

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 **GAINES & GAINES, APLC**
4 4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
5 Facsimile: (818) 703-8984

6 Attorneys for Plaintiff Eleanor Jacobs, on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF HUMBOLDT**

10 ELEANOR JACOBS, on behalf of herself
11 and all “aggrieved employees” pursuant to
12 Labor Code § 2698 *et seq.*,

13 Plaintiffs,

14 v.

15 WESTERN LIVING CONCEPTS, a
California corporation, and DOES 1 through
16 10, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

CASE NO: CV2300926

Assigned to the Hon. Timothy Canning, Dept. 4

**SETTLEMENT AGREEMENT AND
RELEASE OF CLASS AND PAGA CLAIMS**

Complaint Filed: June 13, 2023

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 Eleanor Jacobs (“Jacobs,” “Plaintiff,” or “Class
4 Representative”), individually and on behalf of all others similarly situated, and Defendant Western
5 Living Concepts (“Defendant”), subject to the terms and conditions herein and the Court’s
6 approval.

7 **A. Definitions.**

8 1. Plaintiff, the Settlement Class (as defined below), Aggrieved Employees, and
9 Defendant are collectively 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 Eleanor Jacobs. For purposes of this Settlement Agreement only, Gaines &
12 Gaines, APLC shall be designated as “Class Counsel.”

13 3. The “Action” means *Eleanor Jacobs v. Western Living Concepts*, Humboldt County
14 Superior Court Case. No. CV2300926 (the “Action”).

15 4. The “Settlement Class” shall be defined as “all non-exempt employees of Defendant
16 Western Living Concepts in California at any time between June 13, 2019 and March 30, 2024 who
17 have not entered into an arbitration agreement with Defendant.” Defendant represents that this
18 Class contains no more than approximately 339 Class Members who worked no more than 13,716
19 workweeks during the Class Period (defined below).

20 5. The “Class Period” shall be defined as the time period between June 13, 2019 and
21 March 30, 2024.

22 6. The “Aggrieved Employees” shall be defined as “all non-exempt employees of
23 Defendant Western Living Concepts in California at any time between April 5, 2022 and the date
24 the Court grants preliminary approval, or July 1, 2024, whichever occurs first (the “PAGA Period”).
25 Defendant represents that there are no more than approximately 379 Aggrieved Employees who
26 worked no more than 6,667 pay periods during the PAGA Period.

1 7. Members of the Settlement Class shall collectively be referred to as a “Class
2 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
3 detailed below, will be excluded from the final Settlement Class.

4 8. The “Effective Date” is defined as the date the Court signs an order granting final
5 approval of the settlement and entering judgment thereon (the “Effective Date”). If objections to
6 the settlement are filed that are not subsequently withdrawn, the Effective Date of the settlement is
7 the day after the deadline for filing a notice of appeal from the judgement, unless an appeal is filed,
8 in which case the Effective Date is the day after (1) the settlement is upheld by the Court of Appeals,
9 or (2) all appeals are dismissed and the appellate court affirms the judgement.

10 **B. General.**

11 1. On April 5, 2023, Plaintiff Jacobs exhausted the pre-filing requirements of the Labor
12 Code Private Attorneys General Act of 2004 (“PAGA”) by filing a letter with the Labor Workforce
13 Development Agency (“PAGA Notice”).

14 2. On June 13, 2023, Plaintiff Jacobs initiated her Action in the Humboldt County
15 Superior Court by filing a complaint, pursuant to PAGA, on behalf of herself and all other aggrieved
16 employees.

17 3. As set forth in the First Amended Complaint, in the form attached hereto as **Exhibit**
18 **3** which the Parties will seek to file as part of the motion for preliminary approval of this Settlement,
19 the Action asserts claims against Defendant for (1) failure to provide compliant rest periods or
20 correct compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 5-2001); (2) failure to
21 provide compliant meal periods or correct compensation in lieu thereof (Labor Code §§ 226.7, 510,
22 512, 1174, 1174.5 and 1194; IWC Wage Order 5-2001); (3) failure to comply with itemized
23 employee wage statement provisions (Labor Code § 226(a), (e)); (4) failure to timely pay wages
24 due at the separation of employment (Labor Code §§ 201-203); (5) violation of Business and
25 Professions Code § 17200 for underlying violations of the Labor Code as set forth in the Action;
26 and (6) civil penalties pursuant to PAGA for underlying violations of the Labor Code as set forth
27 in the Action.

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

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

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

24 7. On April 2, 2024, following their exchange of information and documents regarding
25 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in
26 arm's-length negotiations with the assistance of an experienced wage and hour mediator, Brandon
27 McKelvey, Esq., where the Parties were able to reach the resolution of the Action set forth herein.

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

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

16 **C. Terms of Settlement.**

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

18 (a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross
19 Settlement Amount of **Four Hundred Forty-Seven Thousand Five Hundred Dollars (\$447,500)**
20 (“the Gross Settlement Amount”), subject to any increase based on the escalator provision in
21 paragraph H(16) herein. The Gross Settlement Amount includes the attorneys’ fees of Class
22 Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs
23 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
24 providing any notices required as part of the settlement, securing Court approval of the settlement,
25 and obtaining judgment in the Action); the Service and General Release Payment to the Class
26 Representative, as approved by the Court; the payment to the California Labor and Workforce
27 Development Agency (“LWDA”); and all costs of administration, including, without limitation,
28 settlement administration fees and expenses. All employer payroll tax obligations due on wage

1 payments made from the Net Settlement Proceeds shall be paid by Defendant separately and apart
2 from, and in addition to, the Gross Settlement Amount.

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

8 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
9 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
10 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
11 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
12 to participating Class Members, the class portion of the Individual Payment Amount will be
13 determined by dividing the Net Settlement Proceeds, less the \$5,000 PAGA allocation, by the total
14 number of weeks worked by the entire Settlement Class in a non-exempt position in California
15 during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying
16 the class workweek value by the number of weeks worked by each participating Class Member in
17 a non-exempt position in California during the Class Period. As to the Aggrieved Employees, the
18 PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA
19 settlement amount (\$5,000) by the total number of pay periods worked by all Aggrieved Employees
20 in a non-exempt position in California during the PAGA Period, resulting in the PAGA pay period
21 value; and then multiplying the PAGA pay period value by the number of pay periods worked by
22 each Aggrieved Employee in a non-exempt position in California during the PAGA Period.

23 (d) For tax purposes, the class portion of each Individual Payment Amount will
24 be apportioned (a) 10% as wages (reported on an IRS Form W-2 and subject to applicable
25 withholdings); and (b) 90% equally as penalties and interest (reported on an IRS Form 1099, if
26 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as
27 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to
28 Class Members and Aggrieved Employees will be subject to any applicable wage garnishments,

1 liens, or other legally mandated treatment as required by law. Class Members and Aggrieved
2 Employees assume full responsibility and liability for any employee taxes owed on their Individual
3 Payment Amount.

4 (e) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
5 (\$20,000) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount,
6 Seventy-Five percent (75%), or Fifteen Thousand Dollars (\$15,000), shall be paid to the LWDA,
7 and the remaining Twenty-Five percent (25%), or Five Thousand Dollars (\$5,000), shall be paid to
8 Aggrieved Employees as part of the Net Settlement Proceeds.

9 (f) **Service and General Release Payment to Class Representative:** The
10 amount awarded to the Class Representative as a Service and General Release Payment will be set
11 by the Court in its discretion, not to exceed Ten Thousand Dollars (\$10,000). This amount will be
12 deducted from the Gross Settlement Amount. An IRS Form 1099 will be issued to the Class
13 Representative for her Service and General Release Payment. Defendant agrees not to dispute or
14 otherwise object to the Service and General Release Payment if Plaintiff requests \$10,000 or less.
15 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
16 Representative Service and General Release Payment.

17 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
18 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
19 the settlement award that has been made available for the Settlement Class by the efforts of Class
20 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e., One
21 Hundred Fifty-Six Thousand Six Hundred Twenty-Five Dollars (\$156,625)). An IRS Form 1099
22 will be issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not
23 to dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as the
24 request does not exceed 35% of the Gross Settlement Amount. Class Counsel assumes full
25 responsibility and liability for taxes owed on the Class Counsel Attorneys' Fees Payment.

26 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
27 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
28 litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000). An IRS Form

1 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
2 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
3 so long as the request does not exceed \$15,000. Class Counsel assumes full responsibility and
4 liability for taxes owed on the Class Counsel Attorneys' Costs and Expenses Payment.

5 (i) **Settlement Administration Costs:** The fees and other charges of the
6 Settlement Administrator to administer the Settlement are expected to total no more than Fifteen
7 Thousand Dollars (\$15,000.00) and will be paid from the Gross Settlement Amount. These fees
8 shall include any costs associated with the required tax reporting on any employer taxes and any
9 Individual Payment Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to
10 approval of the Court, the Parties have agreed that Phoenix Settlement Administrator will serve as
11 a neutral third-party claims' administrator ("Settlement Administrator") to perform all acts related
12 to providing notice to the Settlement Class. Settlement Administrator shall be responsible for (a)
13 printing and distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to
14 all Class Members; (b) administering the settlement; (c) processing exclusions, objections, and field
15 inquiries from Class Members; (d) resolving disputes; (e) calculating the Individual Payment
16 Amount each Participating Class Members is eligible to receive; (f) distributing the Gross
17 Settlement Amount as directed by the Court and set forth herein; (g) employer and employee tax
18 calculations and reporting; (h) providing necessary weekly status reports; and (i) other duties and
19 responsibilities set forth herein.

20 (j) **Lesser Amount Awarded.** If the Court approves less than the amount requested
21 for any of the above items, the remainder shall be allocated to the Net Settlement Amount.

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

26 **D. Release of Claims.**

27 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
28 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement

1 Class Members who do not timely opt-out of the Settlement will be deemed to have fully released
2 and discharged Defendant Western Living Concepts, and its present and former officers, directors,
3 members, owners, managers, employees, shareholders, agents, operators, partners, joint ventures,
4 subsidiaries, parent companies, related entities, including but not limited to Danco Builders,
5 consultants, attorneys, successors or assignees ("Released Parties") from any and all Released
6 Class Claims which arose during their employment in a non-exempt position in California during
7 the Class Period.

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

13 3. "Released Class Claims" means any and all claims and/or causes of action which
14 accrued during the Class Period during employment in a non-exempt position in California, that
15 are alleged, or that could have been alleged in the Action based on the facts set forth in the First
16 Amended Complaint (which includes direct class action claims for failure to provide meal or rest
17 periods or compensation in lieu thereof, failure to provide compliant wage statements, failure to
18 timely pay wages due at separation of employment and unfair competition under Labor Code §§
19 201, 202, 203, 226(a), (e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, and 1194 and under Business
20 & Professions Code section 17200 *et seq.* predicated on the underlying Labor Code claims
21 alleged). No PAGA claims are encompassed in the Released Class Claims.

22 4. "Released PAGA Claims" means any and all PAGA claims and/or causes of action
23 which accrued during the PAGA Period during employment in a non-exempt position in
24 California, that are alleged in the First Amended Complaint on file in the Action, or that could
25 have been alleged in the Action based on the facts set forth in the First Amended Complaint and
26 the PAGA Notice, including claims for for failure to provide meal or rest periods or compensation
27 in lieu thereof, failure to provide compliant wage statements, and failure to timely pay wages due
28 at separation of employment under Labor Code §§ 201, 202, 203, 226(a), (e), 226.3, 226.7, 510,

1 512, 558, 1174, 1174.5, 1194, and 2699 et seq. No Aggrieved Employee may opt out of the PAGA
2 portion of the Settlement.

3 5. Upon the Effective Date, and subject to Defendant's full payment of the Gross
4 Settlement Amount and all associated employer payroll tax obligations, Plaintiff Jacobs shall be
5 deemed to have fully, finally, and forever released the Released Parties from any and all claims,
6 obligations, demands, Action, rights, causes of action, and liabilities against the Released Parties,
7 of whatever kind and nature, character, and description, whether in law or equity, whether
8 sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common
9 law, or other source of law, whether known or unknown, and whether anticipated or unanticipated,
10 including unknown claims covered by Civil Code Section 1542, arising through the date of her
11 signature hereon, for any type of relief, including, without limitation, claims for wages, damages,
12 unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney's fees, litigation
13 costs, restitution, or equitable relief. These claims include, but are not limited to, the Released
14 Class Claims and Released PAGA Claims, as well as any other claims under any provision of the
15 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders,
16 and claims under local, state, or federal discrimination statutes, including, without limitation, the
17 California Fair Employment and Housing Act, California Government Code §§ 12940 et seq.; the
18 Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII
19 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act,
20 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
21 §§ 1001 et seq.; and all of their implementing regulations and interpretive guidelines. With respect
22 to these Released Claims as described in this Section, Plaintiff Jacobs shall be deemed to have
23 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
24 and benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code,
25 which provides as follows:

26
27 **A general release does not extend to claims that the creditor or releasing party
28 does not know or suspect to exist in his or her favor at the time of executing the**

1 **release and that, if known by him or her, would have materially affected his or**
2 **her settlement with the debtor or released party.**

3 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
4 act as a release of all future claims that may arise from Plaintiff's employment or separation from
5 employment with Defendant, or any other matters that existed between Plaintiff and the Released
6 Parties up to the date of this Agreement, whether such claims are currently known or unknown, and
7 that Plaintiff intentionally waives any rights she may have under the provisions of Section 1542, as
8 well as under any other statutes or common law principles of similar effect in the State of California
9 or in any other state.

10 **E. Notice and Exclusion Process.**

11 1. Within fourteen (14) calendar days after entry of the order granting preliminary
12 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all
13 Class Members, including their last known addresses, telephone numbers, and social security
14 numbers in a non-exempt position in California during the Class Period and the PAGA Period
15 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
16 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
17 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
18 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
19 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
20 storage, custody, use, and/or dissemination of the confidential information. Such information must
21 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

22 2. A notice of pendency of class action, proposed settlement, and hearing date for
23 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
24 Court, shall be sent by the Settlement Administrator to the Class Members and Aggrieved
25 Employees, by first class mail, within twenty (20) calendar days after entry of the order granting
26 preliminary approval. Attached to the Class Notice will be a request for exclusion form ("Request
27

for Exclusion Form”) in the form attached hereto as **Exhibit 2**. These forms will be sent in both English and Spanish.

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

4. Each Class Member will be fully advised of the settlement, the ability to object to the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will inform the Class Members of the Court-established deadlines for filing objections and a Request for Exclusion Form. Aggrieved Employees may neither object to, nor exclude themselves from, the PAGA portion of the settlement.

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

6. All Class Members who do not submit a Request for Exclusion Form will be eligible to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them after the Effective Date occurs based on the limitations set forth herein.

7. In order to elect not to participate in the Settlement, a Class Member must submit a Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five

(45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer period, in which case the Court ordered exclusion period will apply. The date of the postmark shall be deemed the date of submission. The timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day on which the U.S. Postal Service is open.

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

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

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

11. In order to object to the settlement, a Class Member must mail his or her objection to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer period, in which case the Court ordered objection period will apply. If the 45th day falls on a

1 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
2 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
3 extended for any reason.

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

11 13. Defendant shall deposit the Gross Settlement Amount, plus applicable employer
12 payroll taxes, with the Settlement Administrator as follows:

- 13 (1) 14.29% of the Gross Settlement Amount no later than May 31, 2024;
- 14 (2) 14.29% of the Gross Settlement Amount no later than August 31, 2024;
- 15 (3) 14.29% of the Gross Settlement Amount no later than November 30, 2024,
16 plus employer payroll taxes due on all payments encompassed though the date of
17 this deposit;
- 18 (4) 14.29% of the Gross Settlement Amount no later than February 28, 2025;
- 19 (5) 14.29% of the Gross Settlement Amount no later than May 31, 2025;
- 20 (6) 14.29% of the Gross Settlement Amount no later than August 31, 2025; and
- 21 (7) 14.26% of the Gross Settlement Amount, plus the balance of all employer
22 payroll taxes due, no later than November 30, 2025.

23 14. The Settlement Administrator shall disburse Plaintiff's Service and General
24 Release Payment within fifteen (15) calendar days after the occurrence of the Effective Date. The
25 Settlement Administrator shall also disburse proportionate shares of the Gross Settlement Amount
26 within fifteen (15) calendar days after its receipt of each installment thereof, subject to the prior
27 occurrence of the Effective Date, except that Individual Payment Amounts shall be mailed to Class
28 Members and Aggrieved Employees in two proportionate installments, the first within thirty (30)

1 calendar days after the third installment payment has been paid by Defendant, and the second within
2 thirty (30) calendar days after the final installment payment has been paid by Defendant. Class
3 Members and Aggrieved Employees must cash each of their Individual Payment Amount checks
4 within one hundred eighty (180) calendar days after they are mailed by the Settlement
5 Administrator. The value of any checks uncashed more than one hundred eighty (180) calendar
6 days after mailing shall be paid to the State of California Controller's Office – Unclaimed Property
7 Fund, to be held in the name of the respective Class Member or Aggrieved Employee.

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

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

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

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

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

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

20 (e) preliminarily approving the PAGA payment of \$15,000 to the LWDA;

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

22 (g) preliminarily setting the Service and General Release Payment to the Class
23 Representative;

24 (h) preliminarily approving Phoenix Settlement Administration as the
25 Settlement Administrator and its estimated fees and costs of \$15,000; and

26 (i) authorizing Plaintiff to file the First Amended Complaint (Exhibit 3).

27 2. The Parties shall submit this Settlement Agreement to the Court and the LWDA
28 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):

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

(b) approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the Service and General Release Payment to the Class Representative, the PAGA Payment to the LWDA, and the costs of administering the settlement; and

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

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

H. Miscellaneous Provisions:

1. Voiding the Agreement.

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or materially modified on appellate review, shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of any Party. The Court's decision to award less than the amounts requested for the Class Representative Service and General Release Payment, Class Counsel Attorneys' Fees Payment, Class Counsel Attorneys' Costs and Expenses Payment and/or Settlement Administrator Costs Payment shall not constitute a fundamental change of the Parties' Settlement Agreement within the meaning of this Paragraph.

2. If the number of valid Requests for Exclusion exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect

1 whatsoever, and that neither Party will have any further obligation to perform under this
2 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
3 Administration Expenses incurred to that point.

4 **3. Parties' Authority.**

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

7 **4. Mutual Full Cooperation.**

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

17 **5. No Prior Assignments.**

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

22 **6. No Admission.**

23 Nothing contained herein, nor the consummation of this Settlement Agreement, is to be
24 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
25 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
26 Settlement Agreement with the intention of avoiding further disputes and litigation with the
27 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
28 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408

1 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
2 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

3 **7. Construction.**

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

8 **8. Captions and Interpretations.**

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

13 **9. Modification.**

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

18 **10. Integration Clause.**

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

24 **11. Binding on Assigns.**

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

27 **12. Governing Law.**

28 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted

1 according to the laws of the State of California, without giving effect to any conflict of law
2 principles or choice of law principles.

3 **13. Signatures of All Class Members Unnecessary to be Binding.**

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

9 **14. Counterparts.**

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

14 **15. Confidentiality**

15 Until Plaintiff files her motion for preliminary approval of the class action settlement of the
16 Action, the Parties and their Counsel agree to maintain confidentiality as to the Settlement,
17 including the amount and terms of the Settlement, except as to spouses, children, parents, tax or
18 financial advisors, attorneys, taxing agencies, or as otherwise required by law.

19 **16. No Publicity**

20 Plaintiff and her Counsel will not contact the media about the Settlement Agreement or
21 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
22 was amicably settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also
23 will not post any information about the Settlement Agreement on social media or their firm's
24 website.

25 **17. Representation Regarding Workweeks; Escalator Provision**

26 Defendant has represented that Class Members worked no more than 13,716 workweeks
27 during the Class Period and Aggrieved Employees worked no more than 6,667 pay periods during
28

1 the PAGA Period for a combined total of 20,383 workweeks / pay periods. Should this number
2 increase by more than 10% (i.e. be more than 22,421 workweeks / pay periods), the Gross
3 Settlement Amount will increase proportionately by the workweeks / pay periods in excess of
4 22,421. For example, if there are actually 22,625 workweeks / pay periods in the Class and PAGA
5 Periods (an 11% increase over the representation), then the increase to the Gross Settlement
6 Amount shall be equal to 1.0% (11% actual increase-10% grace) of the Gross Settlement, or \$4,475
7 In the alternative, Defendant shall have the option of changing the final date of the Class Period
8 and the PAGA Period to the last date before the combined Class Period workweeks / PAGA Period
9 pay periods exceeded 22,421.

10 **18. Continuing Jurisdiction.**

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

16 **18. Default; Notice; Cure; Acceleration; Time is of the Essence.**

17 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
18 to timely make any payment due hereunder, it shall be in default of its obligations. Plaintiff shall
19 thereafter give written notice of default to Defendant's counsel, Carrie E. Bushman, by email, and
20 Defendant must cure said default within fourteen (14) calendar days thereof. In the event of an
21 uncured default, all unpaid amounts shall be due and payable with interest at the legal rate from the
22 date of default. Time is of the essence with respect to all terms of this Settlement.

23 **19. No Additional Obligations.** The payment of the Individual Payment Amounts to
24 the Class Members / Aggrieved Employees shall not obligate Defendant to confer any additional
25 benefits or make any additional payments to Class Members / Aggrieved Employees beyond
26 those specified in this Agreement.

27 *SIGNATURES ON FOLLOWING PAGE*

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

Dated: 06 / 03 / 2024

By: Ella Jacobs
ELEANOR JACOBS
Plaintiff and Class Representative

Dated: _____

WESTERN LIVING CONCEPTS

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: 6/4/2024

GAINES & GAINES, APLC

By: DG
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative Eleanor Jacobs

Dated: _____

COOK BROWN, LLP

By: _____
Carrie E. Bushman, Esq.
Daniel F.C. Kozieja, Esq.
Counsel for Defendant Western Living
Concepts

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

Dated: _____

By: _____

ELEANOR JACOBS
Plaintiff and Class Representative

Dated: _____

WESTERN LIVING CONCEPTS

By: _____

Its: _____


Dan Johnson
President

APPROVED AS TO FORM AND CONTENT:

Dated: _____

GAINES & GAINES, APLC

By: _____

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

Dated: _____

6/9/24

COOK BROWN, LLP

By: _____


Carrie E. Bushman, Esq.
Daniel F.C. Kozieja, Esq.
Counsel for Defendant Western Living
Concepts

EXHIBIT 1

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

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

Plaintiffs,

v.

WESTERN LIVING CONCEPTS, a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CV2300926

Assigned to the Hon. Timothy Canning, Dept. 4

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

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A COURT-APPROVED
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.

- You are receiving this notice pursuant to an order from the Humboldt County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Settlement Agreement and Release of Class and PAGA Claims (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Eleanor Jacobs (“Plaintiff” or “Class Representative”), and Defendant Western Living Concepts (“Defendant”) on behalf of Class Members and Aggrieved Employees as defined below. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of Class Member and/or Aggrieved Employee.
- The settlement will provide \$447,500 to pay claims to all individuals who worked for Western Living Concepts (“Defendant”) as non-exempt employees in California at any time between June 13, 2019 and March 30, 2024, who did not sign an arbitration agreement (“Class Members”), and all individuals who worked for Defendant as non-exempt employees in California at any time between April 5, 2022 and [REDACTED] (“Aggrieved Employees”).
- The settlement resolves a lawsuit filed by Plaintiff alleging that Defendant failed provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Plaintiff’s lawyers will ask the Court to award them up to \$156,625 as attorneys’ 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 Plaintiff won at trial, and whether Western Living Concepts is even liable for the allegations raised in this case

- **Your legal rights are affected whether or not you act. Read this notice carefully.**

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 may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Western Living Concepts about the legal claims that were brought in this case. If you exclude yourself from the Settlement, you will still be bound by the release of PAGA claims, as detailed herein.
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 / Private Attorneys General Act ("PAGA") 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 / aggrieved employees on whose behalf this class action / PAGA lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On April 5, 2023, Plaintiff, a former employee of Defendant, filed a Private Attorneys General Act notice with the Labor Workforce Development Agency alleging that Defendant violated various provisions of the California Labor Code ("PAGA Notice") and, on June 13, 2023, Plaintiff filed a Representative Action Complaint for Penalties in the Humboldt County Superior Court. On [REDACTED], Plaintiff filed a First Amended Class and Representative Acton Complaint. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. In the lawsuit, Plaintiff seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between June 13, 2019 and March 30, 2024 who did not sign an arbitration agreement ("Class Period") and to pursue PAGA claims on behalf of all current and former non-exempt California employees of Defendant at any time between April 5, 2022 and [REDACTED] ("PAGA Period"). Specifically, the lawsuit alleges that the Class Members and Aggrieved Employees, defined above, were not provided with compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material

allegations in the lawsuit and denies that it owes Class Members or Aggrieved Employees 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

Carrie E. Bushman, Esq.
Daniel F.C. Kozieja, Esq.
Cook Brown, LLP
2407 J Street, 2nd Floor
Sacramento, CA 95816

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 Class and PAGA 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 and Aggrieved Employees.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all non-exempt employees of Defendant Western Living Concepts in California at any time between June 13, 2019 and March 30, 2024 who did not sign an arbitration agreement. It also encompasses Aggrieved Employees composed of all non-exempt employees of Defendant Western Living Concepts in California at any time between April 5, 2022 and [REDACTED].

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$447,500 (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 fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$156,625;

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

(c) **Service and General Release Payment to the Class Representative** in an amount set by the Court, not to exceed \$10,000 for her service in the lawsuit and for her full general release of claims against Defendant;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$15,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$20,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$15,000, shall be paid to the California Labor and Workforce Development Agency. The remaining 25%, or \$5,000, 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?

Class Settlement Release

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 be deemed to have fully released and discharged Defendant Western Living Concepts, and its present and former officers, directors, members, owners, managers, employees, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, including but not limited to Danco Builders, consultants, attorneys, successors or assignees ("Released Parties") from any and all Released Class Claims which arose during their employment in a non-exempt position in California during the Class Period.

"Released Class Claims" means any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint (which includes direct class action claims for failure to provide meal or rest periods or compensation in lieu thereof, failure to provide compliant wage statements, failure to timely pay wages due at separation of employment and unfair competition under Labor Code §§ 201, 202, 203, 226(a), (e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, and 1194 and under Business & Professions Code section 17200 *et seq.* predicated on the underlying Labor Code claims alleged). No PAGA claims are encompassed in the Released Class Claims.

PAGA Settlement Release

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 Aggrieved Employees will be deemed to have fully released and discharged the Released Parties from any and all Released PAGA Claims which arose during their employment in a non-exempt position in California during the PAGA Period.

“Released PAGA Claims” means any and all PAGA claims and/or causes of action which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the First Amended Complaint on file in the Action, or that could have been alleged in the Action based on the facts set forth in the First Amended Complaint and the PAGA Notice, including claims for failure to provide meal or rest periods or compensation in lieu thereof, failure to provide compliant wage statements, and failure to timely pay wages due at separation of employment under Labor Code §§ 201, 202, 203, 226(a), (e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 2699 et seq. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

“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 \$5,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class in a non-exempt position 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 in a non-exempt position 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 (\$5,000) by the total number of pay periods worked by all Aggrieved Employees in a non-exempt position in California during the PAGA Period, resulting in the PAGA pay period value; and then multiplying the PAGA pay period value by the number of pay periods worked by each Aggrieved Employee in a non-exempt position in California during the PAGA Period.

For tax purposes, each Individual Payment Amount will be apportioned (a) 10% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 90% equally to penalties and interest (reported on an IRS Form 1099). 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. Class Members and Aggrieved Employees assume full responsibility and liability for any employee taxes owed on their Individual Payment Amount.

Class Payment: According to the records of Defendant, you worked [REDACTED] weeks while employed as a non-exempt employee in California from June 13, 2019 through March 30, 2024. Based on these weeks worked, you are entitled to a Class Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court. **Note:** This paragraph is not applicable to employees who entered into an arbitration agreement with Defendant.

PAGA Payment: According to the records of Defendant, you worked [REDACTED] pay periods while employed as a non-exempt employee in California from April 5, 2022 through [REDACTED]. Based on these pay periods worked, you are entitled to a PAGA Payment 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.

F. When Will I Be Paid?

After the Court grants approval of the settlement, you will receive your Individual Payment Amount in two installments over approximately eighteen months, through December 2025. If you move, update your address with the Settlement Administrator by contacting it at [REDACTED].

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 Timothy Canning of the Humboldt County Superior Court, Department 4, located at 421 I Street, Eureka, CA 95501. 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 and Aggrieved Employees; (iii) whether the Settlement Class Members and Aggrieved Employees should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; (v) the amount that should be awarded to Plaintiff as a service and general release payment, (vi) the amount that should be awarded to the Settlement Administrator for administering the settlement and (vii) the amount of the PAGA 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 may not receive any benefits from the proposed settlement (except from your share of the PAGA Settlement, if applicable). You will not be bound by a judgment in this case as to the class claims 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]. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

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 Class and PAGA 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 Humboldt County Superior Court, located at 421 I Street, Eureka, CA 95501.

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 *Eleanor Jacobs v. Western Living Concepts*, Humboldt County Superior Court Case. No. CV2300926. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE CLASS SETTLEMENT AMOUNT, BUT YOU WILL BE PAID A PAGA PAYMENT IF YOU ARE AN AGGRIEVED EMPLOYEE.

I confirm that I was employed by Defendant Western Living Concepts as a non-exempt employee in California between June 13, 2019 and March 30, 2024.

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:

Western Living Concepts Claims Administrator
c/o Phoenix Settlement Administration

EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Eleanor Jacobs, 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 HUMBOLDT**

ELEANOR JACOBS, on behalf of herself and
all "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

WESTERN LIVING CONCEPTS, a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CV2300926

*Assigned to the Hon. Timothy Canning, Dept.
4*

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

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

**2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512, 1174, 1174.5, AND 1194; IWC WAGE
ORDER 4-2001)**

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

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

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

**6. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7,**

**510, 512, 1174, 1174.5, AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: June 13, 2023

Plaintiff ELEANOR JACOBS (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of WESTERN LIVING CONCEPTS, a California corporation (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for Defendants within the State of California.

2. 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 failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members (as defined below); provide accurately itemized wage statements to Class Members; and to timely pay wages during employment and upon separation of employment to Class Members.

3. Plaintiff, on behalf of herself and Class Members, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, and 1194, seeking compensation for all unpaid premium meal and rest period wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

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

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

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

II.

PARTIES

A. Plaintiff

7. Plaintiff ELEANOR JACOBS was employed by Defendants from 2022 through January 2023 as a non-exempt employee in Humboldt County, California.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied rest periods or compensation in lieu thereof;
- b. Willfully denied meal periods or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements; and
- d. Willfully denied the timely payment of wages upon separation. of his employment.

B. Defendants

9. Defendant WESTERN LIVING CONCEPTS is a California corporation that employed Plaintiff and Class Members throughout the State of California, including Humboldt County, California.

10. 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 alleges, 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.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant 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.

12. 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.

CLASS ACTION ALLEGATIONS

13. 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 the following class composed of and defined as follows:

THE CLASS

All non-exempt employees who currently work or formerly worked for Defendants in the State of California during the period four (4) years prior to the filing of this Action and continuing to the present.

14. 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.

15. 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

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

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

4 **B. Commonality**

5 18. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual Class Members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Defendants failed to properly provide rest periods or compensation in
9 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
10 and IWC Wage Order 4-2001;
- 11 b. Whether Defendants failed to properly provide meal periods or compensation
12 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
13 226.7, 510, 512, 1174, 1174.5, and 1194 and IWC Wage Order 4-2001;
- 14 c. Whether Defendants failed to provide Plaintiff and members of the Class with
15 accurately itemized wage statements, in accordance with Labor Code § 226(a)
16 and (e);
- 17 d. Whether Defendants failed to timely pay Plaintiff and Class Members all
18 wages due and owing at the separation of their employment, in violation of
19 Labor Code §§ 201-203; and
- 20 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
21 to Business & Professions Code § 17200 *et seq.*

22 **C. Typicality**

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

27 ///

28 ///

1 **D. Adequacy of Representation**

2 20. Plaintiff will fairly and adequately represent and protect the interests of Class
3 Members. Counsel who represents Plaintiff are competent and experienced in litigating large
4 employment class actions.

5 **E. Superiority of Class Action**

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

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

15 **IV.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

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

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

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

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

23 24. Plaintiff and Class Members are entitled to one hour of pay at the regular rate for each
24 day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code §
25 226.7 and IWC Wage Order 4-2001.

26 25. Defendants failed to pay premium wages to Plaintiff and Class Members who were
27 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and
28 Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period

1 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
2 hour's pay for each missed rest period. Plaintiff and Class Members were too busy to take a rest
3 period during their employment and were not paid premium wages at the correct rates in lieu thereof.
4 Any rest periods taken were on-duty and subject to Defendants' control. This violates Labor Code §
5 226.7 and IWC Wage Order 4-2001.

6 26. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
7 payment of all rest period compensation which she and Class Members are owed for no fewer than
8 four years preceding the filing of this Action, according to proof.

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

10 **V.**

11 **SECOND CAUSE OF ACTION**

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

13 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

14 **(LABOR CODE §§ 226.7, 510, 512, 1174, 1174.5, AND 1194 AND IWC WAGE ORDER 4-**
15 **2001)**

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

18 28. Plaintiff and Class Members are entitled to one hour of pay at the regular rate for each
19 day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code
20 §§ 226.7 and 512 and IWC Wage Order 4-2001.

21 29. Defendants failed to pay premium wages to Plaintiff and Class Members who were
22 denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.
23 Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-
24 minute meal period for every shift worked that exceeded five hours in duration, and a second meal
25 period when they worked shifts greater than ten hours, but were not paid premium wages of one
26 hour's pay for each missed meal period. When they were able to take a meal period, they were cut
27 short, late, or on-duty. Furthermore, regardless of whether they take a meal period or not, Defendants
28 deducted an hour of pay from Plaintiff and Class Members' wages, resulting in uncompensated time.

1 Defendants also failed to maintain meal records showing the start and stop time of meal periods. This
2 violates Labor Code §§ 226.7, 510, 512, 1174, 1174.5, and 1194 and IWC Wage Order 4-2001.

3 30. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff
4 seeks the payment of all meal period compensation which she and Class Members are owed for no
5 fewer than four years preceding the filing of this Action, according to proof.

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

7 **VI.**

8 **THIRD CAUSE OF ACTION**

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

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

11 **EMPLOYEE WAGE STATEMENT PROVISIONS**

12 **(LABOR CODE § 226(a), (e))**

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

15 32. Section 226(a) of the California Labor Code requires Defendants to provide wage
16 statements to employees. In those wage statements, Defendants must provide an accurate itemized
17 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
19 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
20 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
21 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
22 her social security number or an employee identification number other than a social security number,
23 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
24 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
25 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
26 226(a).

27 33. Defendants failed to issue Plaintiff and members of the Class wage statements that
28 fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class

1 Members were not paid all wages due, as stated above. As such, the wage statements provided by
2 Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1),
3 total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor
4 Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked, in violation of Labor Code § 226(a)(9). Furthermore, and independent of
6 the above allegations, the wage statements issued to Plaintiff and Class Members failed to set forth
7 (1) an employee identification number or only the last four digits of employees' social security
8 numbers, in violation of Labor Code § 226(a)(7) (the wage statements improperly set forth the entire
9 social security number), (2) the address of the legal entity that is the employer, in violation of Labor
10 Code § 226(a)(8), and (3) all hourly rates in effect during the pay period and the corresponding
11 number of hours worked, in violation of Labor Code § 226(a)(9).

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

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

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

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

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

37. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

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

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

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

///

///

VIII.
FIFTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

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

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

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

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

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

45. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

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

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

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

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

17 **IX.**

18 **SIXTH CAUSE OF ACTION**

19 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**

20 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**

21 **LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1174.5, AND 1194 AND**

22 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**

23 **LABOR CODE §§ 226.3 AND 558**

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

26 51. As a result of the acts alleged above, including the Labor Code violations set forth
27 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*
28

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

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1174.5, and 1194; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

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

54. On April 5, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 5, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages 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;
2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
3. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
4. An award of prejudgment and post-judgment interest;
5. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

1 6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and Aggrieved
2 Employees;

3 7. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
4 1194, 2699(g)(1), and other applicable law;

5 8. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and
6 other applicable law; and

7 9. Such other and further relief as this Court may deem just and proper.

8 Dated: June 3, 2024

Respectfully submitted,

9
10 GAINES & GAINES
A Professional Law Corporation

11
12 By: _____
13 DANIEL F. GAINES
ALEX P. KATOFISKY
14 Attorneys for Plaintiff

15 **DEMAND FOR JURY TRIAL**

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

17 Dated: June 3, 2024

Respectfully submitted,

18 GAINES & GAINES
19 A Professional Law Corporation

20 By: _____
21 DANIEL F. GAINES
ALEX P. KATOFISKY
22 Attorneys for Plaintiff