAGA (the "First Amended Complaint").

20 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
21 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
22 purpose other than this settlement. Defendant contends that it has complied at all times with the
23 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
24 certification would be inappropriate because the case fails to meet numerosity requirements,
25 Plaintiff is not an adequate class representative, Plaintiff's claims are not typical of putative class
26 members, and individual issues predominate over class issues. Similarly, on the PAGA cause of
27 action, Defendant's position is that Plaintiff is not an "aggrieved employee" and is not a proper
28 representative to bring a PAGA cause of action. The Action, the negotiation and execution of this

1 Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance
2 of the Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on
3 behalf of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in
4 any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be,
5 and may not be used as, an admission or evidence of the appropriateness of these or similar claims
6 for class certification in the Action or with respect to any other proceeding. If the First Amended
7 Complaint is not authorized to be filed before or at the time when the Court grants preliminary
8 approval of this Settlement, Defendant has the right to withdraw from the settlement. If Defendant
9 so withdraws, the Parties will return to the same position that they were in prior to mediation and
10 the First Amended Complaint will be deemed withdrawn. The Parties also agree that in the event
11 the Court does not grant final approval of the Settlement, the First Amended Complaint shall be
12 deemed withdrawn. The parties further agree that Defendant does not waive any defense to the First
13 Amended Complaint and the PAGA claim contained therein. The parties further acknowledge that
14 the filing of the First Amended Complaint is for settlement purposes only.

15 5. The Class Representative contends that Defendant violated the California Labor
16 Code and that this case is appropriate for class certification.

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

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

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

11 **C. Terms of Settlement.**

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

13 (a) **Gross Settlement Amount:** The Parties agree to settle this Action for
14 Defendant's payment of the Gross Settlement Amount of Eighty-Five Thousand Fifty U.S. Dollars
15 (\$85,000.00) ("the Gross Settlement Amount"). The Gross Settlement Amount includes payments
16 to the class, payments to Aggrieved Employees, the attorneys' fees of Class Counsel, litigation
17 costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as
18 well as such fees and costs to be incurred in documenting the settlement, providing any notices
19 required as part of the settlement, securing Court approval of the settlement, and obtaining
20 judgment in the Action), the enhancement payment to the Class Representative, as approved by the
21 Court, a PAGA payment to the State of California, and all costs of administration, including,
22 without limitation, settlement administration fees and expenses. Defendant shall pay all employer
23 payroll tax obligations due on wage payments made from the Net Settlement Sum in addition to,
24 and separate and apart from, the Gross Settlement Amount.

25 (b) **Net Settlement Sum:** "Net Settlement Sum" is defined as the Gross
26 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
27 documented litigation costs and expenses incurred or advanced by Class Counsel, the enhancement
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1 payment to the Class Representative, the PAGA payments to the LWDA and the Aggrieved
2 Employees, and the costs of administering the settlement.

3 (c) **Calculation of the Individual Class Settlement Payments:** “Individual
4 Settlement Payments” means the portion of the Net Settlement Sum distributable to each Class
5 Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion
6 form). The Individual Settlement Payments will be calculated by dividing the Net Settlement Sum
7 by the total weeks worked by all participating Class Members in California in a non-exempt
8 position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall
9 be multiplied by the number of weeks each individual participating Class Member worked for
10 Defendant in California in a non-exempt position during the Class Period to yield their Individual
11 Class Payment Amount. Each Participating Settlement Class Member who does not opt out will
12 receive an Individual Class Payment Amount.

13 i. For tax purposes, each Individual Class Payment Amount will be
14 apportioned (a) 25% to wages (reported on an IRS Form W-2 and subject to applicable
15 withholdings); (b) 75% to penalties and interest (reported on an IRS Form 1099-MISC). Each
16 Individual PAGA Payment Amount will be apportioned 100% to penalties (reported on an IRS
17 Form 1099-MISC). All Individual Class Settlement Payments paid to Class Members and all
18 Individual PAGA Settlement Payments paid to Aggrieved Employees will be subject to any
19 applicable wage garnishments, liens, or other legally mandated treatment as required by law.

20 (d) **Enhancement Payment to Class Representative:** The amount awarded to
21 the Class Representative as an enhancement payment will be set by the Court in its discretion, not
22 to exceed \$5,000.00. This amount will be deducted from the Gross Settlement Amount. An IRS
23 Form 1099 will be issued to the Class Representative for her enhancement payment. Defendant
24 agrees not to dispute or otherwise object to the enhancement payment if Plaintiff requests \$5,000
25 or less,

26 (e) **Attorneys’ Fees:** An award to Class Counsel of attorneys’ fees will be
27 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
28 the settlement award that has been made available for the Settlement Class by the efforts of Class

1 Counsel. The amount awarded shall not exceed 40% of the Gross Settlement Amount (i.e.
2 \$34,000.00). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
3 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
4 requested by Class Counsel so long as the request does not exceed \$34,000.

5 (f) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
6 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
7 litigation costs and expenses, not to exceed \$10,000. An IRS Form 1099 will be issued to Class
8 Counsel with respect to its award of costs and expenses. Defendant agrees not to dispute or
9 otherwise object to the attorneys' cost award requested by Class Counsel so long as the request
10 does not exceed \$10,000

11 (g) **Settlement Administration Costs:** The fees and other charges of the
12 Settlement Administrator to administer the Settlement are expected to total no more than \$3,500,
13 and will be paid from the Gross Settlement Amount. These fees shall include any costs associated
14 with the required tax reporting on any Individual Settlement Payments, and the issuing of any and
15 all W-2 and 1099 forms. Subject to approval of the Court, the Parties have agreed that Phoenix
16 Settlement Administration, Inc. will serve as a neutral third-party claims' administrator
17 ("Settlement Administrator") to perform all acts related to providing notice to the Settlement Class.
18 Settlement Administrator shall be responsible for (a) printing and distributing the Court-approved
19 Notice of Class Action Settlement ("Class Notice") to all Class Members; (b) administering the
20 settlement; (c) processing exclusions and objections; (d) resolving disputes; (e) distributing the
21 Gross Settlement Amount as directed by the Court and set forth herein; (f) tax reporting; (g)
22 providing necessary weekly status reports; and (h) other duties and responsibilities set forth herein.

23 (h) **PAGA Payment:** The Parties agree that \$4,000 from the Gross Settlement
24 Amount shall be allocated to PAGA penalties. As required by PAGA. 75% of this amount, of
25 \$3,000, shall be paid to the LWDA. The balance, or \$1,000, shall be paid to the Aggrieved
26 Employees, apportioned among them by dividing the \$1,000 by the total weeks worked by all
27 Aggrieved Employees in California in a non-exempt position during the PAGA Period, which will
28 yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each

1 individual Aggrieved Employee worked for Defendant in California in a non-exempt position
2 during the PAGA Period to yield their Individual PAGA Payment Amount. Each Aggrieved
3 Employee, whether they opt out of the class settlement or not, will receive an Individual PAGA
4 Payment Amount.

5 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
6 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
7 makes no representations regarding tax obligations or consequences, if any, related to this
8 Settlement Agreement.

9 **D. Release of Claims.**

10 1. **Participating Class Members:** Upon the Effective Date, and subject to
11 Defendant's full payment of the Gross Settlement Amount and payroll taxes due hereunder,
12 Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully
13 released and discharged Defendant, and each of its present and former officers, directors,
14 members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries,
15 parent companies, related entities, consultants, attorneys, successors or assigns, and any clients or
16 customers who contracted for Defendant's services ("Released Parties") from any and all Released
17 Class Claims which arose during their employment in a non-exempt position in California during
18 the Class Period. "Released Class Claims" are all claims and allegations asserted in the First
19 Amended Complaint, including all claims for unpaid wages, meal and rest period
20 premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time
21 penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7,
22 510, 512, 1194 and 2802, the applicable Industrial Wage Commission Wage Order, and Business
23 and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced
24 above, which arose during employment in a non-exempt position in California during the Class
25 Period.
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2. Each and every Settlement Class Member who has not submitted a timely and valid opt-out request shall be permanently enjoined and forever barred from prosecuting any and all Released Class Claims against the Released Parties.

3. **Aggrieved Employees:** Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and payroll taxes due hereunder, Plaintiff 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. "Released PAGA Claims" are all claims and allegations asserted in the First Amended Complaint under PAGA, including all claims for PAGA civil penalties based on underlying claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and 2802 and the applicable Industrial Wage Commission Wage Order, which arose during employment in a non-exempt position in California during the PAGA Period.

E. Notice and Exclusion Process.

1. Within twenty (20) calendar days after entry of the order granting preliminary approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All information provided to the Settlement Administrator will be marked CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in writing or orally, by the Settlement Administrator. The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of the confidential information. Such information must be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

2. A notice of pendency of class action, proposed settlement and hearing date for Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the Court,

1 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within thirty
2 (30) calendar days after entry of the order granting preliminary approval. Attached to the Class
3 Notice will be a request for exclusion form ("Request for Exclusion Form") in the form attached
4 hereto as Exhibit 2.

5 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
6 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
7 presumed that if an envelope has not been returned within forty-five (45) days of the mailing that
8 the Class Member received the Class Notice. In the event of returned or non-deliverable notices,
9 the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
10 notices.

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

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

23 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
24 to receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
25 Date occurs.

26 7. In order to elect not to participate in the Settlement, a Class Member must submit a
27 Request for Exclusion Form and mail it to the Settlement Administrator no later than forty-five (45)
28 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class

1 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
2 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
3 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
4 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
5 on which the U.S. Postal Service is open.

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

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

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

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

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

10 13. Defendant shall deposit the Gross Settlement Amount, plus all payroll taxes due
11 hereunder, with the Settlement Administrator no later than fourteen (14) calendar days after the
12 Effective Date. The effective date of this Settlement Agreement (“Effective Date”) is the date the
13 Court signs an order granting final approval of the settlement and entering judgment thereon. If
14 objections to the settlement are filed and not withdrawn, the Effective Date of the settlement is the
15 sixty-fifth (65th) day after notice of the final approval order is mailed, unless an appeal is filed, in
16 which case the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals,
17 or (b) all appeals are dismissed.

18 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
19 ten (10) calendar days after its receipt thereof. Class Members must cash each of their Individual
20 Payment Amount checks within one hundred eighty (180) calendar days after they are mailed by
21 the Settlement Administrator. The value of any checks uncashed more than one hundred eighty
22 (180) days after mailing shall be paid to the State of California State Controller’s Office, to be held
23 in the name of the respective Class Member.

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

25 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
26 Court for preliminary approval of this settlement and entry of an order accomplishing the
27 following:
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- 1 (a) scheduling a fairness hearing on the question of whether the proposed
2 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
3 (b) approving as to form and content the proposed Class Notice;
4 (c) approving as to form and content the proposed Request for Exclusion
5 Form;
6 (d) preliminarily certifying the Settlement Class for purposes of settlement;
7 (e) preliminarily setting attorneys' fees and costs payable to Class Counsel;
8 (f) preliminarily setting the enhancement payment to the Class Representative;
9 (g) preliminarily approving Phoenix Settlement Administration, Inc. as the
10 Settlement Administrator and its estimated fees and costs of \$3,500; and
11 (h) permitting Plaintiff to file the First Amended Complaint.

12 2. Plaintiff agrees to provide notice to the LWDA of this settlement in accordance with
13 Labor Code § 2699(l)(2).

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

15 1. In connection with the hearing on final approval of the settlement provided for in
16 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
17 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
18 by the Court):

- 19 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
20 and adequate, and directing consummation of its terms and provisions;
21 (b) approving Class Counsel's application for an award of attorneys' fees and
22 reimbursement of documented litigation costs and expenses, the enhancement payment to the
23 Class Representative, the PAGA payment, and the costs of administering the settlement; and
24 (c) Entering judgment in this Action in accordance with this Stipulation,
25 pursuant to Cal. Rules of Court, Rule 3.769(h).
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2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

H. Miscellaneous Provisions:

1. Voiding the Agreement.

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

2. Parties' Authority.

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

3. Mutual Full Cooperation.

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

4. No Prior Assignments.

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

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1 5. **No Admission.**

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

10 6. **Circular 230 Disclaimer.**

11 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
12 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN
13 THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
14 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
15 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
16 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY
17 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
18 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
19 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
20 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
21 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
22 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
23 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
24 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
25 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
26 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
27 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
28 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE

1 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
2 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
3 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
4 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
5 CONTEMPLATED BY THIS AGREEMENT.

6 **7. Notices.**

7 Unless otherwise specifically provided herein, all notices, demands or other
8 communications given hereunder shall be in writing and shall be deemed to have been duly given
9 as of the third business day after mailing by United States registered or certified mail, return receipt
10 requested, addressed:

11 **To Plaintiff and the Settlement Class:**

12 Daniel F. Gaines, Esq.
13 Alex P. Katofsky, Esq.
14 Evan S. Gaines, Esq.
15 GAINES & GAINES, APLC
16 4550 E. Thousand Oaks Blvd., Suite 100
17 Westlake Village, CA 91362

18 **To Defendant:**

19 Kevin Cleveland, Esq.
20 Young, Cohen & Durrett, LLP
21 1321 Howe Avenue, Suite 100
22 Sacramento, CA 95825

23 **8. Construction.**

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

28 **9. 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.

1 **10. Modification.**

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

6 **11. Integration Clause.**

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

12 **12. Binding on Assigns.**

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

15 **13. Governing Law.**

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

19 **14. Signatures of All Class Members Unnecessary to be Binding.**

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

25 **15. Counterparts.**

26 This Settlement Agreement may be executed in counterparts, and when each Party has
27 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
28 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement

1 Agreement, which shall be binding upon and effective as to all Parties.

2 **16. Confidentiality**

3 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
4 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
5 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
6 agencies, or as otherwise required by law.

7 **17. No Publicity.**

8 Plaintiff and his Counsel will not contact the media about the settlement or respond to any
9 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
10 settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any
11 information about the settlement on social media or their firms' websites.

12 **18. Escalator Provision re: Representation Regarding Class Size.**

13 Defendant has represented to Plaintiff and her counsel that the Settlement Class includes no
14 more than 14 individuals who worked no more than 350 workweeks during the Class Period.
15 Should the final total of Class Members exceed 14 and/or the final total of workweeks exceed 350
16 by five (5) percent or more, then Plaintiff may terminate this Agreement unless Defendant agrees
17 to increase the Gross Settlement Amount on a pro rata basis based on the proportionate increase
18 (with the larger percentage increase controlling).
19

20 **19. Election to Vacate the Settlement**

21 If more than ten percent (10%) of the Class Members collectively timely request exclusion,
22 Defendant shall have the option, in its sole discretion, and notwithstanding any other provisions of
23 this Agreement, to withdraw from the Agreement in its entirety, whereupon the Agreement shall
24 be null and void for any and all purposes. If Defendant elects to exercise its rights under this
25 provision, it will so notify Class Counsel and the Court in writing no later than ten (10) business
26 days after receiving written notice via overnight delivery from the Settlement Administrator of the
27 number of opt-outs.
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Dated: 12 / 28 / 2022

By: 
DAVID FERGONISE
Plaintiff and Class Representative

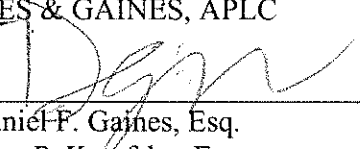
Dated: _____

TRI-ROTOR, L.L.C.

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: 12/28/2022

GAINES & GAINES, APLC
By: 
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: _____

YOUNG, COHEN & DURRETT, LLP

By: _____
Kevin Cleveland, Esq.
Counsel for Defendant

1
2 Dated: _____

By: _____

3 DAVID FERGONISE
4 Plaintiff and Class Representative

5 Dated: 1/12/2023

TRI-ROTOR, L.L.C.

6 By: DocuSigned by: 
7 9FD77CE2F9AF42B...
8 Its: president

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

11 Dated: _____

GAINES & GAINES, APLC

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

17 Dated: January 12, 2023

YOUNG, COHEN & DURRETT, LLP

18 By: 
19 Kevin Cleveland, Esq.
20 Counsel for Defendant

EXHIBIT 1

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

DAVID FERGONISE, on behalf of himself and
on behalf of all similarly situated individuals,

Plaintiff,

v.

TRI-ROTOR, L.L.C., an Arizona limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: ECU002469

**NOTICE OF PENDENCY OF 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 \$85,000 to pay claims to all current and former non-exempt California employees of Defendant Tri-Rotor, L.L.C. (“Defendant”) employed from July 8, 2018 through January 14, 2023.
- The settlement resolves a lawsuit over whether Defendant failed to pay all wages; provide meal and rest periods or compensation in lieu thereof; timely issued wages, including vacation wages, upon separation of employment; issued accurate and complete wage statements; and failed to reimburse employee business expenses. It avoids costs and risks to you from 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 \$34,000 as attorneys’ fees and \$10,000 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 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 you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Tri-Rotor about the legal claims that were brought in this case. Even if you exclude yourself, you will be bound by the settlement of PAGA claims.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

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 July 7, 2022, Plaintiff David Fergonise filed this lawsuit in the Imperial County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code and Business & Professions Code. The Lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant employed from July 8, 2018 through January 14, 2023. ("Class Period"). The lawsuit alleges that members of the Class were not paid all wages; were not provided all meal and rest periods or compensation in lieu thereof; were not timely issued wages, including vacation wages, upon separation of employment; were not issued accurate and complete wage statements; and were not reimbursed for all business expenses they incurred. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff's Attorneys

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

Defendant's Attorneys

Kevin Cleveland, Esq.
 YOUNG, COHEN & DURRETT, LLP
 1321 Howe Avenue, Suite 100
 Sacramento, CA 95825

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt California employees of Defendant employed from July 8, 2018 through January 14, 2023..

C. What does the Settlement provide?

1. Gross Settlement Amount.

Defendant will pay \$85,000 (the "Gross Settlement Amount") to settle the lawsuit. The following sums will be paid from the Gross Settlement Amount: (1) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$34,000 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$10,000; (2) an enhancement payment to the Class Representative set by the court, not to exceed \$5,000, for his service in the Action; (3) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$3,500; and a \$4,000 PAGA payment, in resolution of the civil penalty claims asserted in the Action, which will be paid \$3,000 to the California Labor & Workforce Development Agency and \$1,000 to the Aggrieved Employees, which are defined as all non-exempt employees employed by Defendant in California at any time between November 17, 2021 and January 14, 2023 (the "PAGA Period") . The amount of the Gross Settlement Amount remaining after these payments is the "Net Settlement Sum."

2. Individual Settlement Payments.

You will be paid a share of the PAGA payment apportioned to Aggrieved Employees, even if you opt out of the class settlement. Your share of the PAGA payment is proportionate to the number of weeks you worked for Defendant in a non-exempt position in California during the PAGA Period, compared of the week worked during this time by all Aggrieved Employees. Your share of the Net Settlement Sum 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?

Participating Class Members: Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and payroll taxes due hereunder, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assigns, and any clients or customers who contracted for Defendant's services ("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.

“Released Class Claims” are all claims and allegations asserted in the First Amended Complaint, including all claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and 2802, the applicable Industrial Wage Commission Wage Order, and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period.

Aggrieved Employees: Upon the Effective Date, and subject to Defendant’s full payment of the Gross Settlement Amount and payroll taxes due hereunder, Plaintiff 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. “Released PAGA Claims” are all claims and allegations asserted in the First Amended Complaint under PAGA, including all claims for PAGA civil penalties based on underlying claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and 2802 and the applicable Industrial Wage Commission Wage Order, which arose during employment in a non-exempt position in California during the PAGA Period.

E. How Is My Share Of The Settlement Calculated?

All Aggrieved Employees shall be paid a share of the PAGA Payment, as described above, which will be allocated 100% to penalties (and reported on an IRS Form 1099-MISC) In addition, all Class Members who do not opt out of the Settlement shall receive an “Individual Class Settlement Payment,” which is a portion of the Net Settlement Sum distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Class Settlement Payment will be calculated by dividing the Net Settlement Sum by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Class Settlement Payment. Each Participating Settlement Class Member who does not opt out will receive an Individual Class Settlement Payment.

For tax purposes, each Individual Class Settlement Payment will be apportioned (a) 25% as wages as (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 75% to penalties and interest (reported on an IRS Form 1099-MISC). All Individual Class and PAGA Settlement Payments paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [REDACTED] weeks while employed in a non-exempt position in California from July 8, 2018 through January 14, 2023 (the Class Period) and [REDACTED] weeks while employed in a non-exempt position in California from November 17, 2021 and January 14, 2023 (the PAGA Period). Based on these weeks worked, you are entitled to an Individual Class Settlement Payment of approximately \$[REDACTED] and an Individual PAGA Settlement Payment of \$[REDACTED]. These amounts are subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED]. 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 [REDACTED], at [REDACTED] a.m., in Courtroom [REDACTED] of the Imperial County Superior Court, located at [REDACTED]. 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 Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

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

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

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

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

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

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed class settlement (although you will receive a share of the PAGA settlement and be bound by the Settlement’s PAGA release). You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [REDACTED].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Imperial County Superior Court, located at [REDACTED].

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number]. Reference the Tri-Rotor Class Action Settlement.

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

David Fergonise, on behalf of himself and on behalf of all similarly situated individuals, Plaintiff, v. Tri-Rotor, L.L.C., an Arizona limited liability company, and Does 1 Through 10, Inclusive, Defendants, Imperial County Superior Court, Case No. ECU002469.

I confirm that I was employed by Defendant Tri-Rotor, L.L.C. as a non-exempt employee in California during the period from July 7, 2018 through January 14, 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 class action settlement. I understand that I may still receive an allocation from the PAGA portion of the settlement and cannot be excluded from the PAGA release contained therein.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

Last four digits of Social Security Number: XXX-XX-_____

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:

Tri-Rotor Settlement Administrator

c/o

EXHIBIT 3

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 David Fergonise, on behalf of himself and on behalf of all similarly situated individuals

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

DAVID FERGONISE, on behalf of himself
and on behalf of all similarly situated
individuals,

Plaintiff,

v.

TRI-ROTOR, L.L.C., an Arizona limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: ECV002469

*Assigned to the Honorable L. Brooks Anderholt,
Dept. 9*

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

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES DUE (LABOR
CODE §§ 226.7, 510, 512, 1194, AND 1194.2)**

**2. FAILURE TO PAY REPORTING TIME
PAY (LABOR CODE §§ 510 AND 1194;
IWC WAGE ORDER 9-2001)**

**3. FAILURE TO PROVIDE REST PERIODS
OR PROPER COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 9-2001)**

**4. FAILURE TO PROVIDE MEAL
PERIODS OR PROPER COMPENSATION
IN LIEU THEREOF (LABOR CODE §§
226.7 AND 512; IWC WAGE ORDER 9-
2001)**

**5. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES (LABOR
CODE § 2802)**

**6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-203
AND 227.3)**

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**7. UNFAIR COMPETITION PURSUANT
TO BUSINESS & PROFESSIONS CODE §
17200 ET SEQ.**

**8. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7,
227.3, 510, 512, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: July 7, 2022

Plaintiff DAVID FERGONISE (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of TRI-ROTOR, L.L.C., an Arizona limited liability company, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.* respectively, on behalf of Plaintiff and the Class of individuals described in detail below against Defendants.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due to Plaintiff and Class Members (defined below); failing to pay Plaintiff and Class Members reporting time pay; failing to provide legally compliant meal and rest periods, or proper compensation in lieu thereof to Plaintiff and Class Members; failing to reimburse Plaintiff and Class Members all business-related expenses; and failing to issue Plaintiff and Class Members all wages due and owing upon separation of employment.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226.7, 227.3, 510, 512, 1194, 1194.2, and 2802 seeking compensation for

all unpaid wages, meal and rest period premium wages, business-related expenses, statutory penalties, liquidated damages, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of himself and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages and expense-reimbursement due.

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties and wages for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in Imperial County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff DAVID FERGONISE was employed by Defendants as a non-exempt employee from November 2019 through November 2020 and performed work for Defendants in Imperial County, California.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all minimum and overtime wages due;
- b. Willfully denied the payment of reporting time pay;
- c. Willfully denied all meal and rest periods or proper compensation in lieu thereof;
- d. Willfully denied reimbursement for all business-related expenses incurred; and
- e. Willfully denied the timely payment of all wages upon separation of his employment.

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1 **B. Defendants**

2 9. Defendant TRI-ROTOR, L.L.C. is an Arizona limited liability company that employed
3 Plaintiff and Class Members in Imperial County, California.

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

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

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

18 **III.**

19 **CLASS ACTION ALLEGATIONS**

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

23 **THE CLASS**

24 All non-exempt California employees employed by Defendants at any
25 time since the date four years preceding the filing of this Action, plus
26 any additional time tolled by the California State Judicial Council
27 pursuant to Emergency Rule 9 in response to the COVID-19 pandemic
28 and continuing through the present.

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

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

7 **A. Numerosity**

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

13 17. Accounting for employee turnover during the relevant period necessarily increases this
14 number. Plaintiff alleges Defendants' employment records would provide information as to the
15 number and location of members of the Class. Joinder of members of the Class is not practicable.

16 **B. Commonality**

17 18. There are questions of law and fact common to the Class that predominate over any
18 questions affecting only individual class members. These common questions of law and fact include,
19 without limitation:

- 20 a. Whether Defendants failed to pay all minimum and overtime wages due to
21 Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 510, 512,
22 1194, and 1194.2;
- 23 b. Whether Defendants failed to pay reporting time pay to Plaintiff and Class
24 Members, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order
25 9-2001;
- 26 c. Whether Defendants failed to properly provide rest periods, or proper
27 compensation in lieu thereof to Plaintiff and Class Members, in violation of
28 Labor Code § 226.7 and IWC Wage Order 9-2001;

- 1 d. Whether Defendants failed to properly provide meal periods, or proper
2 compensation in lieu thereof to Plaintiff and Class Members, in violation of
3 Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001;
- 4 e. Whether Defendants failed to reimburse Plaintiff and Class Members for all
5 business-related expenses incurred, in violation of Labor Code § 2802;
- 6 f. Whether Defendants failed to timely pay Plaintiff and Class Members all
7 wages due and owing at the separation of their employment, in violation of
8 Labor Code §§ 201-203 and 227.3; and
- 9 g. Whether Plaintiff and members of the Class are entitled to equitable relief
10 pursuant to Business & Professions Code § 17200 *et seq.*

11 **C. Typicality**

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

16 **D. Adequacy of Representation**

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

20 **E. Superiority of Class Action**

21 21. A class action is superior to other available means for the fair and efficient adjudication
22 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
23 questions of law and fact common to the proposed Class predominate over any questions affecting
24 only individual members of the proposed Class. Each member of the proposed Class has been
25 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

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

3 **IV.**

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

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

7 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE**

8 **(LABOR CODE §§ 226.7, 510, 512, 1194, AND 1194.2)**

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

11 24. During the liability period, Defendants failed to pay Plaintiff and Class Members all
12 minimum and overtime wages due, in violation of Labor Code §§ 510, 1194 and 1194.2. Defendants
13 paid Plaintiff and Class Members straight time wages only, with no adjustment for premium overtime
14 wages. Specifically, Plaintiff and Class Members would work in excess of eight (8) hours per day and
15 forty (40) hours per week, but were never properly compensated for work performed in excess of
16 eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a
17 rate of no less than one and one-half times the regular rate of pay. When they were paid premium
18 overtime wages, it was only when they worked in excess of ten (10) hours in a workday.

19 25. In addition, Plaintiff alleges that he and other Class Members worked off-the-clock:
20 they were not paid for time spent making work-related calls before and after their shift.

21 26. Furthermore, Plaintiff and Class Members earned non-base wages, including, but not
22 limited to, bonuses, however, Defendants failed to properly compute these non-base wages into
23 Plaintiff and Class Members' regular rate of pay for purposes of paying them meal and rest period
24 premiums and overtime wages at the correct rates. Defendants failed to properly blend bonus wages
25 and other non-base hourly wages and instead paid Plaintiff and Class Members meal period
26 premiums, rest period premiums, and overtime wages based *only* on the base hourly rate of pay, thus
27 depriving Plaintiff and Class Members of all meal period premiums, rest period premiums, and
28 overtime wages earned. This violates Labor Code §§ 226.7, 510, 512, 1194, and 1194.2.

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

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

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY REPORTING TIME PAY

(LABOR CODE §§ 510 AND 1194; IWC WAGE ORDER 9-2001)

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

29. During the liability period, Defendants failed to pay Plaintiff and Class Members all reporting time pay, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order 9-2001. Defendants required Plaintiff and Class Members to report to work only to be told they were no longer needed and be sent home within 2 hours of reporting to work. Defendants, however, failed to pay the required “half the usual or scheduled day’s work, but in no event . . . less than two (2) hours . . . at the employee’s regular rate of pay, which shall not be less than the minimum wage.” Plaintiff and Class Members would only be paid for the time spent working and nothing further. This violates Labor Code §§ 510 and 1194 and IWC Wage Order 9-2001.

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

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

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VI.
THIRD CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
FAILURE TO PROVIDE REST PERIODS OR PROPER COMPENSATION IN LIEU
THEREOF
(LABOR CODE §§ 226.7, 510, 1194, AND 1194.2; IWC WAGE ORDER 9-2001)

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 9-2001.

33. Defendants failed to pay premium wages at the proper rate to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay at the regular rate of pay for each missed rest period. Plaintiff and Class Members were simply not permitted to take a rest period during their employment and were not paid premium wages at the regular rate of pay in lieu thereof. This violates Labor Code § 226.7 and IWC Wage Order 9-2001.

34. Pursuant to Labor Code § 226.7, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

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

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
FAILURE TO PROVIDE MEAL PERIODS OR PROPER COMPENSATION IN LIEU
THEREOF
(LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 9-2001)

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512.

37. Defendants failed to pay premium wages at the proper rate to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay at the regular rate of pay for each missed meal period. Plaintiff and Class Members were simply not permitted to take a meal period during their employment and were not paid premium wages at the regular rate of pay in lieu thereof. This violates Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001.

38. Pursuant to Labor Code §§ 226.7 and 512, Plaintiff seeks the payment of all meal period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

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

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VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set forth herein.

40. Pursuant to California Labor Code § 2802, Defendants must indemnify Plaintiff and Class Members for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

41. Plaintiff and Class Members were required to use their personal cell phones for work-related calls and operate their personal trucks while working for Defendants, but were not fully reimbursed by Defendants for the expenses of using their personal cell phones or for operating their personal truck, including, but not limited to, mileage, gas, insurance, maintenance, depreciation, and other costs of ownership.

42. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

43. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

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

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203 AND 227.3)

44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

46. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including all minimum and overtime wages due and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. In addition, when Plaintiff was terminated, he was not issued his final wages immediately upon his termination – instead, he was issued his final wages a day later.

47. Furthermore, when Plaintiff was terminated, he was not issued all of his accrued, but unused PTO and/or vacation wages upon his termination. Plaintiff alleges that Defendants maintain a policy to untimely pay final wages to its former employees. This violates Labor Code §§ 201-203 and 227.3 and is alleged on behalf of Plaintiff and certain Class Members no longer employed by Defendants.

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

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

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

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

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

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

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

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

54. Wage and hour laws express fundamental public policies. Properly providing employees with all minimum and overtime wages and expense reimbursement due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-

1 abiding employers and its employees from competitors who lower their costs by failing to comply
2 with minimum labor standards.

3 55. Defendants have violated statutes and public policies. Through the conduct alleged in
4 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
5 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
6 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
7 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
8 guaranteed to all employees under law.

9 56. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
10 §17200 *et seq.* of the Business & Professions Code.

11 57. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
12 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
13 17200 *et seq.* of the Business & Professions Code.

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

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

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XI.

SEVENTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 510, 512, 1194, AND 2802 AND PURSUANT
TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

60. Plaintiff incorporates paragraphs 1 through 59 of this Complaint as though fully set forth herein.

61. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

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

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

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

64. On November 17, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 17, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages and liquidated damages, pursuant to Labor Code §§ 1194 and 1194.2, respectively, in the amount of all unpaid minimum and overtime wages and reporting time pay due to Plaintiff and members of the Class;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Members, pursuant to Labor Code §§ 226.7 and 512;
3. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
4. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
5. For restitution and injunctive relief for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
7. An award providing for payment of costs of suit pursuant to Labor Code §§ 1194 and 2802 and other applicable law;
8. For injunctive relief and an award of attorneys' fees pursuant to Labor Code §§ 1194 and 2802 and other applicable law;
9. An award of prejudgment and post-judgment interest; and
10. Such other and further relief as this Court may deem just and proper.

Dated: December 27, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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

DEMAND FOR JURY TRIAL

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

Dated: December 27, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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