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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF SAN DIEGO**

19 RAMIRO CLAVEL, individually, and on  
20 behalf of other members of the general  
public similarly situated;

21 Plaintiff,

22 vs.

23 SAN DIEGO SUNRISE MANAGEMENT  
24 COMPANY, a California corporation, and  
DOES 1 through 100, inclusive,

25 Defendants.

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Case No.: 37-2020-00028205-CU-OE-CTL

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

Complaint Filed: August 11, 2020

1 This Class Action Settlement Agreement and Release (hereinafter “**Settlement**” or  
2 “**Agreement**”) is made and entered into by and between Plaintiff Ramiro Clavel (hereinafter,  
3 “**Plaintiff**”), individually and on behalf of all Participating Class Members (as defined in Paragraph  
4 7(d)), on the one hand, and Defendant San Diego Sunrise Management Company (“**Defendant**” or  
5 “**San Diego Sunrise**”) on the other hand (collectively, the “**Parties**”), and subject to the approval  
6 of the Court.

7 1. On August 11, 2020, Plaintiff filed his class action Complaint in the Superior Court  
8 of the State of California for the County of San Diego entitled “*Ramiro Clavel v. San Diego Sunrise*  
9 *Management Company*” pending as Case No. 37-2020-00028205-CU-OE-CTL (the “**Action**”).

10 2. Plaintiff’s Complaint asserts the following claims: (1) failure to pay minimum  
11 wages; (2) failure to pay overtime wages; (3) failure to authorize and permit and/or make available  
12 meal and rest periods or pay premium wages in lieu thereof; (4) failure to provide accurate itemized  
13 wage statements; (5) waiting time penalties; (6) failure to timely pay all wages due; (7) failure to  
14 keep requisite payroll records; (8) failure to reimburse business expenditures; and (9) violation of  
15 California Business and Professions Code.

16 3. On November 15, 2021, the Parties participated in a mediation session with  
17 mediator the Honorable Lesley C. Green (Ret.), with Signature Resolution. Following the mediation  
18 session and continued settlement discussions facilitated by Judge Green, on November 8, 2022, the  
19 Parties reached a settlement in principle resolving this Action. On February 9, 2023, the Parties  
20 executed a Memorandum of Understanding setting forth the material terms of the Settlement.

21 4. Prior to agreeing the Settlement, the Parties engaged in formal written discovery  
22 and an informal exchange of information. Under mediation privilege, Defendant provided to  
23 Plaintiff and his counsel substantial raw data, data compilations, documents, and analysis  
24 concerning the Settlement Class. Furthermore, counsel for the Parties conferred extensively  
25 concerning this information, the merits of the Parties’ claims and/or defenses, and other issues  
26 relevant to reaching a settlement.

27 5. Plaintiff and his counsel have conducted sufficient discovery (formal and informal)  
28 and analysis to evaluate the strengths and weaknesses of his respective claims and Defendant’s



1 (h) **“Final Approval”**: The Court’s order granting final approval of the  
2 Settlement.

3 (i) **“Administrator”**: The administrator responsible for administering this  
4 settlement, Apex Class Action LLC.

5 8. Settlement of the Action: As detailed in Paragraph 33, at the Effective Date, the  
6 Participating Class Members shall release Released Defendant Parties from the Released Claims,  
7 subject to the terms and conditions set forth in this Agreement and the approval of the Superior  
8 Court of California for the County of San Diego.

9 9. Settlement Amount:

10 (a) **“Gross Settlement Amount”**: In consideration for this Settlement and a  
11 release by the Participating Class Members, Defendant has agreed to pay the sum of Two Hundred  
12 and Fifteen Thousand Dollars and Zero Cents (\$215,000.00). The Gross Settlement Amount is the  
13 maximum amount that Defendant is required to pay for any and all purposes under this Agreement.  
14 The Gross Settlement Amount shall exclude Defendant’s share of federal, state, and local taxes,  
15 and such amounts will be paid separately by Defendant. In no event shall any part of the Gross  
16 Settlement Amount revert to the Defendant.

17 (b) **“Net Settlement Amount”**: The Gross Settlement Amount of Two  
18 Hundred and Fifteen Thousand Dollars and Zero Cents (\$215,000.00) less the following  
19 deductions:

20 (i) The sum of Twelve Thousand Dollars and Zero Cents (\$12,000.00) for the  
21 enhanced payment to Plaintiff Clavel under Paragraph 13 or such other amount as approved by the  
22 Court;

23 (ii) The sum of attorneys’ fees to Class Counsel under Paragraph 14(a), which  
24 shall not exceed Seventy-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents  
25 (\$71,666.67) (33.33 % of the Gross Settlement Amount);

26 (iii) The sum of costs awarded to Class Counsel under Paragraph 14(b), which  
27 shall not exceed Nine Thousand Five Hundred Dollars and Zero Cents (\$9,500.00);

28 (iv) The administrative expenses approved by the Court pursuant to this

1 Agreement, estimated at Five Thousand Dollars and Zero Cents (\$5,000.00).

2           10.     Settlement Formula and Distribution: Subject to the conditions of this Agreement,  
3 Participating Class Members shall be entitled to a share (the “**Settlement Share**”) of the Net  
4 Settlement Amount. The Net Settlement Amount is to be divided among all Participating Class  
5 Members based on their pro-rata percentage of workweeks (determined by dividing the number of  
6 weeks worked by the Participating Class Member during the Class Period, by the total number of  
7 weeks worked by all Participating Class Members during the Class Period), such that the  
8 Participating Class Members shall receive a dollar amount calculated by multiplying each of their  
9 respective percentages by the Net Settlement Amount.

10           11.     Reference to Defendant’s Records: The number of weeks worked by Participating  
11 Class Members during the Class Period will be determined by reference to Defendant’s records.  
12 Defendant’s records shall be presumptively correct for determining who the Class Members are and  
13 the number of weeks worked by the Class Members as non-exempt hourly employees in California  
14 during the Class Period.

15           12.     Allocation of Settlement Payments:

16                   (a)     Twenty percent (20%) of all Settlement Share payments to Participating  
17 Class Members shall be considered wages and shall be subject to the withholding of all applicable  
18 local, state and federal taxes. Participating Class Members will receive from the Administrator an  
19 IRS Form W-2 for the payment and taxes that will be withheld at the rate required by law.  
20 Furthermore, Defendant (via the Administrator) will pay all amounts required by law to be paid by  
21 the employer to any federal, state or local tax authority.

22                   (b)     Eighty percent (80%) of all Settlement Share payments to Participating  
23 Class Members shall be considered non-wages for the settlement of interest claims, statutory and  
24 civil penalty claims, and for attorneys’ fees. Participating Class Members will receive from the  
25 Administrator an IRS Form 1099 for these payments, in accordance with and if required by IRS  
26 requirements, and will be responsible for correctly characterizing this compensation for tax  
27 purposes and to pay any taxes owing.

28           13.     Service Payment Award to Representative Plaintiff: In exchange for Plaintiff

1 Clavel executing a general release and initiating and prosecuting this Action on behalf of the Class,  
2 Defendant will not oppose Plaintiff Clavel's application for a service award in the amount of  
3 Twelve Thousand Dollars and Zero Cents (\$12,000.00) for his time and efforts as Representative  
4 Plaintiff from the Gross Settlement Amount and subject to the Court's approval. This service  
5 payment award is in addition to his rights to his individual settlement payment as a Participating  
6 Class Member as provided in this Agreement.

7 (a) Plaintiff Clavel will receive IRS Form 1099s for his service award payment  
8 and will be responsible for correctly characterizing this compensation for tax purposes and to pay  
9 any taxes owing.

10 (b) Plaintiff Clavel hereby indemnifies and holds Class Counsel and Defendant  
11 harmless for and against any action or liability of Plaintiff Clavel, if any tax authority should dispute  
12 the characterization of this compensation.

13 (c) Plaintiff Clavel shall not be entitled to the payment set forth in the  
14 Subparagraph above unless he provides his Social Security number or tax identification number to  
15 the Administrator.

16 14. Attorneys' Fees and Costs

17 (a) Class Counsel shall submit an application for an award of attorneys' fees  
18 not to exceed Seventy-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents  
19 (\$71,666.67) (33.33 % of the Gross Settlement Amount). This amount will cover all work  
20 performed to date and all work to be performed in connection with the approval by the Court of this  
21 Agreement and the final conclusion of this Action. Defendant agrees not to oppose any fee  
22 application that is not in excess of the amount specified in this Paragraph.

23 (b) Class Counsel shall submit an application for the reimbursement of costs  
24 and expenses in an amount not to exceed Nine Thousand Five Hundred Dollars and Zero Cents  
25 (\$9,500.00). This amount will cover all costs and expenses incurred to date or to be incurred. This  
26 amount shall come from the Gross Settlement Amount. Defendant agrees not to oppose any cost  
27 and expense application that is not in excess of the amount specified in this Paragraph.

28 15. Date of Defendant's Payment to Administrator: Defendant shall cause the Court-

1 approved Gross Settlement Amount to be funded on the “**Payment Date**,” which shall be within  
2 ten (10) calendar days after Court’s order granting final approval of the Settlement and Judgment  
3 becomes final, *e.g.*, the day immediately after the last day by which a Notice of Appeal of Judgment  
4 may be timely filed with the California Court of Appeal (the sixty-first calendar day following entry  
5 of Judgment) and no such appeal being filed.

6       16.     Date of Administrator’s Payment to Recipients: Within ten (10) business days of  
7 the Payment Date, the Administrator shall distribute all payments due under the Settlement,  
8 including the checks for payments to each Participating Class Member, to Plaintiff, and Class  
9 Counsel. Also, within ten (10) business days of the Payment Date, the Administrator shall remit  
10 payment to the appropriate tax authorities of the employee’s and employer’s share of taxes with  
11 respect to the wage-portion.

12       17.     No Further Payments: Defendant shall have no obligation to pay or provide any  
13 further consideration to any Class Member by reason of this Agreement or because of the foregoing  
14 payments, including but not limited to contributions to any 401(k) or other retirement or employee  
15 benefit plan, vacation or sick pay, *etc.* Any payments made pursuant to this Agreement will not  
16 trigger any obligation of Defendant to make any withholding for 401(k) contributions or to make  
17 any contributions to any 401(k) or similar plan. Nor will it trigger any obligation of Defendant to  
18 make any contributions to any employee welfare benefit plan for the benefit of any Class Member  
19 who is a member of any union.

20       18.     Certification for Settlement Purposes Only: As part of this Agreement and for  
21 purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class. If  
22 this Agreement does not become final for any reason, the Parties’ willingness to stipulate to class  
23 certification as part of this Settlement shall have no bearing on, and will not be admissible in  
24 connection with, the issue of whether any class should be certified in this case or in any other  
25 pending or future lawsuit. The Parties and their counsel will not offer or make reference to this  
26 provisional stipulation to class certification for purposes of this Settlement in any subsequent  
27 proceeding in this Action (except for purposes of having this Agreement approved by the Court) or  
28 in any other action.



1 issued checks but have not cashed all checks issued to them within ninety (90) calendar days after  
2 the checks' issuance;

3 (c) creating a toll-free call center to field telephone inquiries from Settlement  
4 Class Members during the notice and settlement administration periods. The Administrator will be  
5 directed to take call center down after the 180-day check cashing period for Settlement Share  
6 checks;

7 (d) conducting any necessary verifications of Social Security numbers;

8 (e) reviewing and processing disputes (as defined in Paragraph 31), Requests  
9 for Exclusion (as defined in Paragraph 29), and objections to the Settlement (as defined in  
10 Paragraph 30);

11 (f) providing Class Counsel and Defendant's counsel in this Action with  
12 periodic status reports about the delivery of the Notice, disputes, Requests for Exclusions, and  
13 objections to the Settlement;

14 (g) issuing the checks to effectuate the payments due under the Settlement.  
15 Settlement checks will be valid for one hundred and eighty (180) days. At the end of that 180-day  
16 period, settlement checks will be void. The total residual amount of uncashed settlement checks  
17 will be deposited with the California Controller's Unclaimed Property Fund (the "Fund") in the  
18 Class Member's name, as detailed in Paragraph 28(a);

19 (h) providing a report listing the amounts of payments made to each  
20 Participating Class Member; issuing the tax reports required under this Settlement; and

21 (i) otherwise administering the Settlement pursuant to this Agreement.

22 24. Qualified Settlement Fund: The Parties agree that the settlement funds will be  
23 placed in an account held by the Administrator to effectuate the terms of this Agreement and the  
24 orders of the Court. The Parties agree that the settlement fund (1) shall be established pursuant to  
25 an order of the Court prior to the receipt of any monies from Defendant; (2) that it shall be  
26 established to resolve and satisfy the contested claims that have resulted, or may result, from the  
27 matters that are the subject of this Action and that are released by this Settlement; and (3) that the  
28 fund or account that is established and its assets are segregated and shall be segregated (within a



1 found.

2 (b) It will be presumed that that a Class Member received the Notice Packet if  
3 an envelope has not been returned within thirty (30) days of mailing.

4 (c) At least ten (10) days prior to the Final Approval hearing, the Administrator  
5 shall provide the Court with a declaration of due diligence and proof of mailing with regard to the  
6 mailing of the Notice Packet, and all attempts to locate Class Members. Class Counsel shall be  
7 responsible for working with the Administrator to timely file the declaration of due diligence.

8 28. Administrator's Responsibility for Payment:

9 (a) All settlement checks will be valid for one hundred eighty (180) calendar  
10 days. At the end of that 180-day period, settlement checks will be cancelled.

11 (i) The total residual amount of uncashed settlement checks will be deposited  
12 with the Fund in the Class Member's name.

13 (ii) Within twenty-one (21) days after the distribution of any remaining monies  
14 to Class Members who cashed their Settlement payment check or to the Fund, Plaintiff will file a  
15 Post-Distribution Accounting. The Post-Distribution Accounting will set forth the total settlement  
16 fund, the total number of Class Members, the total number of Class Members to whom notice was  
17 sent and not returned as undeliverable, the number and percentage of opt-outs, the number and  
18 percentage of objections, the average and median recovery per Participating Class Members, the  
19 largest and smallest amounts paid to Participating Class Members, the method(s) of notice and the  
20 method(s) of payment to Participating Class Members, the number and value of checks not cashed,  
21 the amounts distributed to the Fund (if applicable), the administrative costs, the attorneys' fees and  
22 costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any.

23 (b) All settlement checks issued to Participating Class Members shall contain,  
24 on the back of the check, the following language:

25 "VOID IF ALTERED OR IF NOT CASHED BEFORE [DATE]  
26 POSITIVE I.D. REQUIRED  
27 SIGNED ENDORSEMENT BY NAMED PAYEE IS REQUIRED

28

1 By not opting out of the Settlement, you have released San Diego Sunrise  
2 Management Company, and other Released Defendant Parties of all Released  
Claims as defined in the Settlement Agreement.”

3 (c) If a Participating Class Member attempts to alter this language on the back  
4 of the check, any such alterations will be null and void and have no legal effect. The release  
5 language will be effective and controlling.

6 29. Exclusions:

7 (a) The Notice shall describe the process for Class Members to submit a request  
8 for exclusion (“**Request for Exclusion**”) from this Settlement. Requests for Exclusion must contain  
9 the Class Member’s name, current address, a statement that he/she/they wishes to exclude  
10 himself/herself/themselves from the Settlement, last four digits of their social security number, and  
11 must be signed individually by the Class Member. No Request for Exclusion may be made on behalf  
12 of a group. Such written statement must be postmarked within thirty (30) calendar days from the  
13 date the Notice is first mailed (“**Notice Deadline**”). None of the Parties, their counsel, nor any  
14 person on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves  
15 from the settlement. Class Members who submit a Request for Exclusion are not entitled to any  
Settlement Payment under this Agreement.

16 (b) In the event any Request for Exclusion is timely submitted but does not  
17 contain sufficient information to be valid, the Administrator shall provide the Class Member, within  
18 seven (7) calendar days, a letter requesting the information that was not provided and giving the  
19 Class Member fourteen (14) days from the mailing of such cure letter to respond. Any invalid  
20 submission that is not timely cured will be considered a nullity.

21 (c) Any Class Member who does not timely mail or fax a valid Request for  
22 Exclusion to the Administrator shall be bound by the terms of this Agreement and shall have  
23 released the Released Defendant Claims (as defined in Paragraph 33), even if he/she/they file an  
24 objection to the Settlement.

25 (d) A Class Member who has submitted a Request for Exclusion may withdraw  
26 or revoke his/her/their Request for Exclusion in writing provided that the writing is mailed or faxed  
27 to the Administrator and postmarked or fax-stamped no later than five (5) days prior to the Final  
28

1 Approval hearing.

2 (e) No Class Member will be permitted to pursue a claim released by this  
3 Settlement on the grounds that a Request for Exclusion was submitted timely and lost, destroyed,  
4 misplaced, or otherwise not received by the Administrator unless the Class Member has adequate  
5 proof that the Request for Exclusion was mailed timely certified and return receipt requested or has  
6 equivalent proof of timely delivery.

7 30. Objections to the Settlement:

8 (a) Only Participating Class Members may object to the Settlement and/or this  
9 Agreement, including contesting the fairness of the Settlement, and/or amounts requested for  
10 attorneys' fees/costs and the enhanced payment to Plaintiff.

11 (b) To object, a Participating Class Member must file a timely written objection  
12 with the Court. In the alternative, a Participating Class Members may appear in Court (or hire an  
13 attorney to appear in Court) to present verbal objections at the Final Approval hearing.

14 (c) A Participating Class Member who elects to send a written objection to the  
15 Administrator must do so not later than 30 calendar days after the Administrator's first mailing of  
16 the Notice (plus an additional 10 calendar days for Class Members whose Class Notice was re-  
17 mailed).

18 (d) Such written objection shall not be valid unless it includes the information  
19 specified in the Notice. The statement must be signed personally by the objector and shall state each  
20 specific objection and any legal and factual support for each objection. The objection must also  
21 state the Class Member's full name, address, the dates of his/her/their employment with Defendant,  
22 and whether the objector intends to appear at the Final Approval hearing.

23 (e) If the Court rejects the Class Member's objection, the Class Member will  
24 still be bound by the terms of this Agreement including the release.

25 (f) None of the Parties, their counsel, nor any person on their behalf, shall seek  
26 to solicit or otherwise encourage anyone to object to the settlement, or appeal from any order of the  
27 Court that is consistent with the terms of this Settlement.

28 31. Handling of Disputes Regarding Workweeks: Class Member disputes may arise

1 regarding the number of weeks worked as a non-exempt hourly employee of Defendant in  
2 California during the Class Period as shown in his/her/their Notice. To the extent that any Class  
3 Member disputes the number of workweeks that the Class Member worked, such Class Members  
4 may produce evidence to the Administrator establishing the dates they contend to have worked for  
5 Defendant. The deadline for Settlement Class Members to submit disputes pursuant to this  
6 paragraph is the Notice Deadline (disputes must be postmarked by the Notice Deadline). Unless the  
7 Class Member presents convincing evidence proving he/she/they worked more workweeks than  
8 shown by Defendant's records, his/her/their Settlement payment will be determined based on  
9 Defendant's records. The Administrator shall notify counsel for the Parties of any disputes it  
10 receives. Defendant shall review its records and provide further information to the Administrator,  
11 as necessary. The Administrator shall provide a recommendation to counsel for the Parties. Counsel  
12 for the Parties shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be  
13 resolved by the Parties, it shall be presented to the Court for a resolution. The Administrator will  
14 notify the disputing Class Member of the decision.

### 15 **RELEASE OF CLAIMS**

16 32. Plaintiff's General Release: As of the Effective Date, in addition to the claims being  
17 released by all Class Members, Plaintiff Clavel will provide the following additional general  
18 individual release ("General Release"): Plaintiff Clavel, on his own behalf and on behalf of his  
19 heirs, spouses, executors, administrators, attorneys, agents and assigns, fully and finally releases  
20 Defendant and its affiliated companies, respective parent companies, subsidiaries, affiliates,  
21 shareholders, members, agents (including, without limitation, any investment bankers, accountants,  
22 insurers, reinsurers, attorneys and any past, present or future officers, directors and employees)  
23 predecessors, successors, and assigns ("**Released Defendant Parties**") from all claims, demands,  
24 rights, liabilities and causes of action of every nature and description whatsoever, known or  
25 unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of  
26 any state or federal statute, rule or regulation arising out of, relating to, or in connection with any  
27  
28

1 act or omission by or on the part of any of the Released Defendant Parties committed or omitted  
2 prior to the execution of this Agreement. This General Release includes any unknown claims  
3 Plaintiff Clavel does not know or suspect to exist in his favor at the time of this General Release,  
4 which, if known by him, might have affected his settlement with, and release of, the Released  
5 Defendant Parties or might have affected his decision not to object to this Settlement or this Release.  
6 To the extent the foregoing releases are releases to which section 1542 of the California Civil Code  
7 or similar provisions of other applicable law may apply, Plaintiff expressly waives any and all rights  
8 and benefits conferred upon him by the provisions of section 1542 of the California Civil Code or  
9 similar provisions of applicable law which are as follows:  
10

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR  
12 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY  
14 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
15 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.  
16

17 The significance of this release and waiver of Civil Code Section 1542 has been explained  
18 to Plaintiff Clavel by his counsel. This general release excludes the release of claims not otherwise  
19 permitted by law, *i.e.*, worker's compensation and unemployment insurance benefits.  
20

21 33. Release of Claims: Upon the Effective Date, each Participating Class Member fully  
22 releases and discharges Released Defendant Parties from all claims alleged in the Action, including  
23 but not limited to, failure to pay wages/overtime, failure to provide meal periods, failure to permit  
24 rest breaks, failure to provide accurate itemized wage statements, failure to pay all wages due upon  
25 separation of employment, failure to reimburse unpaid wages/overtime, meal and rest period  
26 violations, waiting time penalties, payroll stub violations, failure to indemnify for business  
27 expenses, and inaccurate recordkeeping (the "**Released Claims**"). The Released Claims do not  
28 include claims to enforce the Settlement.

1           34.       Upon the Effective Date, the Released Defendant Parties shall release Plaintiff,  
2 Settlement Class members, Plaintiff’s counsel, and their respective controlling persons, families,  
3 associates, affiliates, shareholders, members, employees, agents, (including, without limitation, any  
4 investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future  
5 officers, directors and employees), heirs, executors, estates, trustees, predecessors, successors, and  
6 assigns (“**Released Plaintiff Parties**”) from all claims, demands, losses, rights, and causes of action  
7 of any nature whatsoever that have been or could have been asserted in any forum by the Released  
8 Defendant Parties, related in any manner to the institution, prosecution, settlement, or resolution of  
9 the Action or the Released Claims (“**Released Defendant Claims**”). The Released Defendant  
10 Claims do not include claims to enforce the settlement.

11                           **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**

12           35.       Plaintiff shall promptly submit an Unopposed Motion for Preliminary Approval of  
13 Settlement Agreement, requesting that the Court certify the Settlement Class pursuant to California  
14 Code of Civil Procedure section 382 for the sole purpose of settlement and a determination by the  
15 Court that this Agreement fair, adequate, and reasonable.

16                           **DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL**

17           36.       Class Counsel will be responsible for drafting the Unopposed Motion for Final  
18 Approval of Settlement Agreement, and approval of the requested enhancement award for Plaintiff,  
19 Class Counsel’s fees and costs, and Administrator’s Costs, to be heard at the Final Approval  
20 hearing. Class Counsel shall provide Defendant’s counsel in this Action a copy of a draft  
21 Unopposed Motion for Final Approval of Settlement Agreement in advance of filing it with the  
22 Court. Plaintiff shall request that the Court schedule the Final Approval hearing no earlier than  
23 thirty (30) days after the Notice Deadline to determine final approval of the settlement and to enter  
24 a Final Approval Order:

25                   (a)       certifying this Action and Settlement Class as a class action under California  
26 Code of Civil Procedure section 382 for purposes of settlement only;

27                   (b)       finding dissemination of the Notice was accomplished as directed and met  
28 the requirements of due process;

- 1 (c) approving the Settlement as final and its terms as a fair, reasonable and  
2 adequate;
- 3 (d) approving the payment of the requested enhancement award to Plaintiff;
- 4 (e) approving Class Counsel’s application for an award of attorneys’ fees and  
5 reimbursement of out-of-pocket litigation costs and expenses;
- 6 (f) directing that the Settlement funds be distributed in accordance with the  
7 terms of this Agreement;
- 8 (g) directing that the Action be dismissed finally, fully, forever and with  
9 prejudice and in full and final discharge of any and all Released Claims and Released Defendant  
10 Claims; and
- 11 (h) retaining continuing jurisdiction over this Action for purposes only of  
12 overseeing all settlement administration matters.

13 **VOIDING THE AGREEMENT**

14 37. If the Court disapproves of or refuses to enforce any of the material conditions set  
15 forth in the preceding Paragraphs, the Parties agree to engage in follow up negotiations with the  
16 intent of resolving the Court’s concerns that precluded approval, and if feasible, to resubmit the  
17 settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or  
18 if the Parties are not able to reach another agreement, then either Party may void this Agreement  
19 by written confirmation. At that point, the Parties agree that each shall return to their respective  
20 positions on the day before this Agreement and that this Agreement shall not be used in evidence  
21 or argument in any other aspect of their litigation.

22 38. Defendant shall have the right, in its sole discretion, to rescind this Agreement if  
23 more than ten percent (10%) of Class Members “opt-out” by submitting valid and timely Requests  
24 for Exclusion. Defendant may exercise its option to void this Agreement as provided in this  
25 Paragraph by giving notice, in writing, to Class Counsel and to the Court at any time prior to Final  
26 Approval of the Settlement by the Court, but not later than seven (7) calendar days after receiving  
27 notice that the number of Requests for Exclusion exceeds ten percent (10%).

28 39. If the conditions of the Settlement set forth herein are not satisfied, or if Defendant

1 void the Settlement under Paragraph 38 above, or if the Payment Date does not occur, or, if one or  
2 more of the material terms of the Agreement is not approved or is materially modified or reversed,  
3 with the exception of the Court's reduction of the amounts of attorneys' fees and costs, Plaintiff's  
4 enhancement award, or Administrator's fee, then this Agreement shall be cancelled, terminated,  
5 and shall have no force or effect, unless the Parties agree otherwise. If the Settlement is not finally  
6 approved, or if this Settlement is terminated, revoked, or cancelled pursuant to its terms, the Parties  
7 to this Settlement shall be deemed to have reverted to their respective status as of the date and time  
8 immediately prior to the execution of this Agreement.

9 **PARTIES' AUTHORITY**

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

12 **MUTUAL FULL COOPERATION**

13 41. The Parties shall fully cooperate with each other to accomplish the terms of this  
14 Agreement, including the execution of such documents and to take such other action as may  
15 reasonably be necessary to implement the terms of this Agreement and to secure the Court's Final  
16 Approval of this Agreement.

17 **NO PRIOR ASSIGNMENTS**

18 42. Plaintiff hereto represents, covenants, and warrants that he has not directly or  
19 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
20 Person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein  
21 released and discharged except as set forth herein.

22 **NO ADMISSION**

23 43. Nothing contained herein, including the consummation of this Agreement, is to be  
24 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part  
25 of Defendant. Each of the Parties hereto has entered into this Agreement with the intention to avoid  
26 further disputes and litigation settled herein with the attendant inconvenience, expenses, and  
27 uncertainties. This Agreement is a settlement document and shall, pursuant to California Evidence  
28 Code Section 1152, be inadmissible in evidence in any proceeding, except an action or proceeding

1 to approve, interpret, or enforce this Agreement.

2 **TAXES**

3 44. Neither Class Counsel nor Defendant's counsel in this Action intend anything  
4 contained herein to constitute legal advice regarding the taxability of any amount paid hereunder,  
5 nor shall it be relied upon as such. The tax issues for each Class Member may be unique, and each  
6 Class Member is advised to obtain tax advice from his/her/their own tax advisor with respect to any  
7 payments resulting from this Agreement.

8 45. It shall be the responsibility of the Administrator to timely and properly withhold  
9 from individual settlement payments to Participating Class Members all applicable federal, state  
10 and local income and employment taxes and to prepare and deliver the necessary tax documentation  
11 for signature by all necessary Parties and, thereafter, to cause the appropriate deposits of  
12 withholding taxes and informational and other tax return filing to occur. It shall be the responsibility  
13 of the Administrator to pursue tax refunds on any uncashed checks, and to remit such payments  
14 accordingly. Payments to Participating Class Members and to Class Counsel pursuant to this  
15 Agreement shall be reported on IRS Forms W-2 and/or 1099 and provided by the Administrator to  
16 the respective Class Members, Class Counsel and all applicable governmental authorities as  
17 required by law.

18 **NOTICES**

19 46. Unless otherwise specifically provided herein, all notices, demands or other  
20 communications given hereunder shall be in writing and shall be deemed to have been duly given  
21 as of the third business day after mailing by United States certified mail with return receipt  
22 requested, addressed as follows:

23 To Plaintiff and Settlement Class:  
24 Carolyn Hunt Cottrell, Esq.  
25 Esther L. Bylsma, Esq.  
26 Philippe M. Gaudard, Esq.  
27 Schneider Wallace Cottrell Konecky LLP  
28 2000 Powell Street, Suite 1400  
Emeryville, California 94608

To Defendant's Counsel:

1 Jeffrey S. Ranen, Esq.  
2 Parisa Khademi, Esq.  
3 Lewis Brisbois Bisgaard & Smith LLP  
4 633 W. 5th Street, Suite 4000  
5 Los Angeles, California 90071

#### 6 **CONSTRUCTION**

7 47. The terms and conditions of this Agreement are the result of lengthy, intensive  
8 arms-length negotiations between the Parties, and this Agreement shall not be construed in favor of  
9 or against any party by reason of the extent to which any party or his, her, their, or its counsel  
10 participated in its drafting.

#### 11 **CAPTIONS AND INTERPRETATIONS**

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

#### 15 **MODIFICATION**

16 49. This Agreement may not be changed, altered, or modified, except in writing and  
17 signed by the Parties hereto. This Agreement may not be discharged except by performance in  
18 accordance with its terms or by a writing signed by the Parties hereto.

#### 19 **INTEGRATION CLAUSE**

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

#### 24 **BINDING ON ASSIGNS**

25 51. This Agreement shall be binding upon and inure to the benefit of the Parties hereto  
26 and their respective spouses, heirs, trustees, executors, administrators, successors, and assigns,  
27 including Defendant and the Released Parties.

#### 28 **CLASS MEMBER SIGNATORIES**

52. Because the Settlement Class is so numerous, it is impossible or impractical to have  
each member execute this Agreement. The Notice, **Exhibit "A"** hereto, as approved by the Court,

1 and the other forms of notice described herein will advise each Class Member of the binding nature  
2 of the release and such shall have the same force and effect, to the extent permitted by law, as if  
3 this Agreement were executed by each Class Member.

#### 4 **CORPORATE SIGNATORIES**

5 53. Any Person executing this Agreement or any such related document on behalf of a  
6 corporate signatory hereby warrants and promises for the benefit of all Parties hereto that such  
7 Person has been duly authorized by such corporation to execute this Agreement or any such related  
8 document.

#### 9 **COUNTERPARTS**

10 54. This Agreement may be executed in counterparts, and when each Party has signed  
11 and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when  
12 taken together with other signed counterparts, shall constitute one Agreement, which shall be  
13 binding upon and effective as to all Parties as set forth herein. Copies and facsimile transmissions  
14 of signatures shall be considered the same as an original signature.

#### 15 **CONTROLLING LAW**

16 55. The Agreement shall be governed by and construed in accordance with the laws of  
17 the State of California. In any dispute about the scope of the Release provisions set forth herein or  
18 their application to bar any future claim, including regarding the assertion of a res judicata /  
19 collateral estoppel defense, this Agreement is governed exclusively by California state law and  
20 without regard to any other state or federal law.

#### 21 **PUBLIC COMMENT**

22 56. The Parties and their counsel will not, unless required by law, issue any press  
23 releases or have any communications to the press concerning this litigation, or the terms of this  
24 Agreement, and/or the business practices of Defendant, except that this provision shall not limit  
25 communications with Class Members up to the Final Approval of this Agreement, so long as the  
26 subject matter of such communications is limited to this Action and Settlement. Nothing in this  
27 provision shall affect the ability of Class Counsel or the Administrator to carry out their duties  
28 consistent with and as required by any other provision herein. Nothing contained in this Paragraph


1 shall limit or restrict Class Counsels' ability to file a declaration with any court that identifies this  
2 case by name and case number and provides any information about this Action and the Settlement  
3 in such declaration reasonably necessary to the filing with such court.

4 **IT IS SO AGREED.**

5  
6 DATED: \_\_\_\_\_, 2023 SCHNEIDER WALLACE COTTRELL KONECKY LLP

7  
8  
9 By: \_\_\_\_\_  
10 ESTHER L. BYLSMA, Esq.  
Attorneys for Plaintiff and the Class


11 DATED: \_\_\_\_\_, 2023 LEWIS BRISBOIS BISGAARD & SMITH LLP

12  
13 DATED: 5-1-23, 2023  
14 By:   
15 JEFFREY RANEN, Esq.  
16 PARISA KHADEMI, Esq.  
Attorneys for Defendant San Diego Sunrise  
17 Management Company

18 PLAINTIFF RAMIRO CLAVEL

19 By: \_\_\_\_\_  
20 RAMIRO CLAVEL

21 DATED: 05.01.2023, 2023 DEFENDANT SAN DIEGO SUNRISE MANAGEMENT  
22 COMPANY


23 By:   
24 Randy Polcyn  
25 Its: In-House Counsel  
26  
27  
28

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4 **IT IS SO AGREED.**

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DATED: \_\_\_\_\_, 2023 SCHNEIDER WALLACE COTTRELL KONECKY LLP

By:   
ESTHER L. BYLSMA, Esq.  
Attorneys for Plaintiff and the Class

DATED: \_\_\_\_\_, 2023 LEWIS BRISBOIS BISGAARD & SMITH LLP

DATED: \_\_\_\_\_, 2023  
By: \_\_\_\_\_  
JEFFREY RANEN, Esq.  
PARISA KHADEMI, Esq.  
Attorneys for Defendant San Diego Sunrise  
Management Company

PLAINTIFF RAMIRO CLAVEL

04 / 26 / 2023

By:   
RAMIRO CLAVEL

DATED: \_\_\_\_\_, 2023 DEFENDANT SAN DIEGO SUNRISE MANAGEMENT  
COMPANY

By: \_\_\_\_\_  
Randy Polcyn  
Its: In-House Counsel