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Attorneys for Plaintiff Colette Appel, on behalf of herself, all others similarly situated, the general public, and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

COLETTE APPEL, on behalf of herself and
all others similarly situated and on behalf of
the general public,

Plaintiff,

v.

INVITATION HOMES REALTY
CALIFORNIA INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 56-2022-00572240-CU-OE-VTA

Assigned to the Hon. Mark Borrell, Dept. 40

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: November 18, 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 Colette Appel (“Plaintiff” or “Class Representative”),
4 individually and on behalf of all others similarly situated, and Defendant Invitation Homes Realty
5 California Inc., a California corporation (“Defendant”), subject to the terms and conditions herein
6 and the Court’s approval.

7 **A. Definitions.**

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

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff Colette Appel. For purposes of this Settlement Agreement only, the firm of
12 Gaines & Gaines, APLC shall be designated as “Class Counsel.”

13 3. The “Action” means the case of *Colette Appel v. Invitation Homes Realty California*
14 *Inc.*, Ventura County Superior Court Case No. 56-2022-00572240-CU-OE-VTA (the “Action”).

15 4. The “Settlement Class” shall be defined as “all persons who worked for Defendant
16 in California as a “Leasing Experience Specialist” and were classified as an independent contractor
17 during the Class Period.” Defendant represents that this Class contains no more than approximately
18 13 Class Members who worked approximately 1,912 workweeks during the Class Period. Attached
19 hereto as **Exhibit 4** is a list of all Class Members and their workweeks.

20 5. The “Class Period” is defined as May 22, 2018 through February 28, 2022.

21 6. The “Aggrieved Employees” shall be defined as “all persons who worked for
22 Defendant in California as a “Leasing Experience Specialist” and were classified as an independent
23 contractor during the PAGA Period.”

24 7. The “PAGA Period” is defined as November 16, 2021 through February 28, 2022.

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

28 9. The “Class Representative” refers to Plaintiff Colette Appel.

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

6 **B. General.**

7 1. On November 16, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
8 Code Private Attorneys General Act of 2004 (“PAGA”).

9 2. On November 18, 2022, Plaintiff initiated her Action in the Ventura County
10 Superior Court by filing a class and collective action on behalf of herself and all other similarly
11 situated individuals.

12 3. As part of the approval of this Settlement, Plaintiff will file a First Amended
13 Complaint substantially in the form attached hereto as **Exhibit 3** which asserts claims against
14 Defendant for (1) failure to pay all minimum and overtime wages due (FLSA 29 U.S.C. §§ 206 and
15 207); (2) failure to pay all minimum and overtime wages due (Labor Code §§ 226.8, 510, 1194,
16 and 1194.2); (3) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7
17 and IWC Wage Order 4-2001); (4) failure to provide meal periods or compensation in lieu thereof
18 (Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198 and IWC Wage Order 4-2001); (5)
19 knowing and intentional failure to comply with itemized employee wage statement provisions
20 (Labor Code §§ 226(a) and (e)); (6) violation of Business and Professions Code § 17200 for
21 underlying violations of the Labor Code as set forth in the complaint in the Action; (7) failure to
22 timely pay wages due at the separation of employment (Labor Code §§ 201-203); and (8) civil
23 penalties pursuant to PAGA for underlying violations of the Labor Code as set forth in the
24 complaint in the Action.

25 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
26 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
27 purpose other than this settlement. Defendant contends that it has complied at all times with the
28 California Labor Code. It is Defendant’s position that, if this case were to be litigated, class

1 certification would be inappropriate because Plaintiff is not an adequate Class Representative,
2 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
3 class issues, among other defenses. The Action, the negotiation and execution of this Settlement
4 Agreement, and all acts performed or documents executed pursuant to or in furtherance of this
5 Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing by the
6 Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence of fault
7 on behalf of Defendant in any action before a civil court, criminal court, administrative agency of
8 any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission
9 or evidence of the appropriateness of these or similar claims for class certification in the Action or
10 with respect to any other proceeding whatsoever.

11 5. The Class Representative contends that Defendant violated the California Labor
12 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
13 certification.

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

20 7. The Parties agreed to participate in nonbinding mediation of Plaintiff's claims. On
21 September 11, 2023, following their exchange of information and documents regarding the
22 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
23 length negotiations with the assistance of an experienced wage and hour mediator, Steven G.
24 Mehta, Esq. The mediation ended with the resolution set forth herein.

25 8. Based on their own independent investigation and evaluation, Class Counsel are of
26 the opinion (and will so represent to the Court) that settlement for the consideration and on the
27 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
28 interest of the Settlement Class in light of all known facts and circumstances, including the risk of

1 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
2 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
3 that this settlement is fair and in the best interest of the Settlement Class.

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

12 **C. Terms of Settlement.**

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

14 (a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross
15 Settlement Amount of Two Hundred Eighty-Five Thousand Dollars (\$285,000) (the “Gross
16 Settlement Amount”), subject to any increase based on the escalator provision in paragraph H(16)
17 herein. The Gross Settlement Amount includes the attorney’s fees of Class Counsel; litigation costs
18 and expenses (which includes, without limitation, all such fees and costs incurred to date, as well
19 as such fees and costs to be incurred in documenting the settlement, providing any notices required
20 as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the
21 Action); the Incentive Award to the Class Representative, as approved by the Court; the payment
22 to the California Labor and Workforce Development Agency (“LWDA”); and all costs of
23 administration, including, without limitation, settlement administration fees and expenses. All
24 employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds
25 shall be paid by Defendant separate and apart from, and in addition to, the Gross Settlement
26 Amount.

27 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
28 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorney’s fees

1 and documented litigation costs and expenses incurred or advanced by Class Counsel; the Incentive
2 Award to the Class Representative; the payment to the LWDA pursuant to PAGA; and the costs of
3 administering the settlement.

4 (c) **Calculation of the Individual Payment Amounts:** “Individual Payment
5 Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member
6 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
7 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
8 to participating Class Members, the class portion of the Individual Payment Amount will be
9 determined by dividing the Net Settlement Proceeds, less the \$2,500 PAGA allocation, by the total
10 number of weeks worked by the entire Settlement Class during their work for Defendant as a
11 “Leasing Experience Specialist” classified as an independent contractor in California during the
12 Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class
13 workweek value by the number of weeks worked by each participating Class Member as a “Leasing
14 Experience Specialist” classified as an independent contractor in California during the Class Period.
15 As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be
16 determined by dividing the PAGA settlement amount (\$2,500) by the total number of weeks
17 worked by all Aggrieved Employees during their work for Defendant as a “Leasing Experience
18 Specialist” classified as an independent contractor in California during the PAGA Period, resulting
19 in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of
20 weeks worked by each Aggrieved Employee with the job title of “Leasing Experience Specialist”
21 classified as an independent contractor in California during the PAGA Period.

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

1 (e) **PAGA Payments:** The Parties agree that Ten Thousand Dollars (\$10,000)
2 shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-
3 Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500), shall be paid to the LWDA,
4 and the remaining Twenty-Five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500),
5 shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds.

6 (f) **Incentive Award to Class Representative:** The amount awarded to the
7 Class Representative as an "Incentive Award," will be set by the Court in its discretion, not to
8 exceed Ten Thousand Dollars (\$10,000). This amount will be deducted from the Gross Settlement
9 Amount. An IRS Form 1099 will be issued to the Class Representative for his Incentive Award.
10 Defendant agrees not to dispute or otherwise object to the Incentive Award if Plaintiff requests
11 \$10,000 or less.

12 (g) **Attorney's Fees:** An award to Class Counsel of attorney's fees will be
13 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
14 the settlement award that has been made available for the Settlement Class by the efforts of Class
15 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e., Ninety-
16 Nine Thousand Seven Hundred Fifty Dollars (\$99,750). An IRS Form 1099 will be issued to Class
17 Counsel with respect to its award of attorney's fees. Defendant agrees not to dispute or otherwise
18 object to the attorneys' fee award requested by Class Counsel so long as the request does not exceed
19 35% of the Gross Settlement Amount.

20 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
21 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
22 litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000). An IRS Form
23 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
24 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
25 so long as the request does not exceed \$15,000.

26 (i) **Settlement Administration Costs:** The fees and other charges of the
27 Settlement Administrator to administer the Settlement are expected to total no more than Five
28 Thousand Dollars (\$5,000) and will be paid from the Gross Settlement Amount. These fees shall

1 include any costs associated with the required tax reporting on any Individual Payment Amounts,
2 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties
3 have agreed that Phoenix Settlement Administrators will serve as a neutral third-party claims'
4 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
5 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing
6 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)
7 administering the settlement; (c) processing exclusions, objections, and field inquiries from Class
8 Members; (d) resolving disputes; (e) calculating the Individual Payment Amount that each
9 Participating Class Member and Aggrieved Employee is eligible to receive; (f) distributing the
10 Gross Settlement Amount as directed by the Court and set forth herein; (g) tax reporting; (h)
11 providing necessary weekly status reports; and (i) other duties and responsibilities set forth herein.

12 (j) **No Warranty by Defendant:** Plaintiff understands and agrees that
13 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
14 makes no representations regarding tax obligations or consequences, if any, related to this
15 Settlement Agreement.

16 **D. Release of Claims.**

17 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
18 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement
19 Class Members who do not timely opt-out of the Settlement will release the Released Class Claims
20 against Invitation Homes Realty California Inc., all entities affiliated with it, and all officers,
21 directors, representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients,
22 joint employer, predecessors, managers, servants, successors-in-interest, assigns, current and
23 former employees of Defendant, including but not limited to agents, insurers, attorneys and all
24 persons or entities acting in concert with or affiliated with any of them ("Released Parties").

25 2. Upon the Effective Date, and subject to Defendant's full payment of the Gross
26 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Aggrieved
27 Employees, including those who opt out of the Class Settlement, will release all Released PAGA
28 claims against the Released Parties alleged in the operative complaint.

1 3. “Released Class Claims” means any and all claims and/or causes of action under
2 state, federal or local law, whether statutory, common law or administrative law, which arise out
3 of the claims and allegations made in the Action or which could have been made based on the facts
4 alleged in the Action, for all periods of time while working for Defendant in California as a
5 “Leasing Experience Specialist” classified as an independent contractor during the Class Period,
6 including allegations of alleged: failure to pay all minimum and overtime wages due, meal period
7 violations; rest period violations; failure to pay meal or rest period premiums; wage statement
8 violations; violations of Business and Professions Code section 17200 based on the allegations set
9 forth above; including, but not limited to, claims for injunctive relief; punitive damages; liquidated
10 damages, penalties of any nature; interest; fees; and costs. No PAGA claims are encompassed in
11 the Released Class Claims.

12 4. The following language will be printed on the reverse of each Settlement Payment
13 Check to each Settlement Class Member, or words to this effect: “By endorsing or otherwise
14 negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in
15 the Notice of Pendency of Proposed Class Action Settlement and Final Hearing and I consent to
16 join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the
17 settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the
18 Settlement.” Only those Participating Class Members who cash their settlement checks will be
19 bound by the release of claims under the FLSA.

20 5. “Released PAGA Claims” means any and all PAGA claims and/or causes of action
21 which accrued during all periods of time while working for Defendant in California as a “Leasing
22 Experience Specialist” classified as an independent contractor during the PAGA Period, that are
23 alleged in the First Amended Complaint to be filed in the Action, or that could have been alleged
24 in the Action based on the facts set forth in the First Amended Complaint. No Aggrieved Employee
25 may opt out of the PAGA portion of the Settlement.

26 **E. Notice and Exclusion Process.**

27 1. Within ten (10) calendar days after entry of the order granting preliminary approval
28 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class

1 Members, including their last known addresses, telephone numbers, social security numbers, and
2 their dates they worked for Defendant as a “Leasing Experience Specialist” in California during
3 the Class Period (“Settlement Class Information”). The names, addresses, telephone numbers, and
4 Social Security numbers will only be disclosed to the Settlement Administrator and not to Plaintiff’s
5 Counsel. All information provided to the Settlement Administrator will be marked
6 CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in
7 writing or orally, by the Settlement Administrator. The Settlement Administrator shall use due care
8 with respect to the storage, custody, use, and/or dissemination of the confidential information. Such
9 information must be stored in a secure fashion and all persons who access the data must agree to
10 keep it confidential.

11 2. A notice of pendency of class action, proposed settlement, and hearing date for
12 Court approval (“Class Notice”) in the form attached hereto as **Exhibit 1**, and as approved by the
13 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
14 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
15 to the Class Notice will be a request for exclusion form (“Request for Exclusion Form”) in the form
16 attached hereto as **Exhibit 2**.

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

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

27 5. Each Class Notice will contain personalized information setting forth the number of
28 weeks each Class Member worked for Defendant as a “Leasing Experience Specialist” classified

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

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

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

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

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

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

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

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

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

23 13. Defendant shall deposit the Gross Settlement Amount, plus applicable employer
24 payroll taxes, with the Settlement Administrator no later than ten (10) calendar days of the Effective
25 Date.

26 14. The Settlement Administrator will issue payments for the obligations due for
27 attorneys' fees and costs to Class Counsel, cost of administration, Incentive Award to Class
28 Representative, Individual Settlement Payments to Class Members and Aggrieved Employees, and

the payment to the LWDA promptly after Defendant pays the Gross Settlement Amount. The value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the State of California Controller's Office – Unclaimed Property Fund, to be held in the name of the respective Class Member or Aggrieved Employee.

F. Duties of the Parties Prior to Court Approval.

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

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

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

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

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

(e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;

(f) preliminarily setting attorney's fees and costs payable to Class Counsel;

(g) preliminarily setting the Incentive Award to the Class Representative;

(h) preliminarily approving Phoenix Settlement Administrators as the Settlement Administrator and its estimated fees and costs of \$5,000; and

(i) permitting Plaintiff to file the First Amended Complaint attached hereto as

Exhibit 3.

2. The Parties shall submit this Settlement Agreement to the Court and the LWDA in support of Plaintiff's unopposed motion for preliminary approval of the settlement.

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

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

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

3 (b) approving Class Counsel's application for an award of attorney's fees and
4 reimbursement of documented litigation costs and expenses, the Incentive Award to the Class
5 Representative, the PAGA payment to the LWDA, and the costs of administering the settlement;
6 and

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

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

12 **H. Miscellaneous Provisions:**

13 1. **Voiding the Agreement.**

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

18 2. **Parties' Authority.**

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

21 3. **Mutual Full Cooperation.**

22 The Parties agree to fully cooperate with each other to accomplish the terms of this
23 Settlement Agreement, including but not limited to, execution of such documents and such other
24 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
25 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
26 by this Settlement Agreement and any other efforts that may become necessary by order of the
27 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
28 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the

1 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
2 Court's preliminary and final approval of the settlement.

3 **4. No Prior Assignments.**

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

8 **5. No Admission.**

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

17 **6. Construction.**

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

22 **7. Captions and Interpretations.**

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

27 **8. Modification.**

28 This Settlement Agreement may not be changed, altered, or modified, except in writing and

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

4 **9. Integration Clause.**

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

10 **10. Binding on Assigns.**

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

13 **11. Governing Law.**

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

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

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

23 **13. Counterparts.**

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

28 ///

1 **14. Confidentiality**

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

6 **15. No Publicity**

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

12 **16. Representation Regarding Class Size.**

13 Defendant has represented that Class Members worked approximately 1,912 workweeks
14 during the Class Period. If the actual number of workweeks increases by more than five percent
15 (5%), Defendant will pay an additional \$149.06 to the Gross Settlement Amount for every extra
16 workweek in excess of 1,912 (the "Escalator Payment").

17 **17. Defendant's Option to Revoke the Settlement.**

18 If the number of Class Members who submitted timely and valid written Requests for
19 Exclusion is over ten percent (10%) of all Class Members, Defendant shall have, in its sole
20 discretion, the option to terminate this Settlement. If Defendant exercises the option to terminate
21 this Settlement, it shall: (i) provide written notice to Class Counsel prior to the Final Approval
22 Hearing and no later than seven (7) calendar days after receiving notice from the Settlement
23 Administrator of the number of Class Members who have submitted timely and valid Requests for
24 Exclusion; (ii) pay all Settlement Administration Costs incurred up to the date or as a result of the
25 termination; and (iii) the Parties shall proceed in all respects as if this Agreement had not been
26 executed. The Parties and their counsel agree not to take any action or make any statements to
27 encourage any Class Members to opt out of and/or object to the Settlement.

28 ///

18. **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.

19. Default; Notice; Cure; Acceleration; Time is of the Essence.

Time is of the essence with respect to all provisions of this Agreement. If Defendant fails to timely make the payment due hereunder, it shall be in default of its obligations. Plaintiff shall thereafter give notice of default and Defendant must cure said default within ten (10) calendar days thereof. In the event of an uncured default, all unpaid amounts shall be due and payable with interest at the legal rate from the date of default.

[SIGNATURES ON NEXT PAGE]

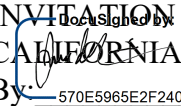
1 Dated: _____

By: _____

COLETTE APPEL
Plaintiff and Class Representative

2
3
4 Dated: ¹⁰/18/2023 _____

INVITATION HOMES REALTY
CALIFORNIA INC.

By:  _____
DocuSigned by: 570E5965E2F2401...

Its: Authorized Representative

5
6
7
8
9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: _____

GAINES & GAINES, APLC

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

15 Dated: October 18, 2023 _____

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

17 By:  _____
18 Linda Claxton, Esq.
19 Counsel for Defendant

EXHIBIT 1

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

COLETTE APPEL, on behalf of herself and all
others similarly situated and on behalf of the
general public,

Plaintiff,

v.

INVITATION HOMES REALTY
CALIFORNIA INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 56-2022-00572240-CU-OE-VTA

Assigned to the Hon. Mark Borrell, Dept. 40

**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 \$285,000 to pay claims to all persons who worked for Defendant Invitation Homes Realty California Inc. (“Defendant”) in California as a “Leasing Experience Specialist” and were classified as an independent contractor (“Class Members”) at any time between May 22, 2018 and February 28, 2022 (the “Class Period”).
- The settlement resolves a lawsuit alleging that Defendant failed to pay all minimum and overtime wages due; provide compliant meal and rest periods, or premium compensation in lieu thereof; 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 \$99,750 as attorney’s fees and \$15,000 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 class settlement. This is the only option that allows you to ever be part of any other lawsuit against Invitation Homes Realty California 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 November 18, 2022, Plaintiff Colette Appel ("Plaintiff"), a former "Leasing Experience Specialist" who worked for Defendant Invitation Homes Realty California Inc. as an independent contractor, filed this lawsuit in the Ventura County Superior Court. The lawsuit alleges violations of the California Labor Code, the Fair Labor Standards Act, and the California Business and Professions Code. The lawsuit seeks to certify a class of all current and former persons who worked for Defendant in California as a "Leasing Experience Specialist" and was classified as an independent contractor at any time between May 22, 2018 and February 28, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all minimum and overtime wages due; provided compliant meal and rest periods or premium compensation in lieu thereof; or issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, liquidated damages, damages, interest, statutory and civil penalties, restitution, attorney's fees and costs. Defendant denies all of the material allegations in the lawsuit 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:

Plaintiff's 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

Defendant's Attorneys

Linda Claxton, Esq.
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff 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. Plaintiff and Plaintiff's 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 persons who worked for Defendant in California as a "Leasing Experience Specialist" and were classified as an independent contractor between May 22, 2018 and February 28, 2022. It also encompasses Aggrieved Employees composed of all persons who worked for Defendant in California as a "Leasing Experience Specialist" and were classified as an independent contractor between November 16, 2021 and February 28, 2022 (the "PAGA Period").

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$285,000 (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 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 Attorney's Fees** in an amount set by the Court, not to exceed \$99,750;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;

(c) **Incentive Award Payment to the Class Representative** in an amount set by the Court, not to exceed \$10,000 for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$5,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Of that amount, 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25%, or \$2,500, 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, Plaintiff and all Settlement Class Members who do not timely opt-out of the Settlement will release the Released Class Claims against Invitation Homes Realty California Inc., all entities affiliated with it, and all officers, directors, representatives, owners, partner, subsidiaries, parent companies, joint venturers, clients, joint employer, predecessors, managers, servants, successors-in-interest, assigns, current and former employees of Defendant, including but not limited to agents, insurers, attorneys and all persons or entities acting in concert with or affiliated with any of them ("Released Parties").

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Aggrieved Employees, including those who opt out of the Class Settlement, will release all Released PAGA claims against the Released Parties alleged in the operative complaint.

"Released Class Claims" means any and all claims and/or causes of action under state, federal or local law, whether statutory, common law or administrative law, which arise out of the claims and allegations made in the Action or which could have been made based on the facts alleged in the Action, for all periods of time while working for Defendant in California as a "Leasing Experience Specialist" classified as an independent contractor during the Class Period, including allegations of alleged: failure to pay all minimum and overtime wages due, meal period violations; rest period violations; failure to pay meal or rest period premiums; wage statement violations; violations of Business and Professions Code section 17200 based on the allegations set forth above; including, but not limited to, claims for injunctive relief; punitive damages; liquidated damages, penalties of any nature; interest; fees; and costs. No PAGA claims are encompassed in the Released Class Claims.

"Released PAGA Claims" means any and all PAGA claims and/or causes of action which accrued during all periods of time while working for Defendant in California as a "Leasing Experience Specialist" classified as an independent contractor during the PAGA Period, that are alleged in the First Amended Complaint to be filed in the Action, or that could have been alleged in the Action based on the facts set

forth in the First Amended Complaint. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

The following language will be printed on the reverse of each Settlement Payment Check to each Settlement Class Member, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Pendency of Proposed Class Action Settlement and Final Hearing and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.” Only those Participating Class Members who cash their settlement checks will be bound by the release of claims under the FLSA.

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 Employee 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 \$2,500 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during their work for Defendant as a “Leasing Experience Specialist” classified as an independent contractor in California 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 as a “Leasing Experience Specialist” classified as an independent contractor in California 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 (\$2,500) by the total number of weeks worked by all Aggrieved Employees during their work for Defendant as a “Leasing Experience Specialist” classified as an independent contractor in California 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 with the job title of “Leasing Experience Specialist” classified as an independent contractor in California 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 [REDACTED] weeks as a “Leasing Experience Specialist” classified as an independent contractor in California from May 22, 2018 through February 28, 2022. Based on these weeks worked, you are entitled to an

Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [REDACTED] weeks as a “Leasing Experience Specialist” classified as an independent contractor in California from November 16, 2021 through February 28, 2022. Based on these weeks worked, you are entitled to a PAGA Payment Amount of approximately \$[REDACTED]. 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 [REDACTED], 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 [REDACTED], at 8:30 a.m., in the Courtroom of Judge Mark Borrell of the Ventura County Superior Court, Department 40, located at 800 S Victoria Ave, Ventura, CA 93009. 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 attorney’s fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as an incentive award 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]. Written 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 settlement except you will participate in the PAGA portion thereof and be paid a share of the PAGA settlement. With that exception, 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 Ventura County Superior Court, located at 800 S Victoria Ave, Ventura, CA 93009.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

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 *Colette Appel v. Invitation Homes Realty California Inc.*, Ventura County Superior Court Case. No. 56-2022-00572240-CU-OE-VTA. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I worked for Defendant Invitation Homes Realty California Inc. in California as a “Leasing Experience Specialist” and was classified as an independent contractor between May 22, 2018 and February 28, 2022.

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:

Invitation Homes Realty California Inc. Claims 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 Colette Appel, on behalf of herself, all others similarly situated, the general public, and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

COLETTE APPEL, on behalf of herself and
all others similarly situated and on behalf of
the general public,

Plaintiff,

v.

INVITATION HOMES REALTY
CALIFORNIA INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 56-2022-00572240-CU-OE-VTA

*Assigned to the Honorable Mark Borrell, Dept.
40*

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

**1. FAILURE TO PAY ALL MINIMUM AND
OVERTIME WAGES DUE (FLSA 29 U.S.C.
§§ 206 AND 207)**

**2. FAILURE TO PAY ALL MINIMUM AND
OVERTIME WAGES DUE (LABOR CODE
§§ 226.8, 510, 1194, AND 1194.2)**

**3. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 4-2001)**

**4. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 512,
558, 1174, 1174.5, AND 1198; IWC WAGE
ORDER 4-2001)**

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

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

7. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 204, 226, 226.7, 226.8, 510, 512, 1174, 1174.5, 1194, AND 1198 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558

DEMAND FOR JURY TRIAL

Complaint Filed: November 18, 2022

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

I.

INTRODUCTION AND FACTUAL BACKGROUND

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

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

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

4. From 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 misclassifying employees as

1 independent contractors and thereby failing to pay all minimum and overtime wages due, provide
2 meal or rest periods or compensation in lieu thereof, timely paying all wages due during employment
3 and upon separation of employment, and failing to issue accurately itemized wage statements.

4 5. Plaintiff, on behalf of herself and members of the Class (as defined below), bring this
5 action pursuant to Labor Code §§ 201, 202, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174,
6 1174.5, 1194, 1194.2, 1198, and 2698 *et seq.*, IWC Wage Order 4-2001, and 29 U.S.C. §§ 206 and
7 207 seeking compensation for all unpaid minimum and overtime wages, meal and rest period
8 premium wages, penalties, interest, injunctive and other equitable relief, liquidated damages, and
9 reasonable attorneys' fees and costs.

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

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

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

19 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
20 Procedure § 395. Defendants operate within California. The violations alleged herein occurred
21 within Ventura County, State of California.

22 II.

23 PARTIES

24 A. Plaintiff

25 10. Plaintiff COLETTE APPEL has worked for Defendants since July 2014, first as an
26 independent contractor and then as a non-exempt employee. Plaintiff performed work for Defendants
27 in Ventura County, California.

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

- a. Willfully misclassified as an independent contractor and thereby willfully denied the payment of all minimum and overtime wages due during employment;
- b. Willfully denied all meal and rest periods, or compensation in lieu thereof; and
- c. Willfully denied accurately itemized wage statements.

B. Defendants

12. Defendant INVITATION HOMES REALTY CALIFORNIA INC. is a California corporation that operates in California. Defendant INVITATION HOMES REALTY CALIFORNIA INC. employed and contracted with Plaintiff and similarly situated individuals in Ventura County, California.

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

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

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

III.

TOLLING AGREEMENT

16. Plaintiff and Defendants entered into an agreement to toll the statute of limitations on Plaintiff's PAGA claims, pursuant to California Code of Civil Procedure § 360.5, from January 30,

2023 through and including the date this First Amended Complaint is filed. As such, all periods of limitation (statutory or otherwise) affecting Plaintiff's PAGA claims against Defendants have been tolled between January 30, 2023 and the date this First Amended Complaint is filed.

IV.

CLASS ACTION ALLEGATIONS

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

THE CLASS

All persons who worked for Defendants in the State of California with the job title of "Leasing Experience Specialist" and were classified as independent contractors between May 22, 2018 and February 28, 2022.

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

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

A. Numerosity

20. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon allege, that Defendants currently contract with, and during the relevant time periods contracted with, over 10 persons who fall within the Class definition.

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

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B. Commonality

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

- a. Whether Defendants misclassified Plaintiff and Class Members as independent contractors, thereby failing to pay all minimum and overtime wages due during employment, in violation of Labor Code §§ 226.8, 510, 1194, and 1194.2 and the FLSA, 29 U.S.C. §§ 206 and 207;
- b. Whether Defendants failed to pay Plaintiff and Class Members all minimum and overtime wages due during employment, in violation of Labor Code §§ 510, 1194, and 1194.2 and the FLSA, 29 U.S.C. §§ 206 and 207;
- c. Whether Defendants failed to provide Plaintiff and Class Members with wage statements that fully and accurately itemize the requirements set forth in Labor Code § 226(a) and whether their claims are actionable under Labor Code § 226(e);
- d. Whether Defendants failed to provide Plaintiff and Class Members all meal and rest periods, or compensation in lieu thereof, and maintain all required records, in violation of Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198; IWC Wage Order 4-2001; and
- e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

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

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D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE

(FLSA, 29 U.S.C. §§ 206 AND 207)

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

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

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

1 30. Defendants, individually and collectively, are Plaintiff's "employer" as defined by the
2 FLSA.

3 31. Defendants, individual and collectively, are an "enterprise" as defined by Section
4 3(r)(1) of the FLSA, 29 U.S.C. § 203(r)(1).

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

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

10 34. Plaintiff is an "employee" of Defendants as defined by the FLSA.

11 35. During the entire course of their employment by Defendants, Plaintiff and Class
12 Members have not been exempt from the minimum wage and overtime provisions of the FLSA.

13 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
14 required, or require, Class Members, as part of their employment, to work without all additional
15 minimum and overtime wages, pursuant to 29 U.S.C § 207(a)(1). That section provides the following:

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

21 37. In the performance of their duties for Defendants, Class Members often worked more
22 than forty hours per week and did not receive all minimum wage and overtime compensation for the
23 work, labor and services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§ 206
24 and 207. Specifically, they were not paid for all hours worked at the minimum wage and they have
25 not been paid minimum and overtime wages at the rate of one and one-half times their regular rate
26 for all hours worked over 40 in one week.

27 38. The precise amount of unpaid minimum and overtime wages will be proven at trial.
28

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

40. Defendants' violations of the FLSA were willful within the meaning of the statute and interpretive case law.

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

VI.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE

(LABOR CODE §§ 226.8, 510, 1194, AND 1194.2))

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

43. During the liability period, Defendants voluntarily and knowingly misclassified Plaintiff and Class Members as independent contractors, instead of non-exempt employees, in violation of Labor Code § 226.8. Defendants controlled their wages, hours and working conditions. Specifically, Defendants paid Plaintiff and Class Members commissions *only*, generated from making sales (renting homes as a leasing agent). Defendants also provided them with a set hourly schedule in which to perform their jobs, thereby controlling Class Members' working hours—including, among other things, the number of hours they were permitted to work and their work schedule. Defendants also controlled their working conditions—including, among other things, requiring Plaintiff and Class Members to work from home remotely and specific hours of work. Plaintiff and Class Members were also required to work a set number of days per week at Defendants' office. As Defendants had control over Plaintiff's and Class Members' wages, hours and working conditions, Plaintiff and Class

1 Members were improperly classified as independent contractors and instead should have been
2 classified as non-exempt employees.

3 44. As a result of their misclassification, Defendants failed to pay Plaintiff and Class
4 Members all minimum and overtime wages earned, in violation of Labor Code §§ 510, 1194, and
5 1194.2. Plaintiff and Class Members were required to work overtime hours, but were not paid
6 premium overtime wages of one-and-one-half times the regular rate of pay for all hours worked over
7 eight hours in a workday and over forty hours in a workweek. Furthermore, Plaintiff and Class
8 Members were paid commissions *only*—they were not paid for all time spent working for Defendants
9 even though they were under Defendants' control, resulting in significant unpaid wages for work
10 performed off the clock. They were also not separately paid for their rest periods. These failures to
11 pay all minimum and overtime wages due and for all hours worked at the proper rates of pay constitute
12 violations of Labor Code §§ 510, 558, 1194, and 1194.2.

13 45. As a result of the unlawful acts of Defendants in willfully failing to pay all overtime
14 wages, Plaintiff and Class Members have been deprived of wages in amounts to be determined at
15 trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys'
16 fees, and costs pursuant to Labor Code § 1194, and liquidated damages, pursuant to Labor Code §
17 1194.2.

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

20 **VII.**

21 **THIRD CAUSE OF ACTION**

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

23 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

24 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

25 47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set
26 forth herein.

48. 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 4-2001.

49. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and Class Members were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late, cut short or on-duty, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001.

50. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed for four years preceding the filing of this complaint, according to proof.

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

VIII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM WAGES IN LIEU THEREOF

(LABOR CODE §§ 226.7, 512, 558, 1174, 1174.5, AND 1198

AND IWC WAGE ORDER 4-2001)

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

52. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 510, 512, and 1194 and IWC Wage Order 4-2001.

53. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 4-2001. 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

1 a second meal period when they worked shifts greater than ten hours, but were not paid premium
2 wages of one hour's pay for each missed meal period. When they were able to take a meal period,
3 they were cut short, late or on-duty. Defendants also fail to maintain records indicating the start and
4 end time of each meal period. This violates Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198
5 and IWC Wage Order 4-2001.

6 54. Pursuant to Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 4-2001,
7 Plaintiff seeks the payment of all meal period compensation which she and Class Members are owed
8 for four years preceding the filing of this complaint, according to proof.

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

10 **IX.**

11 **FIFTH CAUSE OF ACTION**

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

13 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

14 **EMPLOYEE WAGE STATEMENT PROVISIONS**

15 **(LABOR CODE § 226(a), (e))**

16 55. Plaintiff incorporates paragraphs 1 through 54 of this Complaint as though fully set
17 forth herein.

18 56. Section 226(a) of the California Labor Code requires Defendants to provide wage
19 statements to employees. In those wage statements, Defendants must accurately set forth, among
20 other things, total net and gross wages earned, total hours worked, the inclusive dates of the pay
21 period, the address of the legal entity that is the employer, and all applicable pay rates in effect during
22 the pay period, for Plaintiff and Class Members. Defendants have knowingly and intentionally failed
23 to comply with Labor Code § 226(a).

24 57. Defendants failed to provide Plaintiff and Class Members wage statements that fully
25 and accurately itemize the requirements set forth in Labor Code § 226(a). As Plaintiff and Class
26 Members were not paid all wages due during the course of their employment, as detailed above, the
27 wage statements issued by Defendants fail to state the correct gross wages earned, in violation of
28 Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), all deductions,

1 in violation of Labor Code § 226(a)(4), net wages earned, in violation of Labor Code § 226(a)(5), and
2 all applicable hourly rates in effect during the pay period and the corresponding numbers of hours
3 worked at each rate, in violation of Labor Code § 226(a)(9).

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

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

14 **X.**

15 **SIXTH CAUSE OF ACTION**

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

17 **UNFAIR COMPETITION PURSUANT TO**

18 **BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.**

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

21 60. This is a Representative Private Attorney General Action and Class Action for Unfair
22 Business Practices. Plaintiff, on behalf of herself and on behalf of the general public, and on behalf
23 of the Class, brings this claim pursuant to Business & Professions Code §§ 17200 *et seq.* The conduct
24 of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
25 harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important
26 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

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

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

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

18 65. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
19 §§ 17200 *et seq.* of the Business & Professions Code.

20 66. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
21 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §§
22 17200 *et seq.* of the Business & Professions Code.

23 67. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and the
24 Class have been damaged in a sum as may be proven.

25 68. Unless restrained by this Court, Defendants will continue to engage in the unlawful
26 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
27 make such orders or judgments, including the appointment of a receiver, as may be necessary to
28 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive

practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to the money Defendants have unlawfully failed to pay.

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, 204, 226, 226.7, 226.8, 510, 512, 1174, 1174.5, 1194, AND 1198 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558

69. Plaintiff incorporates paragraphs 1 through 68 of this Complaint as though fully set forth herein.

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

71. Furthermore, and independent of the above allegations, Defendants failed to timely pay Plaintiff and all other persons who worked for Defendants in California as a “Leasing Experience Specialist” and were classified as an independent contractor during the period one (1) year prior to the filing of this Action and continuing to the present (“Aggrieved Employees”) all wages due and owing during employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiff and Aggrieved Employees on a bi-weekly basis but failed to issue them all their wages within seven calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d); their wages were typically issued eight or more days after the conclusion of the pay period. This subjects Defendants to penalties as authorized by Labor Code § 210.

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

- a. With respect to the violation of Labor Code § 2699(f) for violations of Labor Code 201, 202, 204, 226, 226.7, 226.8, 510, 512, 1174, 1174.5, 1194, and

1198, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period; and

b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 210, 226.3, and 558.

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

74. On November 16, 2022, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 16, 2022. Plaintiff may therefore commence this action to seek penalties and other relief pursuant to Labor Code § 2698 *et seq.*

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For recovery of all unpaid wages and liquidated damages, pursuant to the FLSA, 29 U.S.C. § 201 *et seq.* with respect to Plaintiff and Class Members;

2. For unpaid wages pursuant to Labor Code §§ 1194, in the amount of all unpaid minimum and overtime wages due to Plaintiff and Class Members;

3. For unpaid wages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members, pursuant to Labor Code §§ 226.7 and 512;

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

5. For penalties and other relief pursuant to Labor Code §§ 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

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

1 7. An award of prejudgment and post-judgment interest;

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

6 9. An award providing for payment of costs of suit;

7 10. An award of attorneys' fees; and

8 11. Such other and further relief as this Court may deem just and proper.

9 Dated: October 5, 2023

Respectfully submitted,

10 GAINES & GAINES
11 A Professional Law Corporation

12 By: _____
13 DANIEL F. GAINES
14 EVAN S. GAINES
15 Attorneys for Plaintiff

16 **DEMAND FOR JURY TRIAL**

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

18 Dated: October 5, 2023

Respectfully submitted,

19 GAINES & GAINES
20 A Professional Law Corporation

21 By: _____
22 DANIEL F. GAINES
23 EVAN S. GAINES
24 Attorneys for Plaintiff

EXHIBIT 4

Appel v. Invitation Homes Realty California Inc. - Class List

Employee Name	Class Start Date	Class Termination Date	Total Class Workweeks	PAGA Start Date	PAGA Termination Date	Total PAGA Workweeks
S.M.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
L.R.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
R.C.	September 27, 2021	November 22, 2021	8	November 16, 2021	November 21, 2021	0.714285714
K.G.	September 27, 2021	February 28, 2022	22	November 16, 2021	February 28, 2022	14.85714286
C.A.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
N.C.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
M.C.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
A.C.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
J.F.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
A.H.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
A.M.G.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
A.M.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286
J.S.	November 18, 2018	February 28, 2022	171.1428571	November 16, 2021	February 28, 2022	14.85714286

Total Class Workweeks	1912.571429
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Total PAGA Workweeks	179
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