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Attorneys for Defendant The Airport Collective, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KEVIN PUGH, on behalf of himself and all
"aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*

Plaintiff,

v.

THE AIRPORT COLLECTIVE, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 21LBCV00333

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: June 18, 2021

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement" or "Stipulation
3 of Settlement") is made and entered into by and between Plaintiff Kevin Pugh ("Pugh" or
4 "Plaintiff" or "Class Representative"), individually and on behalf of the Settlement Class and all
5 others similarly situated, and Defendant The Airport Collective, Inc. ("Defendant"), subject to the
6 terms and conditions herein and the Court's approval.

7 **A. Definitions.**

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

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

13 3. The "Action" means the case entitled *Kevin Pugh v. The Airport Collective, Inc.*,
14 Case No. 21LBCV00333, pending before the Superior Court of the State of California for the
15 County of Los Angeles.

16 4. The "Settlement Class" shall be defined as "all non-exempt California employees
17 of Defendant from January 1, 2020 through January 27, 2022" (the "Class Period"). Defendant
18 represents that this Class contains no more than 77 members.

19 5. Members of the Settlement Class shall collectively be referred to as a "Class
20 Member" or "Class Members." Any Class Member who files a timely Request for Exclusion, as
21 detailed below, will be excluded from the final Settlement Class.

22 **B. General.**

23 1. On April 13, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
24 Private Attorneys General Act of 2004 ("PAGA").

25 2. On or about June 18, 2021, Plaintiff initiated the Action by filing a Representative
26 Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved
27 employees (the "Complaint"). The First Amended Complaint, attached hereto as Exhibit 3 and
28 which will be filed as part of the settlement approval process, asserts class and PAGA representative

1 action claims against Defendant for (1) failure to provide compliant rest periods or compensation
2 in lieu thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 4-2001); (2) failure to provide
3 compliant meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 558, 1194
4 and 1194.2; IWC Wage Order 4-2001); (3) failure to reimburse employee business expenses (Labor
5 Code § 2802); (4) failure to comply with itemized employee wage statement provisions (Labor
6 Code §§ 226 and 226.3); (5) failure to timely pay wages due at separation of employment (Labor
7 Code §§ 201-203); (6) violation of Business and Professions Code §§ 17200, *et seq.*; and (7) civil
8 penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226,
9 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "First Amended Complaint").

10 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
11 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
12 purpose other than this settlement. Defendant contends that it has complied at all times with the
13 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
14 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
15 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
16 representative, Plaintiff's claims are not typical of putative class members, and individual issues
17 predominate over class issues. The Action, the negotiation and execution of this Settlement
18 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
19 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
20 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
21 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
22 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
23 class certification in the Action or with respect to any other proceeding.

24 4. The Class Representative contends that Defendant violated the California Labor
25 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
26 certification.

27 5. Class Counsel represent that they have conducted a thorough investigation into the
28 facts and law during the prosecution of this class action case, including the exchange of extensive

1 formal and informal discovery and the review and verification of statistical data and other facts and
2 information provided by Defendant. Counsel for the Parties also represent that they have
3 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
4 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

5 6. On January 27, 2022, following their exchange of information and documents
6 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
7 engaged in arm's-length negotiations with the assistance of mediator Judge David I. Brown (Ret.),
8 through which they were able to reach the resolution of the Action set forth herein.

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

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

24 **C. Terms of Settlement.**

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

26 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
27 a Maximum Settlement Amount of One Hundred Fifty Thousand Dollars (\$150,000.00) (the
28 "Maximum Settlement Amount"), subject to any increase based on the escalator provision in

1 paragraph H(16) herein. The Maximum Settlement Amount includes the attorneys' fees of Class
2 Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs
3 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
4 providing any notices required as part of the settlement, securing Court approval of the settlement,
5 and obtaining judgment in the Action); the Enhancement Payment to the Class Representative, as
6 approved by the Court; the payment to the California Labor and Workforce Development Agency
7 ("LWDA"); and all costs of administration, including, without limitation, settlement administration
8 fees and expenses. Defendant shall pay all employer payroll tax obligations due on wage payments
9 made from the Net Settlement Proceeds in addition to, and separate and apart from, the Maximum
10 Settlement Amount. Defendant shall separately pay Plaintiff a general release payment of \$15,000,
11 documented through a separate agreement.

12 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
13 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys'
14 fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the
15 Enhancement Payment to the Class Representative; the payment to the LWDA pursuant to PAGA;
16 and the costs of administering the settlement.

17 (c) **Individual Payment Amounts:** "Individual Payment Amount" means the
18 portion of the Net Settlement Proceeds distributable to each Class Member who participates in the
19 Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment
20 Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by
21 all participating Class Members in California in a non-exempt position during the Class Period,
22 which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of
23 weeks each individual participating Class Member worked for Defendant in California in a non-
24 exempt position during the Class Period to yield their Individual Payment Amount. Each
25 Participating Settlement Class Member who does not opt out will receive an Individual Payment
26 Amount equal to their individual weeks worked in California in a non-exempt position during the
27 Class Period multiplied by the weekly rate.

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i. For tax purposes, each Individual Payment Amount will be apportioned (a) 30% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties (reported on an IRS Form 1099); 10% to expense reimbursement; and 10% to interest (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

(d) **PAGA Payment:** The Parties agree that Two Thousand Dollars (\$2,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-Five percent (75%), or One Thousand Five Hundred Dollars (\$1,500.00), shall be paid to the LWDA, and the remaining Twenty-Five percent (25%), or Five Hundred Dollars (\$500.00), shall be included in the Net Settlement Proceeds for payment to Class Members.

(e) **Enhancement Payment to Class Representative:** The amount awarded to the Class Representative as an Enhancement Payment will be set by the Court in its discretion, not to exceed Two Thousand Five Hundred Dollars (\$2,500.00). This amount will be deducted from the Maximum Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his Enhancement Payment. Defendant agrees not to dispute or otherwise object to the Enhancement Payment if Plaintiff requests \$2,500 or less.

(f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into account the settlement award that has been made available for the Settlement Class by the efforts of Class Counsel. The amount awarded shall not exceed 35% of the Maximum Settlement Amount (i.e., Fifty Two Thousand Five Hundred Dollars (\$52,500.00)). An IRS Form 1099 will be issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as the request does not exceed 35% of the Maximum Settlement Amount.

(g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-pocket litigation costs and expenses, not to exceed Ten Thousand Dollars (\$10,000.00). An IRS

1 Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
2 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class
3 Counsel so long as the request does not exceed \$10,000.

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

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

22 **D. Release of Claims.**

23 1. Upon the Effective Date, and subject to Defendant's full payment of the Maximum
24 Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be
25 deemed to have fully released and discharged Defendant The Airport Collective, Inc. and each of
26 its present and former officers, directors, members, owners, managers, shareholders, agents,
27 operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants,
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1 attorneys, successors or assignees ("Released Parties") from any and all Released Claims which
2 arose during their employment in a non-exempt position in California during the Class Period.

3 2. The "Released Claims" include all claims, rights, demands, liabilities and causes
4 of actions that are alleged or reasonably could have been alleged based on the facts and claims
5 asserted in the Action, including the following claims: all claims for meal and rest period
6 premiums/wages, inaccurate wage statements, unreimbursed business expenses, and waiting time
7 penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.7, 512, 558,
8 and 2802, the applicable Industrial Wage Commission Wage Orders, and PAGA and Business and
9 Professions Code section 17200 as they relate to the underlying Labor Code claims referenced
10 above, which arose during employment in a non-exempt position in California during the Class
11 Period.

12 **E. Notice and Exclusion Process.**

13 1. Within ten (10) calendar days after entry of the order granting preliminary approval
14 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
15 Members, including their last known addresses, telephone numbers, social security numbers, and
16 their dates of employment in a non-exempt position in California during the Class Period
17 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
18 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
19 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
20 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
21 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
22 storage, custody, use, and/or dissemination of the confidential information. Such information must
23 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

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

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

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

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

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

24 7. In order to elect not to participate in the Settlement, a Class Member must submit a
25 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
26 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
27 Class Members, unless the Court requires a longer period, in which case the Court ordered
28 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The

1 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
2 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
3 next day on which the U.S. Postal Service is open.

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

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

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

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

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

8 13. Defendant shall deposit the Maximum Settlement Amount with the Settlement
9 Administrator as follows: Ten Thousand Dollars (\$10,000.00) on the first day of the month after
10 which preliminary approval of this Settlement is granted and twenty (20) subsequent monthly
11 payments of Seven Thousand Dollars (\$7,000.00) each and payable on the first of each month
12 thereafter. The installment payments shall be held by the settlement administrator in a Qualified
13 Settlement Fund. No disbursements shall be made unless and until the Effective Date of the
14 Settlement first occurs. The effective date of this Settlement Agreement ("Effective Date") is the
15 date of the later of: (a) final approval by the Court; or (b) if there are objections to the settlement
16 which are not withdrawn, and if an appeal, review, or writ is not sought from the judgment, the
17 sixty-first (61st) day after service of notice of entry of judgment; or (c) the dismissal or denial of
18 an appeal, review, or writ, if the Judgment is no longer subject to judicial review.

19 14. The Settlement Administrator shall disburse the Individual Payment Amount
20 checks within ten (10) days after each 7th installment payment, such that Class Members will be
21 paid in three (3) installments. Plaintiff, Class Counsel, the Settlement Administrator, and the
22 LWDA shall each be paid their pro rata share of each installment payment promptly after receipt.
23 Class Members must cash each of their Individual Payment Amount checks within one hundred
24 eighty (180) calendar days after they are mailed by the Settlement Administrator. The value of any
25 checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the State
26 of California State Controller's Office, to be held in the name of the respective Class Member.

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

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

- 5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
7 (b) approving as to form and content the proposed Class Notice;
8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;
10 (d) preliminarily certifying the Settlement Class for purposes of settlement;
11 (e) preliminarily approving the PAGA payment of \$1,500 to the LWDA;
12 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
13 (g) preliminarily setting the enhancement payment to the Class Representative;
14 (h) preliminarily approving Phoenix Class Action Administration Solutions as
15 the Settlement Administrator and its estimated fees and costs of \$5,000; and
16 (i) permitting Plaintiff to file the First Amended Complaint.

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

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

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

- 24 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
25 and adequate, and directing consummation of its terms and provisions;
26 (b) approving Class Counsel's application for an award of attorneys' fees and
27 reimbursement of documented litigation costs and expenses, the Enhancement Payment to the
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1 Class Representative, the PAGA payment to the LWDA, and the costs of administering the
2 settlement; and

3 (c) entering judgment in this Action in accordance with this Stipulation,
4 pursuant to Cal. Rules of Court, Rule 3.769(h).

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

8 **H. Miscellaneous Provisions:**

9 1. **Voiding the Agreement.**

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

14 2. **Parties' Authority.**

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

17 3. **Mutual Full Cooperation.**

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

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1 4. **No Prior Assignments.**

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

6 5. **No Admission.**

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

15 6. **Construction.**

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

20 7. **Captions and Interpretations.**

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

25 8. **Modification.**

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

3 **9. Integration Clause.**

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

9 **10. Binding on Assigns.**

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

12 **11. Governing Law.**

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

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

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

22 **13. Counterparts.**

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

27 **14. Confidentiality**

28 Until Plaintiff files his motion for preliminary approval of the class action settlement, the

1 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
2 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
3 agencies, or as otherwise required by law.

4 **15. No Publicity**

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

9 **16. Representation Regarding Class Size.**

10 Defendant has represented that there are no more than 77 Class Members during the Class
11 Period. Should this number increase, the Maximum Settlement Amount will increase
12 proportionately. For example, if there are 90 Class Members, the Maximum Settlement Amount
13 will increase by 16.88% (i.e. 90/77).

14 **17. Default; Notice; Cure; Acceleration; Time is of the Essence.**

15 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
16 to timely make any payment within five (5) business days of the due date hereunder, it shall be in
17 default of its obligations. Plaintiff shall thereafter give notice of default and Defendant must cure
18 said default within five (5) business days thereof. In the event of an uncured default, all unpaid
19 amounts shall be accelerated and be all due and payable together with interest at the legal rate
20 from the date of default.

21 **18. Continuing Jurisdiction.**

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

27 [SIGNATURES ON FOLLOWING PAGE]
28

1 Dated: March _____, 2022

By:

2 KEVIN PUGH

3 Plaintiff and Class Representative

4 Dated: April 13, 2022

5 THE AIRPORT COLLECTIVE, INC.

6 By: Mark Simonian

7
8 His: CEO

9
10 APPROVED AS TO FORM AND CONTENT:

11 Dated: March _____, 2022

GAINES & GAINES, APLC

12 By:

13 Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

14 Counsel for Plaintiff and Class
15 Representative

16 Dated: March _____, 2022

LAW OFFICES OF THOMAS F. NOWLAND

17 By:

18 Thomas F. Nowland, Esq.

Daniel A. Brodnax, Esq.

19 Sarah K. O'Brien, Esq.

20 Joseph F. Desiderio, Esq.

Counsel for Defendant

1 Dated: April 18, 2022
2 Dated: March _____, 2022

By: 
6DB4B4F7D8D04E9...

KEVIN PUGH
Plaintiff and Class Representative

4 Dated: March _____, 2022

THE AIRPORT COLLECTIVE, INC.

By: _____

Its: _____

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

10 Dated: March _____, 2022

GAINES & GAINES, APLC

11 By: _____

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

15 Dated: March _____, 2022

LAW OFFICES OF THOMAS F. NOWLAND

16 By: _____

17 Thomas F. Nowland, Esq.
18 Daniel A. Brodnax, Esq.
19 Sarah K. O'Brien, Esq.
20 Joseph F. Desiderio, Esq.
21 Counsel for Defendant
22
23
24
25
26
27
28

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KEVIN PUGH, on behalf of himself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 et seq.

Plaintiff,

v.

THE AIRPORT COLLECTIVE, INC., a
California corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 21LBCV00333

*Assigned to the Honorable Mark C. Kim, Dept.
S27*

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

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

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

- A settlement will provide \$150,000 to pay claims to all individuals who worked for The Airport Collective, Inc. (“Defendant”) as a non-exempt employee in California at any time between January 1, 2020 through January 27, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse employee business expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$52,500 as attorneys’ fees and \$10,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If 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 The Airport Collective, Inc. about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

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

WHAT IS THIS LAWSUIT ABOUT?

On June 18, 2021, Plaintiff Kevin Pugh ("Plaintiff"), a former employee of The Airport Collective, Inc., filed this lawsuit in the Los Angeles County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between January 1, 2020 through January 27, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; were not issued accurate and complete itemized wage statements; and were not reimbursed for all business expenses incurred. 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 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

Thomas F. Nowland, Esq.
Daniel A. Brodnax, Esq.
Sarah K. O'Brien, Esq.
Joseph F. Desiderio, Esq.
Law Offices of Thomas F. Nowland
20241 SW Birch Street, Suite 203
Newport Beach, CA 92660

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

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

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for The Airport Collective, Inc. as a non-exempt employee in California at any time between January 1, 2020 through January 27, 2022.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay \$150,000 (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum 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 amount is the Maximum 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 \$52,500;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$10,000;

(c) **Service Payments to the Class Representative** in an amount set by the Court, not to exceed \$2,500 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$5,000.00, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$2,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$1,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$500, shall be included in the Net Settlement Proceeds for payment to Class Members

3. **Individual Payment Amount.**

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

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

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

The "Released Claims" include all claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the Action, including the following claims: all claims for meal and rest period premiums/wages, inaccurate wage statements, unreimbursed business expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.7, 512, 558, and 2802, the applicable Industrial Wage Commission Wage Orders, and PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

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

For tax purposes, each Individual Payment Amount will be apportioned (a) 30% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties (reported on an IRS Form 1099); 10% to expense reimbursement; and 10% to interest (reported on an IRS Form 1099). All

Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from January 1, 2020 through January 27, 2022. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

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 _____, 2022. 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 Courts grants approval of the settlement, you will receive your Individual Payment Amount in three installments over 21 months.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at 8:30 a.m., in the Courtroom of Judge Mark C. Kim of the Los Angeles County Superior Court, Department S27, located at 275 Magnolia, Long Beach, California 90802. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

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

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

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

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person

or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

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

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

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Los Angeles County Superior Court, located at 275 Magnolia, Long Beach, California 90802.

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 *Kevin Pugh v. The Airport Collective, Inc., and Does 1 Through 10, Inclusive, Defendants*, Los Angeles County Superior Court, Case No. 21LBCV00333. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant The Airport Collective, Inc. as a non-exempt employee in California between January 1, 2020 through January 27, 2022.

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

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

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

The Airport Collective, Inc. Claims Administrator
c/o Phoenix Class Action Administration Solutions

EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
27200 Agoura Rd., Suite 101
Calabasas, CA 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Kevin Pugh, on behalf of himself and on behalf of all similarly situated individuals and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KEVIN PUGH, on behalf of himself and all
"aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

THE AIRPORT COLLECTIVE, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 21LBCV00333

*Assigned to the Honorable Mark C. Kim, Dept.
S27*

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

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

**2. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §§
226.7, 510, 512, 1194 AND 1194.2; IWC
WAGE ORDER 4-2001)**

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

**4. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a))**

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

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

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**7. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 226(a), 226.7, 510, 512, 1194 AND 2802
AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: June 18, 2021

Plaintiff KEVIN PUGH (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for THE AIRPORT COLLECTIVE, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. From January 1, 2020 through January 27, 2022, 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); pay all wages due to Class Members; pay all business-related expense reimbursement due to Class Members; provide accurately itemized wage statements to Class Members; and to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and the members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802, seeking compensation for unpaid premium meal and rest period wages and business-related expense reimbursements, statutory penalties, liquidated damages, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

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

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

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

7. Pursuant to the Judicial Council's Emergency Rule 9 of the California Rules of Court, Plaintiff's claims are subject to tolling from April 6, 2020 through October 1, 2020.

II.

PARTIES

A. Plaintiff

8. Plaintiff KEVIN PUGH was employed by Defendants from March 2020 through December 2020 as a non-exempt employee in Los Angeles County, California.

9. During his work with Defendants, Plaintiff was:

- a. Willfully denied compliant rest periods or compensation in lieu thereof;
- b. Willfully denied compliant meal periods or compensation in lieu thereof;
- c. Willfully denied the payment of all business-related expense reimbursement due;
- d. Willfully denied accurately itemized wage statements; and
- e. Denied the timely payment of wages upon separation of his employment.

B. Defendants

10. Defendant The Airport Collective, Inc., is a California corporation. Defendant The Airport Collective, Inc. employed Plaintiff and Class Members throughout the State of California, including Los Angeles County, California.

11. 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

1 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
2 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
3 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
4 designated hereinafter as DOES when such identities become known.

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

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

12 III.

13 CLASS ACTION ALLEGATIONS

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

17 THE CLASS

18 All non-exempt California employees of Defendant from January 1,
19 2020 through January 27, 2022.

20 15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
21 modify these class descriptions with greater specificity or further division into subclasses or limitation
22 to particular issues.

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

26 ///

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1 **A. Numerosity**

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

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

10 **B. Commonality**

11 19. There are questions of law and fact common to the Class that predominate over any
12 questions affecting only individual Class Members. These common questions of law and fact include,
13 without limitation:

- 14 a. Whether Defendants failed to properly provide compliant rest periods or
15 compensation in lieu thereof to Plaintiff and Class Members, in violation of
16 Labor Code § 226.7 and IWC Wage Order 4-2001;
- 17 b. Whether Defendants failed to properly provide compliant meal periods or
18 compensation in lieu thereof to Plaintiff and Class Members, in violation of
19 Labor Code §§ 226.7, 510, 512, 1194, and 1194.2 and IWC Wage Order 4-
20 2001;
- 21 c. Whether Defendants failed to reimburse Plaintiff and Class Members for
22 necessary business expenses incurred in direct consequence of the discharge
23 of their duties, in violation of Labor Code § 2802;
- 24 d. Whether Defendants failed to provide Plaintiff and Class Members with
25 accurately itemized wage statements, in accordance with Labor Code § 226(a);
- 26 e. Whether Defendants failed to timely pay Plaintiff and Class Members all
27 wages due and owing at the separation of their employment, in violation of
28 Labor Code §§ 201-203; and

f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU
6 THEREOF

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

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

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

13 26. Defendants failed to pay premium wages to Plaintiff and Class Members who were
14 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and
15 Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period
16 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
17 hour's pay for each missed rest period. Plaintiff and Class Members were simply not able to take all
18 of their applicable rest periods. Typically, they would only be authorized to take fewer than half the
19 rest periods Defendants were obligated to provide. This violates Labor Code §§ 226.7 and 558 and
20 IWC Wage Order No. 4-2001.

21 27. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
22 payment of all rest period compensation which he and Class Members are owed, according to proof.

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

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V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU
THEREOF

(LABOR CODE §§ 226.7, 510, 512, 1194, AND 1194.2 AND IWC WAGE ORDER 4-2001)

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

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

30. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, 1194 and 1194.2 and IWC Wage Order 4-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. Plaintiff and Class Members would typically work through their meal periods entirely while they were clocked-out, thereby resulting in unpaid time and wages. This violates Labor Code §§ 226.7, 510, 512, 558, 1194 and 1194.2 and IWC Wage Order 4-2001.

31. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all unpaid meal period compensation which he and Class Members are owed, according to proof.

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

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

5 (LABOR CODE § 2802)

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

8 33. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse
9 Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of
10 their job duties.

11 34. Plaintiff and Class Members to were required to drive their personal vehicles to
12 perform work for Defendants, but were not fully reimbursed by Defendants for all expenses they
13 incurred to operate their automobile, including, but not limited to, depreciation, gas, and maintenance.

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

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

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

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT
PROVISIONS
(LABOR CODE § 226(a))

37. Plaintiff incorporates paragraphs 1 through 36 of this Complaint as though fully set forth herein.

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

39. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all premium wages for unauthorized meal and rest periods and business-related expenses, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

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

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

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

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

42. 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.

43. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including premium wages for missed and denied meal and rest periods and all business-related expense reimbursement, as detailed above. Consequently, at the time of their separation from

1 employment with Defendants, they were not paid all final wages due and owing for the entirety of
2 their employment.

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

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

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

10 **IX.**

11 **SIXTH CAUSE OF ACTION**

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

13 **UNFAIR COMPETITION PURSUANT TO**

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

15 46. Plaintiff incorporates paragraphs 1 through 45 of this Complaint as though fully set
16 forth herein.

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

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

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

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

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

14 52. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
15 §17200 *et seq.* of the Business & Professions Code.

16 53. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
17 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
18 17200 *et seq.* of the Business & Professions Code.

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

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

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1 X.

2 SEVENTH CAUSE OF ACTION

3 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
4 CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS
5 OF LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194 AND 2802 AND PURSUANT
6 TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

7 56. Plaintiff incorporates paragraphs 1 through 55 of this Complaint as though fully set
8 forth herein.

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

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

- 13 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
14 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512,
15 1194 and 2802; and
16 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
17 Code §§ 226.3 and 558.

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

20 60. On April 13, 2021, Plaintiff sent a letter, by online submission to the LWDA and by
21 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
22 violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
23 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
24 calendar days of April 13, 2021. Plaintiff may therefore commence this action to seek civil penalties
25 pursuant to Labor Code § 2698 *et seq.*

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

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XI.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory and liquidated damages pursuant to Labor Code §§ 1194 and 1194.2, respectively, in the amount of all unpaid minimum and overtime wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
3. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
6. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
9. An award of prejudgment and post-judgment interest;
10. An award providing for payment of costs of suit;
11. An award of attorneys' fees; and
12. Such other and further relief as this Court may deem just and proper.

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1 Dated: April 15, 2022

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: _____
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

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

10 Dated: April 15, 2022

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: _____
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiff
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