Janelle Carney (Bar No. 201570)
janelle@janellecarneylaw.com
JANELLE CARNEY- ATTORNEY AT LAW, APC
14758 Pipeline Ave., Suite E
Chino Hills, CA 91709-6025
Tel.: (909) 393-0223 / Fax: (909) 393-0471

Manny Starr, Esq. (Bar No. 319778)
manny@frontierlawcenter.com
Adam Rose. Esq. (Bar No. 210880)
adam@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, #1084
Calabasas, CA 91302
Telephone: (818) 914-3433/ Fax: (818) 914-3433

Attorneys for Plaintiff David Llamas

FILED
Clerk of the Superior Court
DEC 14 2023
By: T. Moore, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DAVID LLAMAS, individually and on behalf of all others similarly situated, Plaintiff, v. SAN DIEGO SUNRISE MANAGEMENT COMPANY, a California corporation; and DOES 1 to 100, Defendants.	Case No.: 37-2023-00044344 CU-OE-CTL Judge: James A. Mangione CLASS ACTION **FIRST AMENDED COMPLAINT** **1. Violation of B&PC §17200, et seq.** **2. Violation of Labor Code §§ 204, 510, 1194, and 1198** **3. Inaccurate Wage Statements (LC §226)** **4. Failure to Provide Meal Periods** **5. Failure to Provide Rest Periods** **6. Work Expenditure Reimbursements** **7. Waiting Time Penalties** **8. PAGA Penalties** Action filed 10/12/23

Plaintiff, David Llamas on behalf of himself and all others similarly situated, hereby complains against SAN DIEGO SUNRISE MANAGEMENT COMPANY, a California corporation (hereinafter collectively referred to as "Defendant" or "SUNRISE MANAGEMENT"), and DOES 1 to 100, as follows:

GENERAL ALLEGATIONS

JURISDICTION

1. This is a civil action seeking recovery of unpaid wages under California Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 1197.1, 2698, 2699, and 2802. The Plaintiff for himself and all others similarly situated, brings an action for monetary damages for failure to pay wages as well as for injunctive relief, declaratory relief and restitution for Defendant's violations of Business and Professions Code (B&PC) §17200, et seq., including full restitution of all compensation retained by Defendant, as a result of its unlawful, fraudulent and unfair business practices. Plaintiff seeks all available relief, including full damages, full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits retained by Defendant as a result of its unlawful, unfair business practices.

VENUE

2. Venue as to the Defendant is proper in San Diego County pursuant to California Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of herein occurred in the County of San Diego. Defendant either owns or maintain offices, transacts business, has an agent or agents within the County of San Diego, or otherwise is found within the County of San Diego, and Defendant is within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. David Llamas is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff Llamas was and currently is a resident of the County of San Diego, State of California.

4. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, Defendant San Diego Sunrise Management Company is a California Corporation based

in San Diego, California.

5. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, Defendant and each of them listed herein are property managers, owners, and operators,and do business in California.

6. Plaintiff is informed and believes and thereon allege that at all relevant times each Defendant was licensed to do business in the State of California, with its principal place of business in San Diego, California.

7. Further, Defendant is and was the employer of the Plaintiff and Plaintiff Class during the Class Period. During the liability period, Defendant employed Plaintiff and similarly situated non-exempt hourly employees and due to Defendant's uniform payroll practices, failed to pay Plaintiff and Plaintiff Class for all time worked due to work off the clock, failed to pay Plaintiff and Plaintiff class premiums for missed rest and meal periods at the regular rate of pay, failed to provide duty-free off-premises meal and rest breaks, failed to reimburse Plaintiff and Plaintiff Class for necessary business expenditures, and failed to provide accurate wage statements. On information and belief and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in California.

8. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to 100, control and operate business and establishments in locations within the State of California, including, but not limited to, the County of San Diego. Thus, each named Defendant and DOES 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code as hereinafter alleged.

9. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said Defendant is sued under such fictitious names, and Plaintiff will seek from this Court leave to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes and thereon alleges that each Defendant and each fictitious Defendant, whether individual, partners, or corporate, was responsible in some manner for the circumstances alleged herein, and proximately caused Plaintiff and all others similarly situated hereinafter alleged to be

subjected to the unlawful employment practices, wrongs, injuries and damages complained of herein.

PRIVATE ATTORNEY GENERAL ALLEGATIONS

10. Plaintiff on behalf of himself and all others similarly situated, filed this cause of action acting as a private attorney general on behalf of the general public to challenge and remedy the business practices of Defendant alleged herein.

11. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which constitute unfair, unlawful, or fraudulent business acts or practices within the State of California. Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is authorized to order injunctive relief, declaratory relief, and restitution to affected members of the general public as remedies for any violations of B&PC §17200.

12. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

a. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by maintaining the integrity of entities that employ employees;

b. This action will result in a significant benefit to the general public by ceasing unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains obtained by Defendant through their failure to properly pay their employees;

c. Unless this action is prosecuted, members of the general public will not recover monies wrongfully taken from them, and many employees and consumers would not be aware that they were victimized by Defendant's wrongful acts and practices; and unless attorneys' fees and costs are awarded against Defendant, the general public will not be made whole.

/////

CLASS REPRESENTATIVE

13. The class representative Plaintiff who worked in the position of non-exempt hourly employee, while employed by Defendant within the State of California, is David Llamas.

CLASS ACTION ALLEGATIONS

14. Plaintiff bring this action on behalf of himself and all others similarly situated as a class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of and defined as follows:

Class Definition:

All non-exempt hourly employees who worked for Defendant in California at least one (1) day at any time from four (4) years preceding the filing of this Complaint (October 12, 2019) through the date of the class certification order.

Class 1:

All non-exempt hourly California employees who worked for Defendant from October 12, 2019 through certification who were not provided a 30-minute uninterrupted meal period within the first five hours of their shift. (Meal Break Class)

Subclass 1:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from October 12, 2019 through certification who were required to remain on-premises for their meal breaks. (On-Premises Meal Break Subclass).

Class 2:

All current and former hourly non-exempt California employees who work or worked for Defendant at any time from October 12, 2019 through class certification, who were not authorized or permitted to take a duty-free rest period of at least ten (10) consecutive minutes for each four (4) hours or major fraction thereof pursuant to California law. (Rest Period Class)

Subclass 2:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from October 12, 2019 through certification who were required to remain on-premises for their rest breaks. (On-Premises Rest Period Subclass).

Class 3:

All current and former hourly non-exempt California employees who work or worked for Defendant at any time from October 12, 2029 through preliminary approval or judgment who were not reimbursed for out-of-pocket costs paid for necessary work expenses, including but not limited to, mileage reimbursement. (2802 Class)

Class 4:

All non-exempt hourly California employees who worked for Defendants from October 12, 2022 through certification who were provided a paystub (wage statement) from Defendants. (Pay Stub Class)

Class 5:

All hourly non-exempt California employees who worked for Defendants at some point from October 12, 2020 through the date of certification who are no longer employed with Defendant. (Waiting Time Penalty Class)

Class 6:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from October 12, 2019 through certification who were required to work off the clock. (minimum wage / off the clock/ overtime class)

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time; however, it is estimated that the classes number greater than 50 individuals. The identity of such membership is readily ascertainable via inspection of Defendant's employment records.

15. There are common questions of law and fact as to Plaintiff and all others similarly situated which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendant required Plaintiff and Plaintiff Class to work off-the-clock;

ii. Whether Defendant failed to pay overtime premium or meal and rest period premiums to the class based on the correct regular rate of pay;

iii. Whether Defendant improperly retained, appropriated or deprived Plaintiff of the use of monies or sums to which Plaintiff was legally entitled;

iv. Whether Defendant engaged in unfair business practices;

v. Whether Defendant, and each of them, was/were participants in the alleged unlawful conduct;

vi. Whether Defendant's conduct was willful or reckless;

vii. The effect upon and the extent of injuries suffered by Plaintiff and all others similarly situated and the appropriate amount of compensation;

viii. The appropriate amount of monetary penalties allowed by Labor Code §201, et. seq.;

ix. Whether Defendant discouraged, dissuaded, or impeded non-exempt employees from receiving legally compliant meal or periods;

x. Whether Defendant violated Labor Code §226 and by failing to accurately report total hours worked at all applicable hourly rates by Plaintiff and the members of the class;

xi. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiff and members of the class as required by Labor Code § 1174 and IWC Order, 5-2001.

16. Plaintiff's claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiff, as representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claims or interests that are antagonistic to any class member.

17. The nature of this action and the nature of laws available to the members of the classes identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves one large employer, Defendant, and a large number of individual employees (Plaintiff and all others similarly situated) with many relatively small claims with common issues

of law and fact. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present and/or subsequent employment. Proof of a common business practice or factual pattern, of which the named Plaintiffs experienced, is representative of the class mentioned herein and will establish the right of each of the members of the named class to recovery on the causes of action alleged herein.

18. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendant herein; and which would establish potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

19. Plaintiff and all others similarly situated are entitled to the wages and other monies unlawfully withheld.

FIRST CAUSE OF ACTION

Violation of Business & Professions Code §17200, et seq.

Against All Defendants

20. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

21. Beginning on an exact date unknown to Plaintiff but believed to have occurred at least four (4) years preceding the filing of this action, Defendant has engaged in a pattern and

practice of acts of unfair competition in violation of B&PC §17200.

22. Defendants have engaged in the practice of paying their employees, including all hourly employees in a fashion that circumvents California wage laws.

FAILURE TO PAY PROPER WAGES, PREMIUM PAY AND OVERTIME COMPENSATION

23. Plaintiff is informed and believe and thereon allege that as part of Defendant's ongoing unfair business practices, Defendant's non-exempt hourly employees were and are employed and scheduled as a matter of established company policy to work, and in fact, worked shifts in excess of eight (8) hours a day, including but not limited to shifts lasting ten (10) hours and twelve (12) hours yet were not paid for all time worked given that Defendant required Plaintiff and the class to work off the clock as detailed infra.

VIOLATION OF MEAL PERIOD PROVISIONS

24. Defendant's improper meal policies are in violation of California law including, but not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. Plaintiff and all others similarly situated these classes are entitled to wages at their regular rate of pay for each violation where Defendants violated the meal break provisions and failed to provide a compliant meal period due to constant interruption or otherwise non-compliant meal periods. Plaintiff and the class are entitled to 1 hour of pay for each meal break violation at the correct regular rate of pay.

FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS

25. Plaintiff and other members of the Rest Period Class are entitled to the benefits of Labor Code § 226.7 and Order 5-2001 of the Industrial Welfare Commission. Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Plaintiff and the other members of the Rest Period Class were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof, and one hour of additional pay for every shift a rest period was not provided in conformance with this obligation.

/////

/////

the herein described unfair, unlawful, and/or fraudulent business practices at all times in the future.

33. Plaintiff seeks restitution for said violations.

34. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices prohibited by California B&PC §17200, thereby depriving their employees and the putative class the minimum working condition, standards and conditions due to them under the California Labor Laws and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff further seeks an order requiring Defendant to identify by full name, telephone number, and last known address employees who worked or still work for Defendant from four (4) years preceding the filing of the original Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant to timely pay restitution to all current and former employees, including back wages, and interest.

35. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class.

SECOND CAUSE OF ACTION

RECOVERY OF UNPAID WAGES & PENALTIES

(Violation of Labor Code §§ 204, 510, 1194 and 1198)

Against All Defendants

36. Plaintiff re-alleges and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

37. Plaintiff and all others similarly situated identified herein were and are employed and scheduled as a matter of established company policy to work and in fact worked as non-exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per pay period, including shifts that last ten (10) hours or twelve (12) hours without daily overtime paid for the hours worked in excess of eight (8) in a day at the correct regular rate. Labor Code § 204 establishes the fundamental right of all employees in the state of California to be paid the proper amount of wages in a timely fashion for their work, including overtime.

26. Plaintiff is informed and believes, and thereon allege that Defendant consistently compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3) rest breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to provide duty-free rest periods and off-site rest periods to Plaintiff and the class and/or would regularly interrupt Plaintiff and the class while on a break.

FAILURE TO PAY FOR ALL TIME WORKED (OFF THE CLOCK)

27. Plaintiff is informed and believes and thereon alleges, that at all times herein mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited by California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered or permitted Plaintiff and Plaintiff Class to work off the clock.

28. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and the Class were required to perform work off-the-clock. Defendant failed to pay Plaintiff and the Class for all time worked, including but not limited to straight time, and overtime. When Defendant would contact Plaintiff and the class while knowing Plaintiff and the class were off-the-clock.

FAILURE TO REIMBURSE

29. Defendant further adopted, implemented and enforced a uniform policy and practice of requiring Plaintiff and the Class to drive their own vehicles, pay for their own gas, and mileage, without reimbursement. Thus, Defendants are in violation of Labor Code §2802.

30. Plaintiff seeks restitution for all the aforementioned violations.

31. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to and do seek such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and class members have been deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

32. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled to and do seek a declaration that the above-described business practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of

38. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiff may bring a civil action for overtime wages directly against the employer without first filing a claim with the Division of Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with interest thereon, penalties, attorneys' fees and costs.

39. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all persons similarly situated wages when due as required by Labor Code § 204.

40. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 5, as amended, applies to Plaintiff.

41. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges that Defendant has treated Plaintiff and all other similarly situated hourly employees as hourly non-exempt employees. Despite this classification, Defendant has willfully and wrongfully underpaid overtime premiums at the regular rate in order to avoid payment of overtime wages and other benefits in violation of the Labor Code and the orders issued by the IWC, thereby Defendant is able to reduce its overhead and operating expenses and gain an unfair advantage over competing companies complying with state law.

42. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt class was underpaid due to Defendant's off-the-clock practice.

43. Plaintiff is informed and believes and thereon alleges that Defendant consistently administered a corporate policy regarding both staffing levels and duties and responsibilities of the members of the classes which required the entirety of all classes to work without overtime or minimum wages, by working off-the-clock. Thus, Plaintiff and all others similarly situated routinely, regularly and customarily performed overtime work. Accordingly, Plaintiff and all others similarly situated are entitled to overtime compensation under California law.

44. Defendant has willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to minimum wages and overtime premium pay, and other wages earned and remaining uncompensated according to amendment, or proof.

/////

45. Further, Plaintiff and the class members were required to work off-the-clock. Specifically, Defendant required Plaintiff and Plaintiff Class to clock out and continue to finish tasks off-the-clock and respond to calls.

46. The pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and all others similarly situated, in a civil action, for the unpaid balance of the full amount of the all wages owing, including the proper calculation of the regular rate, including interest thereon, willful penalties, reasonable attorneys' fees, and costs of suit according to the mandate of Labor Code § 1194.

47. Likewise, Defendant has a pattern, practice and uniform administration of corporate policy regarding failure to comply with the required provisions of Labor Code § 226.7, in failing to pay Plaintiff and the class the meal and rest break violation payment at the regular rate.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

PURSUANT TO LABOR CODE §226

Against All Defendants

48. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein. Labor Code section 226 provides:

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. Subsection (e) provides: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

49. During the Class Period, Defendants knowingly and intentionally failed to provide the Class Members, including Plaintiff, with timely and accurate wage statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing that Class Member, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by that Class Member.

50. Defendant thus required the Class Members, including Plaintiff, to work under conditions prohibited by order of the Industrial Welfare Commission, in violation of those orders.

51. The Class Members, including Plaintiff, suffered injury as a result of Defendant's knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage and hour statements required by law.

52. Based on Defendant's conduct as alleged herein, Defendant is liable for actual damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's fees and costs.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL BREAKS

Against All Defendants

53. Plaintiff incorporates by reference as if fully set forth herein, the allegations of paragraphs above.

54. Labor Code §226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Plaintiff alleges that Defendant failed to provide legally compliant meals in addition to impeding, discouraging and/or dissuading employees from taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and the class consistently worked over five (5) hour shifts without meal periods due to Defendant's policy of discouraging, dissuading and/or impeding Plaintiff and the class from taking compliant meal

periods. Plaintiff and the class are entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment, and a second meal period for hours worked over ten (10) in a day. Further, Defendant frequently interrupted Plaintiff and the class while on their breaks. Additionally, Defendant has a practice of requiring employees to remain on premises for said breaks.

55. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during the relevant class period and/or failed to obtain legal waivers waiving the first or second meal period.

56. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in an amount equal to one (1) hour of wages at the employee's regular rate per missed meal break.

FIFTH CAUSE OF ACTION

FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7

(Against All Defendants)

58. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the aforementioned allegations.

59. The Plaintiff alleges that Defendant has violated Labor Code §§226.7 & the applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Hourly non-exempt employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof. The Defendant's policy discourages, dissuades, and prevents all hourly non-exempt employees from taking a duty-free rest period break for any work period that is greater than two (2) hours up to four (4) hours. Plaintiff and the class consistently worked over four (4) hours per shift with no duty-free, off-premises rest breaks, due to Defendant's policy of discouraging, dissuading and/or preventing hourly employees from taking said breaks off-premises.

/////

/////

60. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break violation, in a sum to be proven at trial.

SIXTH CAUSE OF ACTION

WORK EXPENDITURE REIMBURSEMENTS

(Against All Defendants)

61. Plaintiff re-alleges and incorporate each and every one of the allegations of all preceding paragraphs.

62. Labor Code section 2802(a) requires an employer to indemnify their employees for all necessary expenditures or losses in the direct discharge of their duties.

63. Defendant has a uniform policy that requires Plaintiff and the class members to travel between property locations without mileage reimbursement.

64. As a result, Plaintiff and the class members are entitled to reimbursement for all the above expenses, as well as attorney fees and costs.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

65. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the allegations of the preceding paragraphs.

66. Labor Code §§ 200, et. seq., provides that an employer is required to pay an employee all wages (including accrued vacation), within twenty four (24) hours of the employees' involuntary separation from employment; within twenty four (24) hours of his or her voluntary separation if the employee gave at least seventy two (72) hours' notice, and within seventy two (72) hours, if the employee voluntarily separated, but did not give at least seventy two (72) hours' notice.

67. Plaintiff and other former employees of Defendant employed in the State of California separated from employment with defendant. Plaintiff and all others similarly situated did not timely receive a final paycheck from Defendant in violation of Labor Code §§

200, et seq. Plaintiff is informed and believes and thereon alleges that Defendant also violated the mandates of Labor Code §§ 200, et seq., as to other employees whose employment ended during the period of time covered by this action.

68. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer works for defendant, and who was not timely paid is entitled to one (1) day of pay in penalties for each day that he or she was paid late, until payment was made, up on a maximum of thirty (30) days.

69. Based on the willful nonpayment of wages as described above, the waiting time penalty applies to Llamas and members of the waiting time penalty subclass, which is 30 days of each class members' wages at their regular rate of pay.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699

70. Plaintiff re alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

71. Labor Code §§2698, 2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

72. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

73. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

74. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or about October 9,2023, via mandatory online filing through the State of California LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and some theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that he has exhausted all administrative remedies and filed the herein complaint 65 days after mailing said notice. At the date of filing this Complaint, the LWDA has not responded with any intention to investigate. As such, Plaintiff has exhausted his administrative requirements pursuant to Labor Code §2699.3(a)(1) and (2) (A-C).

75. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

76. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved employees are entitled to recover civil penalties for each of the Defendant's violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

a. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

b. For violations of Labor Code § 226(a), two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by Labor Code § 226.3).

c. For violations of Labor Code § 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by Labor Code § 558).

d. For violations of Labor Code § 1197, one hundred dollars ($100.00) for each aggrieved employee for each initial and intentional violation per pay period (regardless of whether the initial violations were intentionally committed) and two hundred fifty dollars ($250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and applicable penalties imposed pursuant to Labor Code § 203.

e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code § 2699(f)(2)).

f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of Regulations in the amount of $50 for each aggrieved employee per pay period for the initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation;

g. Penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

h. Penalties under Labor Code §256, in addition to and entirely independent and apart from other penalty provided in the Labor Code, including Labor Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

i. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and $100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid pursuant to Labor Code §558 provided to the affected employees;

j. Penalties under Labor Code §226.3, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $250 for each aggrieved employee per pay period for each violation, and $1,000 for each aggrieved employee per pay period for each subsequent violation;

k. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes.

l. Penalties under Labor Code section 210 for the weekly pay violations.

77. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1. That the Court determines this action may be maintained as a class action;

As to the First Cause of Action:

2. For an order, preliminarily and permanently enjoining Defendant from engaging in the practices challenged herein;

3. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendant by means of the unfair practice complained of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor Codes §§ 201, 202, 510 1194, 1194.2, and interest, and attorneys' fees as a result of the unfair business practices;

4. For an order for full restitution of all wages withheld due to Defendant's unfair and fraudulent business practices;

5. For an order finding and declaring that Defendant's acts and practices as challenged herein are unlawful, and unfair and/or fraudulent;

6. For an accounting, under administration of Plaintiff and subject to Court Review, to determine the amount to be returned by Defendant and the amounts to be refunded to members who are or were not paid all their wages due to Defendant's unfair business practices;

7. For the creation of an administrative process wherein each injured current and former employee receives his or her back wages in the form of overtime pay or alternatively that each current or former eligible employee may submit a claim in order to receive his/her money;

8. For an order requiring Defendant to make full restitution and payment pursuant to B&PC §§17200, et seq.;

9. For all other appropriate declaratory and equitable relief;

10. For pre-judgment interest to the extent permitted by law and the California Constitution;

11. For an order requiring Defendant to identify, by name, address and telephone number of each person who worked as an hourly exempt employee for Defendant from four (4) years preceding the filing of this action through the time of judgment;

As to the Second Cause of Action:

12. For damages according to proof, as set forth in Labor Code §§ 510, 1194, and 1194.2, et. seq., (and the applicable California Industrial Welfare Commission wage orders) regarding wages due and owing.

13. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for reasonable attorneys' fees;

14. For recovery of the unpaid balance of the full amount of unpaid minimum wage or overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197, and 1198 due and owing, according to proof;

15. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor

Code §1194.2(a);

16. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a) and CC §3287;

17. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or Labor Code §1194(a);

As to the Third Cause of Action:

18. For recovery as authorized by Labor Code §226(e);

19. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or §226(h);

As to the Fourth Cause of Action:

20. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

As to the Fifth Cause of Action:

21. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a rest break was not remitted or authorized, or was impeded, discouraged and/or dissuaded.

As to the Sixth Cause of Action:

22. Reimbursement of all deductions from wages related to expenses;

23. Reimbursement for all fees relating to obtaining physical checks;

24. Attorney fees and costs;

As to the Seventh Cause of Action:

25. Waiting time penalties, attorneys fees and costs;

As to the Eighth Cause of Action:

26. On behalf of all current and former employees, for all civil penalties authorized by Labor Code Private Attorney General Act of 2004 as specified in Labor Code §558 plus Labor Code §1197.1 for former or current employees who are due wage payments;

/////

/////

27. For civil penalties per Labor Code §226.3 in the amount of $250 for each aggrieved employee per pay period for each violation, and $1,000 for each aggrieved employee per pay period for each subsequent violation;

28. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

29. For civil penalties, pursuant to Labor Code § 558 as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid;

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid;

30. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

31. For civil penalties under Labor Code §2699(f), in addition to and entirely independent and apart from other penalty provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation.

/////

/////

/////

/////

/////

/////

As to All Causes of Action:

32. For reasonable costs incurred;

33. For such other and further relief as this Court may deem just and proper.

Date: December 13, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

Janelle Carney
Attorney for Plaintiff
David Llamas

JURY TRIAL DEMAND

Plaintiff DAVID LLAMAS herby demands a jury trial on all issues so triable.

Date: December 13, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

By:

Janelle Carney,
Attorney for Plaintiff
David Llamas

Exhibit 1

JANELLE CARNEY
ATTORNEY AT LAW
A PROFESSIONAL LAW CORPORATION

October 7, 2023

Via Online Filing
Labor and Workforce Development Agency
https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

Via Certified Mail/RRR
San Diego Sunrise Management Company
7837 Convoy Ct., Ste 100
San Diego, CA 92111

Re: *David Llamas v. San Diego Sunrise Management Co.*

Dear Representative:

This office along with Frontier Law Center represents David Llamas ("Llamas") for claims related to his employment with San Diego Sunrise Management Company (hereinafter referred to as "Sunrise Management"). Sunrise Management provides residential property management services for its multiple apartment complexes throughout the State.

Llamas intends to seek PAGA penalties on behalf of himself and all nonexempt hourly employees employed by Sunrise Management within one year of the date of this notice through the date of settlement approval or judgment of any action filed pursuant to this letter, whichever is earlier ("Aggrieved Employees"). This letter is sent pursuant to the pre-filing requirements of Labor Code section 2699.3. The violations in this notice are ongoing, thus, the relevant time period extends beyond the date of this letter.

A. Background Facts

Llamas was employed by Sunrise Management as a Maintenance Technician out of Sunrise Management's San Diego headquarters. Llamas' claims include nonpayment of all hours worked, missed meal and rest breaks, off-the-clock work, failure to reimburse himself and other employees for out-of-pocket expenses, including mileage reimbursement, unpaid premiums for missed breaks, and inaccurate wage statements.

First, throughout his employment, Llamas and the Aggrieved Employees were regularly denied the ability to take compliant meal or rest breaks. On the rare occasions that Llamas and the Aggrieved Employees were provided meal breaks, they were routinely interrupted. Despite having incomplete or interrupted meal and rest periods, Llamas and the Aggrieved Employees were required to record that a full 30-minute break was taken.

Without question, Sunrise Management's employment practices run counter to the requirement that they provide Llamas and the Aggrieved Employees with statutorily compliant meal and rest breaks. Further, despite not receiving statutorily compliant meal and rest breaks, Llamas and the Aggrieved Employees did not receive premium pay as required under Labor Code section 226.7. Consequently, Llamas and the Aggrieved

MANAGING PARTNER - Janelle Carney: janelle@janellecarneylaw.com | OF COUNSEL - Joseph Antonelli: jantonelli@antonellilaw.com
14758 Pipeline Ave., Suite E, 2nd Floor, Chino Hills, CA 91709 | www.janellecarneylaw.com | Phone: 909.521.9609 | Fax: 909.393.0471

Employees also failed to receive statutorily compliant wage statements under the requirements of Labor Code section 226(a).

Second, Defendant required Llamas to respond to calls on his breaks and off-the-clock after hours, without any compensation.

Third, Sunrise Management failed to provide accurate itemized wage statements as required under Labor Code section 226(a), as the wage statements failed to include the total hours actually worked, given the off-the-clock allegations.

Further, Llamas drives his own vehicle and travels to various locations throughout his shift while clocked in. Llamas was not reimbursed for his mileage until very recently.

As an "aggrieved employee," Llamas intends to file a civil action on behalf of himself and other similarly Aggrieved Employees who performed work for Sunrise Management in California and have suffered at least one of the wage-and-hour violations described herein during their employment.

B. Labor Code Violations

(1) Violation of Labor Code sections 558 and 1197.1 – Not All Hours Paid

Several distinct instances of off-the-clock work occurred during Llamas' employment with Sunrise Management as a result of, *inter alia*, Sunrise Management's interrupted breaks or breaks not provided and calls after hours. Thus, the PAGA penalties in Labor Code sections 558 and 1197.1 apply.

(2) Violation of Labor Code sections 226.7 and 512 – Meal and Rest Break Premiums

Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than 5 hours per day without providing an uninterrupted meal period of not less than 30 minutes. Labor Code section 226.7 provides that every employer shall authorize and permit all employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four 4 hours or major fraction thereof. Section 226.7 further provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission, and that if an employer fails to provide an employee a meal period or rest period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

While Labor Code section 512(a) simply states that an employee shall not work more than five (5) hours without a 30-minute meal period, it is silent as to when that break must occur. Notwithstanding this fact, Labor Code section 512 makes two things clear: (1) an employee must actually perform work prior to taking a break; and (2) an employee cannot work more than five (5) hours without receiving a 30-minute uninterrupted meal period. In *Donohue v. AMN Services, LLC.*, the Court noted that the 30-minute meal period requirement was partially created to address the noneconomic burdens on an employee's health when they are required to work for longer than five (5) hours without a 30-minute meal period. Employees who are denied compliant meal periods "'face greater risk of work-related accidents and increased stress' and lose valuable time 'free from employer control that is often needed to be able to accomplish important personal tasks.'" ((2021) 275 Cal. Rptr. 3d 422, 431) (Citing *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1113). "Shortening or delaying a meal period by even a few minutes may exacerbate risks associated with stress or fatigue, especially for workers who are on their feet most of the day or who perform manual labor or repetitive tasks." *Donohue, Supra* 275 Cal.Rptr. 3d 422, 431). "The legislative history [of the IWC Wage Orders[indicates that the meal period provisions are not 'aimed at protecting or providing employees' wages. Instead [they are] primarily concerned with ensuring the health and welfare of employees by requiring that employers provide meal… periods as mandated by the IWC." (*Id.*, at 431-432). "The premium pay scheme reflects the Legislature's and the IWC's determination that infringements on meal period requirements threaten employees' health and safety whenever they occur." (*Id.*, at 432).

Because Sunrise Management did not provide compliant rest and meal breaks and did not pay Llamas and the Aggrieved Employees the proper premium pay for all non-compliant breaks, the civil penalties in Labor Code sections 558 and 2699 apply.

(3) Violation of Labor Code Sections 226 – Wage Statement Violations

Labor Code section 226 requires an employer to provide its employees with wage statements that *accurately* show, among other things: (1) the total amount of wages earned; and (2) the total amount of hours they worked.

Here, Sunrise Management failed to provide Llamas and the Aggrieved Employees with accurate itemized wage statements due to Sunrise Management's failure to include all hours worked as well as owed premium pay for missed breaks.

Based on the foregoing wage statement violations, the civil penalties listed in Labor Code section 226.3 apply.

(4) Violation of Labor Code Section 2802 – Failure to Reimburse

Labor Code § 2802 requires employers to reimburse workers for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Here, Llamas and the Aggrieved Employees incurred out of pocket expenses in connection with their employment, including but not limited to using their own personal vehicles without mileage reimbursement. As a result, PAGA penalties apply.

C. Conclusion

Pursuant to Labor Code § 2699.3(a)(2)(A), if the Labor and Workforce Development Agency decides not to investigate these matters, please let us know.

Having laid out the statutory authority for and factual basis of the PAGA claim, and having sent a copy of this notice to Employer, our client now awaits LWDA's response to this claim.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Llamas becomes aware of additional compensation owed or losses incurred by Llamas or by any other aggrieved employee, Llamas expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Llamas intends to pursue his claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for the employer that were subject to the same Labor Code violations described above.

Very truly yours,
JANELLE CARNEY – ATTORNEY AT LAW, APC

Janelle Carney

JC/jw
Cc: Frontier Law Center