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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

JACQUELINE BALTAZAR an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WESTGATE HOTEL COMPANY, a
Corporation; SINCLAIR SERVICES
COMPANY, a Corporation; GRAND
AMERICA HOTELS & RESORTS, INC.; and
DOES 1 through 30, inclusive.

Defendants.

Case No. 37-2020-00005102

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: 04/02/2021

Time: 1:30 p.m.

Judge: Hon. Timothy Taylor

Dept.: 72

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for Plaintiff JACQUELINE BALTAZAR, (hereafter "Plaintiff") in this wage and hour class action filed against WESTGATE HOTEL COMPANY; SINCLAIR SERVICES COMPANY; GRAND AMERICA HOTELS & RESORTS, INC.; (hereinafter collectively "Defendants").

2. This declaration is being submitted in support of Plaintiff's motion for Preliminary Approval of Class Action Settlement.

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1 **I. EXHIBITS**

2 3. Attached hereto as **Exhibit “1”** is a true and correct copy of the fully executed Joint the
3 Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement” or “Settlement
4 Agreement”). Attached as **Exhibit “A”** to the Agreement is a true and correct copy of the proposed
5 Class Notice.

6 4. Attached hereto as **Exhibit “2”** is a true and correct copy of the proof of filing with the
7 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
8 and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class
9 Counsel’s compliance with California Labor Code Section 2699(1)(2).

10 **II. INTRODUCTION**

11 5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
12 the Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at
13 arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by
14 the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs
15 pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class
16 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
17 certification being denied or of Defendants prevailing at trial. Given that there are approximately 605
18 Settlement Class Members, **the average gross recovery is approximately \$723.69** (Net Settlement
19 Amount divided by Settlement Class Members).

20 6. As discussed below, the proposed Settlement satisfies all criteria for preliminary
21 settlement approval under California law and falls within the range of reasonableness. The average
22 Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour
23 class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification.
24 Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

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1 **III. FACTS AND PROCEDURE**

2 **A. Overview of the Litigation**

3 7. Defendants own, operate and manage “The Westgate Hotel®” a 223-room, luxury hotel
4 located in Downtown, San Diego. Defendants employed Plaintiff as an hourly, non-exempt employee
5 at the Westgate Hotel in San Diego in the Food and Beverage Department between September 3, 2014
6 and April 22, 2016 and again between December 20, 2018 and December 2, 2019. As a non-exempt
7 employee working in the Food and Beverage department, Plaintiff regularly worked shifts at the pool
8 bar, delivering room service, at banquets, in the Plaza Bar and in the Westgate Room restaurant. At all
9 times during her employment, Plaintiff earned an hourly wage plus gratuities, and was entitled to legally
10 complaint meal and rest periods, and minimum, regular and overtime wages for all hours worked.
11 Throughout her employment, Plaintiff was subject to Defendants’ written policies and procedures
12 contained in, among other documents, the “Team Member Handbook – The Westgate Hotel.”

13 8. Generally, Plaintiff claims that Defendants failed to pay her for all hours worked, failed
14 to provide complaint meal and rest periods, failed to reimburse mandatory business expenses and
15 improperly pooled gratuities. Defendants forcefully deny liability for each of Plaintiff’s claims. Further,
16 Defendants assert that they fully complied with all applicable employment laws and raised several other
17 significant defenses to Plaintiff’s claims, including but not limited to, facially complaint meal and rest
18 period polices, written policies making the use of personal cell phones optional, and never required any
19 member of the Settlement Class to don or doff a uniform while off-the-clock.

20 9. On January 17, 2020, Plaintiff served Defendants and the Labor and Workforce
21 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA
22 Notice set forth the facts and theories supporting Defendants’ alleged violations of various provisions
23 of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and
24 of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
25 Code Sections 2698 et seq (“PAGA”).

26 10. On January 27, 2020, Plaintiff filed a class action complaint in the San Diego Superior
27 Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay
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1 minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to
2 pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to pay
3 gratuities in violation of California Labor Code section 351; (5) failure to provide required meal periods
4 in violation of California Labor Code sections 226.7 and 512; (6) failure to provide required rest periods
5 in violation of California Labor Code sections 226.7 and 512; (7) failure to reimburse employees for
6 required business expenses in violation of California Labor Code sections 2802; (8) failure to provide
7 accurate itemized wage statements in violation of California Labor Code section 226; and (9) failure to
8 provide wages when due in violation of California Labor Code sections 201, 202 and 203.

9 11. Subsequently, on May 28, 2020, Plaintiff filed the operative First Amended Complaint
10 alleging a tenth cause of action for violations of the California Labor Code Private Attorney General
11 Act (“PAGA”). Thereafter, Defendants answered the First Amended Complaint.

12 12. Plaintiff commenced written discovery in May 2020. Prior to answering Plaintiff’s
13 written discovery, the Parties agreed to mediate this action. In anticipation of mediation, the Parties
14 stipulated to stay formal discovery. To prepare for mediation, the Parties agreed to informally produce
15 certain documents and data points subject to the mediation privilege, including but not limited to, a
16 sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained
17 the Berger Consulting Group, to analyze Defendants’ time and payroll data.

18 13. On December 9, 2020 the Parties participated in a full day mediation with (Ret.) Hon.
19 Steven Denton. After arms-length negotiations and bargaining, the parties reached an agreement to
20 settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the
21 parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant
22 motion.

23 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

24 14. In October 2019, Class Counsel began its pre-filing investigation into Plaintiff’s
25 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part
26 of the interview process, Plaintiff produced nearly 100 pages of documents related to her employment
27 for Defendants, including portions of Defendants’ handbooks, compensation policies and time and
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1 payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's
2 complaints justified further inquiry.

3 15. Next, in November 2019 Class Counsel requested Plaintiff's employee file from
4 Defendants. In response, Defendants produced hundreds of pages of documents, including but not
5 limited, a copies of Plaintiff's hiring documents, payroll and time records, performance reviews and
6 separation documents. Class Counsel reviewed and analyzed the documents and determined the
7 documents substantiated Plaintiff's claim that Defendants withheld mandatory service charges from its
8 service employees and required their non-exempt employees to don and doff their uniforms while off
9 the clock. Shortly thereafter, Class Counsel summarized the known factual and legal issues in the
10 PAGA Notice addressed to the LWDA. Several weeks later, Class Counsel filed this class action in the
11 State Court Class Action.

12 16. Additionally, during the meetings with Class Counsel, Plaintiff provided the names and
13 contact information for several members of the Settlement Class. After filing this action, Class Counsel
14 interviewed those members of the Settlement Class to further investigate Plaintiff's allegations and
15 those made on behalf of the Settlement Class.

16 17. After filing the First Amended Complaint, Plaintiff propounded written discovery. Prior
17 to answering Plaintiff's written discovery, the Parties agreed to mediate the action. To prepare for
18 mediation, Class Counsel requested a number of documents and data points to further evaluate
19 Plaintiff's claims and Defendants' liability exposure to the Settlement Class members. In response to
20 Class Counsel's request, Defendants produced the time and payroll records for approximately 10% of
21 the Settlement Class members, aggregate workweek and pay period data for 100% of the Settlement
22 Class, and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal
23 and rest period policies. Additionally, Defendants produced the standard form catering contract and
24 data detailing the total amount of catering service charges collected and disbursed the Settlement Class
25 during the Class Period. In total, Defendants produced approximately 3,200 pages containing nearly
26 one-half million unique cells of time and payroll data for Class Counsel to analyze.

18. Class Counsel then retained the statisticians and economists at Berger Consulting Group (“BCG”), to evaluate the Settlement Class Members’ payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG’s team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendants’ time and payroll data.

19. BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shift, work weeks, pay periods, average rate of pay, average length of shift and average number of hours worked per week and pay period during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount of off-the-clock work performed by the Settlement Class during the Class Period.

20. In advance of mediation, Class Counsel created several damage models predicated on BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions.

21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Rodriguez's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and

magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the parties have agreed.

22. In addition to formal and informal discovery, witness interview, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed to Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. For instance, Class Counsel reviewed the settlement in *Shachno v. KT Hotels, LLC dba Pendry Hotel San Diego*, San Diego Superior Court Case Number 37-2018-0043601-CU-OE-CTL, where the Court approved a \$14.26 workweek value in a similar wage and hour class action. Similarly, in *Guerrero v. Estancia Hotel Operations, LLC dba Estancia Hotel La Jolla*, San Diego Superior Court Case Number 37-2019-00028963-CU-OE-CTL, the court approved a settlement with a pay period value of \$23.36 in a PAGA only action arising out of similar Labor Code violations. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and in light of the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of Settlement Class. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

C. The Parties Settled at Mediation

23. On December 9, 2020, the Parties agreed to conduct a full day of mediation with (Ret.) Steven Denton, Esq., a highly regarded mediator and former San Diego County Superior Court Judge. Hon. Denton helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After nearly eight hours arm's length and adversarial

1 negotiations, the mediation nearly concluded without a settlement. However, at the conclusion of the
2 mediation, Judge Denton issued a proposal for settlement that the Parties accepted. The complete and
3 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the
4 Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

5 24. At all times, the Parties' negotiations were at an arm's length, adversarial and non-
6 collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the
7 mediation session nearly concluded without a settlement. The matter resolved only when Judge Denton
8 issued a mediator's proposal that the Parties accepted. Judge Denton only arrived at his proposal after
9 hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses.

10 25. Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted
11 negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's
12 length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement.
13 The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms
14 are fair, adequate and represent a reasonable compromise of the claims at issue.

15 **IV. ARGUMENT**

16 **A. The Court Should Preliminarily Approve the Settlement**

17 26. The Total Settlement Amount of \$740,000 is fair and reasonable in light of the nature and
18 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
19 mediation, Class Counsel retained BCG to develop varied economic damages models measuring
20 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The
21 various models were informed by Class Counsel's investigation, including the analysis of a significant
22 sample of time and payroll data. Class Counsel projected Defendants' liability exposure for the
23 Settlement Class ranged between approximately \$2.5 million ("Conservative Model") and \$8.3 million
24 ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several of
25 Plaintiff's claims, together with the uncertainty surrounding derivative liability for inaccurate wage
26 statements and waiting time penalties resulting from meal and rest period violations. Thus, the Total
27 Settlement Amount of \$740,000 represents approximately between 8% and 30% of Defendants' liability

1 exposure as estimated by Class Counsel at the time of mediation. The following summarizes
2 Defendants' estimated exposure.

3 27. Plaintiff's theory of liability is that Defendants knew or should have known that their
4 employees were donning and doffing their uniforms off the clock, but nonetheless stood idly by and
5 failed to compensate Plaintiff, the Class Members and the Aggrieved Employees for this time.
6 Defendants on the other hand assert that they never required, knew or permitted their employees to
7 work while off the clock and maintained written policies prohibited working off-the-clock. Moreover,
8 Defendants assert that their employees were allowed to take uniforms home and allowed to report in
9 full uniform. Thus, Defendants argued that individualized issues predominated the claim making
10 certification unlikely.

11 28. Notwithstanding Defendants' arguments, Plaintiff perceived the donning and doffing
12 claim as the strongest claim in the Action. Plaintiff estimated the damages for unpaid wages, penalties
13 and interest at approximately arising from the donning and doffing claim at approximately \$2.5 million

14 29. Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and the
15 Settlement Class Members were not able to take timely and duty-free meal periods. Labor Code 512
16 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal
17 period within the first five hours of work. Defendants argued that they fully complied with California meal
18 period laws and maintained legally compliant policies and practices. Courts have found that where an
19 employer's meal period policies are compliant, individualized issues exist as to the reasons for missed, late
20 or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851
21 (2018) (holding that although only 11.1% of the employees' time punches for meal periods were within the
22 first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late
23 meal periods)

24 30. Defendants also argued that they regularly paid meal period premium when missed, late or
25 truncated meal periods were reported. As evidence, Defendants produced evidence establishing that they
26 actually paid in excess of \$120,000 for meal period premiums during the Class Period. Further,
27 Defendants argued that many of the Settlement Class members executed valid First Meal Period Waiver
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1 or Second Meal Period Waiver. Again, if successful, Defendants availed themselves to a complete
2 defense of Plaintiff's meal period claim. Plaintiff estimated the range of outcomes for this claim ranged
3 between \$0 and approximately \$800,000.

4 31. Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
5 Plaintiff alleged that as a result of their rigorous work schedule they were not able to take timely and duty-
6 free rest periods. Again, Defendants denied liability and asserted that they maintained legally compliant rest
7 period policies and practices at all time throughout the Class Period. Moreover, Plaintiff recognizes the
8 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost
9 entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages.
10 Defendants likely would have argued that only a small number of Class Members actually missed their rest
11 breaks. Certification likely would have required depositions of Class Members who provided declarations,
12 and Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or
13 rest breaks were voluntarily waived. Accordingly, the rest break claim was heavily discounted in Plaintiff's
14 valuation of the case. this claim and ranged between \$0 and \$900,000.

15 32. Plaintiff alleged that Defendants required the Settlement Class Members to use their
16 personal cell phone to obtain and view work schedules. Again, Defendants vigorously denied any
17 liability for this claim. Defendants argued that any cell phone use was voluntary, never mandatory, and
18 contrary to written policies. Defendants also offered evidence that work schedules were regularly
19 posted at the Westgate Hotel where copies were made available their employees to take home. This
20 claim was also heavily discounted based on Defendants' defenses. Plaintiff estimated Defendants'
21 exposure for this claim ranged between \$0 and \$650,000.

22 33. Generally, Plaintiff alleges that Defendants' aforementioned violations resulted in
23 derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable
24 presence of various penalties and weighed the potential recoveries against probable defenses.
25 Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain
26 waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendants could argue that Plaintiff
27 could not show that Class Members suffered an "injury" as a result of wage statement violations, as

1 required by Cal. Lab. Code § 226. Defendants could also argue that that meal and rest period violations
2 do not entitled employees like Plaintiff and the Settlement Class Members to pursue the derivative
3 waiting time and itemized wage statement penalties. Plaintiff could not give the penalty claims great
4 weight given that they depended on proving the underlying claims, which had their own risks.

5 34. Class Counsel's damage models also estimated Defendants' exposure for PAGA
6 penalties arising from the aforementioned violations. At the time of mediation, Plaintiff estimated
7 Defendants' PAGA exposure at approximately \$1,650,000. Here, Plaintiff would need to prove that
8 each Aggrieved Employee suffered a violation for each pay period the employee worked. Again,
9 Defendants raised a number of defenses that presented serious threats to the claims of the Plaintiff and
10 the Aggrieved Employees. Defendants asserted that the employment practices complied with all
11 applicable Labor Laws. In addition to those arguments discussed *supra*, Defendants also argued that
12 the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened
13 Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's
14 PAGA liability exposure is hotly contested.

15 35. Accordingly, the Gross Settlement Fund of \$740,000 represents between **8% and 30%**
16 of the full verdict value of the claims being released.

17 36. Although Plaintiff and Class Counsel are confident about the strength of the claims,
18 collectively they recognize that Defendants have factual and legal defenses that, if successful, would
19 potentially defeat or substantially impair the value of Plaintiff's lawsuit. These risks include not being
20 able to certify the action, the fast-changing landscape of wage and hour law, decertification, and a
21 reversal after an appeal. Consequently, the uncertainty of obtaining certification through a contested
22 motion is a significant risk factor favoring settlement.

23 37. Finally, continuing to litigate this action would require continued and extensive resources
24 coupled with significant Court time to proceed through trial and post-trial motions; which can often
25 take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates
26 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
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trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment.

38. In this matter, Class Counsel negotiated a Total Settlement Amount of \$740,000 that is roughly between 8% and 30% Defendants' maximum liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

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B. Proposed Notice Informs the Class About the Case and Settlement

39. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement Class of their rights and remedies in this action. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to entire Settlement Class. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost effective administration of the Settlement.

40. As detailed in the Agreement, the method of disseminating the proposed Class Notice and contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

C. The Court Should Preliminarily Approve the Enhancement Award

41. Approximately 605 members of the Settlement Class will share in the estimated \$437,833.34 Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$7,500 for Plaintiff. The service award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed

Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendants a general release of all claims arising out of their employment.

42. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award.

D. The Court Should Preliminary Approve the Negotiated Class Counsel Award

43. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$15,000. Agreement at §III(M)(3). In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable.

44. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

E. The Court Should Provisionally Certify the Settlement Class

45. For the purpose of Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Settlement Class is appropriate. It is my opinion that provisional certification is appropriate here, and that the Settlement is fair, reasonable and adequate, and in the best interests of the Class.

46. Generally, the proposed Settlement Class consists of all of Defendants' current and former California employees during the Class Period. Defendants' records show that the Settlement Class Members consists of approximately 490 individuals, making joinder of all Settlement Class Members impracticable. Further, because all Settlement Class Members are Defendants' current and

former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records.

47. The California statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

48. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that they were injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

49. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Settlement Class Member's claim, Class Settlement Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

F. Class Counsel's Experience

50. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Tesla Stone (Paralegal), Leilani Edmunds (Legal Secretary), Amanda De Blouw (Legal Assistant).

1 51. I am qualified to represent the Plaintiff, the State of California and the Aggrieved
2 Employees. I have extensive experience with wage and hour class and representative actions litigation
3 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
4 litigation experience and complex construction product liability experience. I can, will and have
5 adequately represented the interests of the Plaintiff, the State of California and the Aggrieved
6 Employees throughout this action.

7 52. I have represented consumers and employees in California class actions, and complex
8 multi-party product liability actions exclusively for more than 13 years. I have been in practice as a
9 plaintiffs' civil litigation attorney since April 2007.

10 53. I have significant class counsel and collective action counsel experience. I served as class
11 and/or collective (PAGA) counsel in the following matters:

12 a. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court,
13 Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and
14 PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC
15 acted as class counsel for the settlement class and as representative PAGA counsel the
16 State of California and the Aggrieved Employees.)

17 b. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
18 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
19 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
20 employees by the JCL Law Firm, APC.)

21 c. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
22 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed
23 the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement
24 for, *inter alia*, missed meal and rest periods.)

25 d. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court,
26 Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
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Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

e. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

f. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)

g. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)

h. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

i. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

j. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

k. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

l. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

m. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

n. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

o. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

p. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

q. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W.

Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

r. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

s. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

t. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

u. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

v. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

w. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

x. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

54. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$50 million on behalf of the Firm’s clients.

55. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm’s clients.

56. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

EXHIBIT 1

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)

2 **JCL LAW FIRM, APC**

3 3990 OLD TOWN AVENUE, SUITE C204

4 SAN DIEGO, CA 92110

5 TEL: 619-599-8292

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8 ATTORNEYS FOR PLAINTIFF JACQUELINE BALTAZAR

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12 paradisd@higgslaw.com

13 HIGGS FLETCHER & MACK LLP

14 401 West "A" Street, Suite 2600

15 San Diego, CA 92101-7913

16 TEL: 619.236.1551

17 FAX: 619.696.1410

18 Attorneys for Defendants

19 WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY, and GRAND
20 AMERICA HOTELS & RESORTS, INC., E/S/A "GRAND AMERICAN HOTELS & RESORTS,
21 INC."

22 **SUPERIOR COURT OF CALIFORNIA**

23 **COUNTY OF SAN DIEGO**

24 JACQUELINE BALTAZAR an individual, on
25 behalf of herself, and on behalf of all persons
26 similarly situated,

27 Plaintiffs,

28 vs.

WESTGATE HOTEL COMPANY, a
Corporation; SINCLAIR SERVICES
COMPANY, a Corporation; GRAND
AMERICAN HOTELS & RESORTS, INC.;
and DOES 1 through 30, Inclusive;

Defendants.

Case No. 37-2020-00005102

[Action Filed 01/27/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION CLAIMS AND
RELEASE OF CLAIMS**

Judge: Hon. Timothy Taylor
Dept.: 72

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff JACQUELINE BALTAZAR (hereinafter “Plaintiff”), individually and on behalf
3 of the Settlement Class, and Defendants WESTGATE HOTEL COMPANY, SINCLAIR SERVICES
4 COMPANY, and GRAND AMERICA HOTELS & RESORTS, INC. (hereinafter “Defendants”):

5 **I. DEFINITIONS**

6 A. “Action” shall mean *Baltazar v. Westgate Hotel Company, et al.*, currently pending
7 in the Superior Court for the County of San Diego, Case No. 37-2020-00005102 filed
8 January 27, 2020, as a class action and representative action pursuant to the Private
9 Attorney General Act of 2004, Labor Code § 2698 *et seq.* (hereinafter, “PAGA”).

10 B. “Aggrieved Employees” shall mean all of Defendants’ current and former non-
11 exempt employees employed in California at the Westgate Hotel in San Diego
12 between January 17, 2019 and February 14, 2020.

13 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
14 Class Action and Release of Claims.

15 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC.

16 E. “Class Counsel Award” means the award of fees and expenses that the Court
17 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
18 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
19 third of the Total Settlement Amount currently estimated to be \$246,666.66 out of
20 \$740,000.00 plus costs and expenses not to exceed \$15,000.00

21 F. “Class Data” means information regarding Settlement Class Members that
22 Defendants will in good faith compile from its records and provide to the Settlement
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1 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall
2 include: each Settlement Class Member's full name; last known address; Social
3 Security Number; start dates and end dates of employment, and number of
4 Workweeks as a Settlement Class Member during the Class Period and PAGA Period
5 and email address, if known.
6

7 G. "Class Period" means the period from January 27, 2016 and February 14, 2020.
8

9 H. "Class Representative Service Award" means the amount that the Court authorizes to
10 be paid to the Class Representative, in addition to her Individual Settlement Payment
11 and her pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
12 in assisting with the prosecution of the Action and in exchange for executing a
13 General Release of Defendant.
14

15 I. "Class Representative" means Plaintiff JACQUELINE BALTAZAR.
16

17 J. "Court" means the Superior Court for the State of California, County of San Diego
18

19 K. "Defendants" shall mean WESTGATE HOTEL COMPANY, SINCLAIR
20 SERVICES COMPANY, and GRAND AMERICA HOTELS & RESORTS, INC.

21 L. "Effective Date" means the earliest date, following entry by the Court of an order
22 and judgment finally approving this Settlement, upon which one of the following have
23 occurred: (i) if no objection is filed to the settlement and no objector appears at the
24 hearing on final approval, ten (10) calendar days following the Court's entry of the
25 order granting final approval, (ii) if an objection is filed to the settlement and/or an
26 objector appears at the hearing on final approval, then the earlier of the following: (a)
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1 the expiration of all potential appeal periods without a filing of a notice of appeal of
2 the final approval order or judgment; (b) final affirmance of the final approval order
3 and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal
4 or denial of all such appeals (including any petition for review, rehearing, certiorari,
5 etc.) such that the final approval order and judgment is no longer subject to further
6 judicial review.
7

8 M. “Funding Date” shall mean ten (10) calendar days after the Effective Date and is the
9 date Defendants transfer the Total Settlement Amount into the QSF in accord with
10 the terms of this Agreement.
11

12 N. “Individual Settlement Payment” means the amount payable from the Net Settlement
13 Amount to each Settlement Class Member and excludes any amounts distributed to
14 Settlement Class Members pursuant to PAGA
15

16 O. “Net Settlement Amount” or “NSA” means the Total Settlement Amount, less Class
17 Counsel Award, Class Representative Service Award, PAGA Settlement, and
18 Settlement Administration Costs.
19

20 P. “Notice Packet” means the Class Notice to be provided to the Settlement Class
21 Members by the Settlement Administrator in the form set forth as Exhibit A to this
22 Agreement (other than formatting changes to facilitate printing by the Settlement
23 Administrator).
24

25 Q. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
26 Labor Code § 2698 *et seq.*
27
28

- 1 R. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
2 for each Aggrieved Employee divided by the sum total of the Workweeks for all
3 Aggrieved Employees during the PAGA Period.
4
- 5 S. "PAGA Period" means the period between January 17, 2019 and February 14, 2021.
6
- 7 T. "PAGA Settlement" shall mean Twenty Thousand Dollars (\$20,000.00) to be
8 allocated from the Total Settlement Amount.
- 9 U. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
10 Plaintiff or Defendants, individually.
11
- 12 V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
13 divided by the sum total Workweeks for all Settlement Class Members.
14
- 15 W. "Plaintiff" shall mean JACQUELINE BALTAZAR.
- 16 X. "QSF" means the Qualified Settlement Fund established, designated and maintained
17 by the Settlement Administrator to fund the Total Settlement Amount.
18
- 19 Y. "Released Claims" means all class claims, actions, demands, causes of action, suits,
20 debts, obligations, damages, penalties, rights or liabilities, of any nature and
21 description whatsoever, that are asserted in the Action, or could have been asserted in
22 the Action based on the facts, claims and theories plead in the operative complaint on
23 file at the time of final approval, or raised during the mediation of this dispute,
24 including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210,
25 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
26 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders which
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1 occurred during the Class Period, and expressly excluding all other claims, including
2 claims for wrongful termination, unemployment insurance, disability, social security,
3 workers' compensation, and class claims outside of the Class Period. The Released
4 Claims include, but are not limited to: (1) unfair competition in violation of Business
5 and Professions Code section 17200 et seq. predicated on violations of the following
6 California Labor Code sections; (2) failure to pay minimum wages in violation of
7 California Labor Code sections 1194, 1197 and 1197.14; (3) failure to pay overtime
8 wages at the appropriate regular rate of pay in violation of California Labor Code
9 section 510 et seq. (including but not limited to any allegations of rounding, donning
10 and doffing, or otherwise working off the clock); (4) failure to pay gratuities in
11 violation of California Labor Code section 351 (including but not limited to
12 Defendants alleged failure to fully distribute service charges to non-exempt
13 employees in the chain of service); (5) failure to provide required meal periods in
14 violation of California Labor Code sections 226.7 and 512; (6) failure to provide
15 required rest periods in violation of California Labor Code sections 226.7 and 512;
16 (7) failure to reimburse employees for required business expenses in violation of
17 California Labor Code sections 2802 (including but not limited to reimbursements for
18 Settlement Class Members alleged use of personal cellular telephones); (8) failure to
19 provide accurate itemized wage statements in violation of California Labor Code
20 section 226; (9) and failure to provide wages when due in violation of California
21 Labor Code sections 201, 202 and 203 (including but not limited to any allegations
22 of rounding, donning and doffing, or otherwise working off the clock or failing to pay
23 any "wages" as defined by Labor Code section 200 which includes, but is not limited
24 to, salaries, hourly pay, piece rate, payments by the job, commissions, bonuses,
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1 gratuities, vacation, overtime, and the reasonable cash value of compensation other
2 than cash). Except as provided for in this Agreement, the term Released Claims also
3 includes Plaintiff's claim that Defendants are liable for the attorneys' fees incurred to
4 prosecute this Action on behalf of Plaintiff and the Settlement Class Members,
5 including fees incurred for the services of Class Counsel. The term Released Claims
6 also includes all claims that Plaintiff and/or the Settlement Class Members may have
7 against the Released Parties relating to (i) the payment, taxation and allocation of
8 attorneys' fees and costs to Class Counsel pursuant to this Agreement, and (ii) the
9 payment, taxation and allocation of the Class Representative Service Award pursuant
10 to this Agreement.
11

12
13 Z. "Released PAGA Claims" mean any and all claims for relief under PAGA, of
14 whatever kind or nature, whether known or unknown, arising during the PAGA
15 Period, based on the facts alleged in the operative complaint at the time of final
16 approval by Plaintiff in the Action and Plaintiff's notice letters to the LWDA
17 including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210,
18 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
19 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any
20 resulting claim for attorneys' fees and costs under PAGA, which occurred during
21 the PAGA Periods.

22 AA. "Released Parties" means Defendants.

23 BB. "Response Deadline" means the date forty-five (45) days after the Settlement
24 Administrator mails Notice Packets to Settlement Class Members and the last date on
25 which Settlement Class Members may submit requests for exclusion or objections to
26 the Settlement.
27
28

1 CC. "Settlement" means the disposition of the Action pursuant to this Agreement.

2
3 DD. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
4 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
5 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
6 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
7 of the Total Settlement Amount is deposited for the purpose of resolving the claims
8 of Settlement Class Members. The Settlement Administrator shall maintain the funds
9 until distribution in an account(s) segregated from the assets of Defendants and any
10 person related to Defendant. ***All accrued interest shall be paid and distributed to the***
11 ***Settlement Class Members as part of their respective Individual Settlement***
12 ***Payment.***
13

14
15 EE. "Settlement Class Members" or "Settlement Class" means all of Defendants' current
16 and former non-exempt employees employed in California at the Westgate Hotel in
17 San Diego between January 27, 2016 and February 14, 2021. The "Settlement Class
18 Members" shall not include any person who submits a timely and valid request for
19 exclusion as provided in this Agreement.
20

21 FF. "Total Settlement Amount" means Seven Hundred and Forty Thousand Dollars
22 (\$740,000.00) that Defendants must pay into the QSF in connection with this
23 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
24 Representative Service Payment Awards, the Class Counsel Award, PAGA
25 Settlement and the Settlement Administration Costs.
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1 GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement
2 Amount, means the number of weeks of employment during the Class Period that
3 each Settlement Class Member worked while paid on a draw. The Settlement
4 Administrator will calculate the number of Workweeks by calculating the number of
5 days each Settlement Class Member was employed during the Class Period, dividing
6 by seven (7), and rounding up to the nearest whole number. For purpose of
7 determining the Individual Settlement Payments and Payment Ratio, each Settlement
8 Class Member who is a former employee no longer working for Defendants will be
9 assigned four (4) additional Workweeks. For purposes of distributing the PAGA
10 Settlement to the Settlement Class, Workweeks means the number of weeks of
11 employment for each Settlement Class Member during the PAGA Period.
12

13
14 **II. RECITALS**

15 A. On January 17, 2020, Plaintiff filed a Notice of Violations with the Labor and
16 Workforce Development Agency (LWDA) and served the same on Defendant.
17

18 B. On January 27, 2020, Plaintiff filed a class action complaint in the San Diego Superior
19 Court for:
20

21 1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;

22 2. failure to pay minimum wages in violation of California Labor Code sections
23 1194, 1197 and 1197.1;
24

25 3. failure to pay overtime wages in violation of California Labor Code sections
26 510 *et seq.*;
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4. failure to pay gratuities in violation of California Labor Code section 351;
5. failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512;
6. failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512;
7. failure to reimburse employees for required business expenses in violation of California Labor Code section 2802;
8. failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and
9. failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203.

C. On May 28, 2020, Plaintiff filed the operative First Amended Complaint alleging a tenth cause of action for violations of the California Labor Code Private Attorney General Act (“PAGA”). Thereafter, Defendant answered the First Amended Complaint.

D. On December 9, 2020, the Parties participated in mediation presided over by the Honorable Judge Steven R. Denton (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based on a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding.

1 E. This Agreement replaces and supersedes the Memorandum of Understanding and any
2 other agreements, understandings, or representations between the Parties. This
3 Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by
5 Defendants that the claims in the Action of Plaintiff or the Settlement Class Members
6 have merit or that Defendants bears any liability to Plaintiff or the Class on those
7 claims or any other claims, or as an admission by Plaintiff that Defendant's defenses
8 in the Action have merit. The Parties agree to certification of the Class for purposes
9 of this Settlement only. If for any reason the settlement does not become effective,
10 Defendants reserves the right to contest certification of any class for any reason and
11 reserves all available defenses to the claims in the Action.
12

13
14 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
15

16 **III. TERMS OF AGREEMENT**

17 A. Settlement Consideration and Settlement Payments by Defendant.

- 18
19 1. Settlement Monetary Consideration. In full and complete settlement of the
20 Action, and in exchange for the releases set forth below, Defendants will pay
21 the sum of the Individual Settlement Payments, the Class Representative
22 Service Award, the Class Counsel Award, PAGA Settlement, and the
23 Settlement Administration Costs, as specified in this Agreement, equal to the
24 Total Settlement Amount of Seven Hundred Forty Thousand Dollars
25 (\$740,000.00). The Parties agree that this is a non-reversionary Settlement and
26 that no portion of the Total Settlement Amount shall revert to Defendants.
27
28 Other than the Defendants' share of employer payroll taxes, or as otherwise

1 specified in the Agreement, Defendants shall not be required to pay more or
2 less than the Total Settlement Amount.

3
4 2. Class Size. At the time of mediation, Defendants represented that as of August
5 1, 2020, there were 605 Settlement Class Members who collectively worked
6 approximately 38,984 Workweeks during the Class Period. In regard hereto,
7 Defendants will provide a declaration under penalty of perjury confirming the
8 number of Class Members and Workweeks they worked during the Class
9 Period prior to the filing of the motion for preliminary approval.

10
11 3. Settlement Payment. Defendants and the Released Parties, and each of them,
12 are jointly and severally liable for payment of the Total Settlement Amount.
13 Defendants shall pay, via wire transfer or check, the Total Settlement Amount
14 to the Settlement Administrator on the Funding Date:

15
16 4. Defendants' Share of Payroll Taxes. The Defendants' share of employer side
17 payroll taxes is in addition to the Total Settlement Amount and shall be paid
18 by Defendants within ten (10) calendar days of request by the Settlement
19 Administrator.
20

21 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
22 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
23 release the Released Parties from the Released Claims for the Class Period.

24
25 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
26 consideration set forth in this Agreement, the Plaintiff, the LWDA and the Aggrieved
27
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1 Employees release the Released Parties from the PAGA Released Claims for the
2 PAGA Period.

3 D. General Release by Plaintiff. In consideration for the promises and payments set forth
4 in this Settlement Agreement, to which the Plaintiff is otherwise not entitled, the
5 Plaintiff agrees to provide a Complete and General Release. "Complete and General
6 Release" means an irrevocable and unconditional release given by the Plaintiff
7 releasing the Released Parties from any and all charges, complaints, claims, causes of
8 action, debts, penalties, wages, sums of money, controversies, agreements, promises,
9 damages and liabilities of any kind or nature whatsoever, both at law and equity,
10 known or unknown, suspected or unsuspected, arising from conduct occurring on or
11 before the date the Plaintiff signs this Settlement Agreement, related to or arising out
12 of her employment with Defendants and/or this lawsuit, including but not limited to
13 all of the Claims identified in the operative complaint. This provision is intended by
14 the Parties to be all encompassing and to act as a full and total release of any claims,
15 whether specifically enumerated herein or not, that the Plaintiff might now have or
16 had, that exists or ever has existed, on or prior to the date this Settlement Agreement
17 is signed. The words "claim" or "claims" in this context includes without limitation
18 all actions, claims and grievances, whether actual or potential, known or unknown,
19 related, incidental to or arising out of any act or omission committed or omitted by
20 the Released Parties through the date the Plaintiff signs this Settlement Agreement
21 and/or arising out of her employment relationship with Defendants and/or the
22 cessation thereof. Plaintiff also agrees to provide a 1542 Waiver to the Released
23 Parties, which shall release all claims and damages of every kind and nature, actual
24 or potential, known and unknown, which exist or could arise out of her employment
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1 and/or the end of her employment with Defendants, through and including the date of
2 execution of this Settlement Agreement. With respect to the General Release, the
3 Plaintiff stipulates and agrees that, upon the Effective Date, she shall be deemed to
4 have, and by operation of the Court's Final Approval Order, shall have, expressly
5 waived and relinquished, to the fullest extent permitted by law, the provisions, rights
6 and benefits of Section 1542 of the California Civil Code, or any other similar
7 provision under federal or state law, which provides:

9
10 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
13 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
14 AFFECTED HIS OR HER SETTLEMEN WITH THE DEBTOR OR RELEASED
15 PARTY.”

16
17 The Plaintiff acknowledges that she may discover facts in addition to or different from
18 those she now knows or believes to be true with respect to the subject matter of the
19 Complete and General Release, but upon the Effective Date, shall be deemed to have,
20 and by operation of the Final Approval Order shall have, fully, finally, and forever
21 settled and released any and all of the claims covered by the Complete and General
22 Release, whether known or unknown, suspected or unsuspected, contingent or non-
23 contingent, which now exist, or have existed, upon any theory of law or equity now
24 existing, including, but not limited to, conduct that is negligent, intentional, with or
25 without malice, or a breach of any duty, law or rule, without regard to the subsequent
26 discovery or existence of such different or additional facts. The Parties understand
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1 and agree that this includes all actions, group actions (including any pending or future
2 collective, class, private attorney general or representative actions for which the
3 Plaintiff may otherwise qualify as a putative class member, aggrieved employee, or
4 represented party), complaints and grievances that could potentially be brought by
5 him against the Released Parties. The Plaintiff further agrees that this Complete and
6 General Release includes, but is not limited to, any rights or claims arising under the
7 California Constitution; the California Labor Code; the California Business &
8 Professions Code; the California Code of Regulations; the California Fair
9 Employment and Housing Act; the Fair Labor Standards Act; Title VII of the Civil
10 Rights Act of 1964; the Americans with Disabilities Act; federal and state family
11 leave statutes; and any and all other federal, state and local laws, statutes, executive
12 orders, regulations and common law, including contract, employment and tort law.
13

14
15 E. Conditions Precedent: This Settlement will become final and effective only upon the
16 occurrence of all of the following events:
17

- 18 1. The Court enters an order granting preliminary approval of the Settlement;
- 19 2. The Court enters an order granting final approval of the Settlement and a Final
20 Judgment;
- 21 3. If an objector appears at the final approval hearing, the time for appeal of the
22 Final Judgment and Order Granting Final Approval of Class Action
23 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
24 any appeal from the Judgment and Order Granting Final Approval of Class
25 Action Settlement; and
26
27
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4. Defendants fully funds the Total Settlement Amount.

F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Claims:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and

1 of no force or effect, and shall not be admissible in any judicial, administrative or
2 arbitral proceeding for any purpose or with respect to any issue, substantive or
3 procedural.
4

5 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
6 effect of the payments called for, and Settlement Class Members are not relying on
7 any statement or representation by the Parties in this regard. Settlement Class
8 Members understand and agree that they will be responsible for the payment of any
9 taxes and penalties assessed on the Individual Settlement Payments described and will
10 be solely responsible for any penalties or other obligations resulting from their
11 personal tax reporting of Individual Settlement Payments.
12

13 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
14 the “acknowledging party” and each Party to this Agreement other than the
15 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
16 of this Agreement, and no written communication or disclosure between or among the
17 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
18 such communication or disclosure constitute or be construed or be relied upon as, tax
19 advice within the meaning of United States Treasury Department circular 230 (31 CFR
20 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
21 her or its own, independent legal and tax counsel for advice (including tax advice) in
22 connection with this Agreement, (b) has not entered into this Agreement based upon
23 the recommendation of any other Party or any attorney or advisor to any other Party,
24 and (c) is not entitled to rely upon any communication or disclosure by any attorney
25 or adviser to any other party to avoid any tax penalty that may be imposed on the
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1 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
2 any limitation that protects the confidentiality of any such attorney's or adviser's tax
3 strategies (regardless of whether such limitation is legally binding) upon disclosure by
4 the acknowledging party of the tax treatment or tax structure of any transaction,
5 including any transaction contemplated by this Agreement.
6

7 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
8 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
9 which shall include this Settlement Agreement.
10

11 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
12 establishing and administering the QSF; calculating, processing and mailing payments
13 to the Class Representatives, Class Counsel, LWDA and Settlement Class Members;
14 printing, mailing and emailing the Notice Packets to the Settlement Class Members as
15 directed by the Court; establishing and maintaining the a landing page hosted on its
16 website to containing information about the Settlement; receiving and reporting the
17 objections and requests for exclusion; calculating, deducting and remitting all legally
18 required taxes from Individual Settlement Payments and distributing tax forms for the
19 Wage Portion and Non-Wage Portion of the Individual Settlement Payments;
20 processing and mailing tax payments to the appropriate state and federal taxing
21 authorities; providing declaration(s) as necessary in support of preliminary and/or final
22 approval of this Settlement; posting notice of entry of judgment on its website; and
23 other tasks as the Parties mutually agree or the Court orders the Settlement
24 Administrator to perform. The Settlement Administrator shall keep the Parties timely
25 apprised of the performance of all Settlement Administrator responsibilities by among
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1 other things, sending a weekly status report to the Parties' counsel stating the date of
2 the mailing, the of number of Elections Not to Participate in Settlement it receives
3 (including the numbers of valid and deficient), and number of objections received.
4

5 L. Notice Procedure.

6
7 1. Class Data. No later than fourteen (14) calendar days after the Preliminary
8 Approval Date, Defendants shall provide the Settlement Administrator with
9 the Class Data for purposes of preparing and mailing Notice Packets to
10 Settlement Class Members. Defendants shall verify the total number of
11 Workweeks at the time Class Data is provided to the Settlement Administer.
12

13 2. Notice Packets.

14 a) The Notice Packet shall contain the Notice of Class Action Settlement
15 in a form substantially similar to the form attached as Exhibit A. The
16 Notice of Class Action Settlement shall inform Settlement Class
17 Members that they need not do anything in order to receive an
18 Individual Settlement Payment and to keep the Settlement
19 Administrator apprised of their current mailing address, to which the
20 Individual Settlement Payments will be mailed following the Funding
21 Date. The Notice of Class Action Settlement shall set forth the release
22 to be given by all members of the Settlement Class who do not request
23 to be excluded from the Settlement Class in exchange for an Individual
24 Settlement Payment, the number of Workweeks worked by each
25 Settlement Class Member during the Class Period, and the estimated
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amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement. The Settlement Administrator shall use the Class Data to determine Class Members' Workweeks.

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall mail and email copies of the Notice Packet to all Settlement Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. If no forwarding address is

1 provided, the Settlement Administrator shall promptly attempt to determine a
2 correct address by lawful use of skip-tracing, or other search using the name,
3 address and/or Social Security number of the Settlement Class Member
4 involved, and shall then perform a re-mailing, if another mailing address is
5 identified by the Settlement Administrator. In addition, if any Notice Packets,
6 which are addressed to Settlement Class Members who are currently
7 employed by Defendant, are returned to the Settlement Administrator as non-
8 delivered and no forwarding address is provided, the Settlement Administrator
9 shall notify Defendant. Defendants will request that the currently employed
10 Settlement Class Member provide a corrected address, and transmit to the
11 Administrator any corrected address provided by the Settlement Class
12 Member. Settlement Class Members who received a re-mailed Notice Packet
13 shall have their Response Deadline extended fifteen (15) days from the
14 original Response Deadline.
15

- 16
- 17 5. Disputes Regarding Individual Settlement Payments. Settlement Class
18 Members will have the opportunity, should they disagree with Defendants'
19 records regarding the start and end dates of their employment, to provide
20 documentation and/or an explanation to show contrary dates. If there is a
21 dispute, the Settlement Administrator will consult with the Parties to
22 determine whether an adjustment is warranted. The Settlement Administrator
23 shall determine the eligibility for, and the amounts of, any Individual
24 Settlement Payments under the terms of this Agreement. The Settlement
25 Administrator's determination of the eligibility for and amount of any
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1 Individual Settlement Payment shall be binding upon the Settlement Class
2 Member and the Parties.

3
4 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
5 by the Settlement Administrator concerning the administration of the
6 Settlement will be resolved by the Court under the laws of the State of
7 California. Before any such involvement of the Court, counsel for the Parties
8 will confer in good faith to resolve the disputes without the necessity of
9 involving the Court.

10
11 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
12 Packet shall state that Settlement Class Members who wish to exclude
13 themselves from the Settlement must submit a written request for exclusion
14 by the Response Deadline. The written request for exclusion must state that
15 the Settlement Class Member wishes to exclude himself or herself from the
16 Settlement and (1) must contain the name, address, and the last four digits of
17 the Social Security number of the person requesting exclusion; (2) must be
18 signed by the Settlement Class Member; (3) must be postmarked or fax
19 stamped by the Response Deadline and returned to the Settlement
20 Administrator at the specified address or fax telephone number; and (4)
21 contain a typewritten or handwritten notice stating in substance: "I wish to
22 opt out of the settlement of the class action lawsuit entitled *Baltazar v.*
23 *Westgate Hotel Company et al.*, currently pending in the Superior Court for
24 the County of San Diego, Case No. 37-2020-00005102-CU-OE-CTL. I
25 understand that by requesting to be excluded from the settlement, I will
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1 receive no money from the Settlement described in this Notice.” The request
2 for exclusion will not be valid if it is not timely submitted, if it is not signed
3 by the Settlement Class Member, or if it does not contain the name and address
4 and last four digits of the Social Security number of the Settlement Class
5 Member. The date of the postmark on the mailing envelope or fax stamp on
6 the request for exclusion shall be the exclusive means used to determine
7 whether the request for exclusion was timely submitted. Any Settlement Class
8 Member who requests to be excluded from the Settlement Class will not be
9 entitled to an Individual Settlement Payment and will not be otherwise bound
10 by the terms of the Settlement or have any right to object, appeal or comment
11 thereon. However, any Settlement Class Member that submits a timely
12 request for exclusion that is also a member of the Aggrieved Employees will
13 still receive their pro rata share of the PAGA Settlement, as specified below,
14 and in consideration, will be bound by the Release by the Aggrieved
15 Employees as set forth herein. Settlement Class Members who fail to submit
16 a valid and timely written request for exclusion on or before the Response
17 Deadline shall be bound by all terms of the Settlement and any final judgment
18 entered in this Action if the Settlement is approved by the Court. No later
19 than fourteen (14) calendar days after the Response Deadline, the Settlement
20 Administrator shall provide counsel for the Parties with a final list of the
21 Settlement Class Members who have timely submitted written requests for
22 exclusion. At no time shall any of the Parties or their counsel seek to solicit
23 or otherwise encourage members of the Settlement Class to submit requests
24 for exclusion from the Settlement.
25
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1 8. Objections. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Settlement Class Members who wish to object to the
3 Settlement must mail to the Settlement Administrator a written statement of
4 objection (“Notice of Objection”) by the Response Deadline. The postmark
5 date of mailing shall be deemed the exclusive means for determining that a
6 Notice of Objection was served timely. The Notice of Objection must be
7 signed by the Settlement Class Member and state: (1) the case name and
8 number; (2) the name of the Settlement Class Member; (3) the address of the
9 Settlement Class Member; (4) the last four digits of the Settlement Class
10 Member’s Social Security number; (4) the basis for the objection; and (5) if
11 the Settlement Class Member intends to appear at the Final
12 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
13 to make objections in the manner specified above shall be deemed to have
14 waived any objections and shall be foreclosed from making any objections
15 (whether by appeal or otherwise) to the Settlement. Settlement Class
16 Members who submit a timely Notice of Objection will have a right to appear
17 at the Final Approval/Settlement Fairness Hearing in order to have their
18 objections heard by the Court. At no time shall any of the Parties or their
19 counsel seek to solicit or otherwise encourage Settlement Class Members to
20 file or serve written objections to the Settlement or appeal from the Order and
21 Final Judgment. Settlement Class Members who submit a written request for
22 exclusion may not object to the Settlement.
23
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1 M. Funding and Allocation of the Total Settlement Amount. Defendants are required to
2 pay the Total Settlement Amount on or before the Funding Date, plus any employer's
3 share of payroll taxes as mandated by law within the time specified herein.
4

5 1. Individual Settlement Payments. Individual Settlement Payments shall be
6 paid from the Net Settlement Amount and shall be paid pursuant to the
7 formula set forth below.
8

9 a) Calculation of Individual Settlement Payments. Using the Class Data,
10 the Settlement Administrator shall add up the total number of
11 Workweeks for all Settlement Class Members. The respective
12 Workweeks for each Settlement Class Member will be divided by the
13 total Workweeks for all Settlement Class Members, resulting in the
14 Payment Ratio for each Settlement Class Member. Each Settlement
15 Class Member's Payment Ratio will then be multiplied by the Net
16 Settlement Amount to calculate each Settlement Class Member's
17 estimated Individual Settlement Payments. Each Individual
18 Settlement Payment will be reduced by any legally mandated
19 employee tax withholdings (e.g., employee payroll taxes, etc.).
20 Individual Settlement Payments for Class Members who submit valid
21 and timely requests for exclusion will be redistributed to Settlement
22 Class Members who do not submit valid and timely requests for
23 exclusion on a pro rata basis based on their respective Payment Ratios.
24

25 b) Calculation of Individual Payments to the Aggrieved Employees.
26 Using the Class Data, the Settlement Administrator shall add up the
27
28

1 total number of Workweeks for all Aggrieved Employees during the
2 PAGA Period. The respective Workweeks for each Aggrieved
3 Employee will be divided by the total Workweeks for all Aggrieved
4 Employees, resulting in the “PAGA Payment Ratio” for each
5 Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment
6 Ratio will then be multiplied by the Aggrieved Employee Payment to
7 calculate each Aggrieved Employee’s estimated Individual PAGA
8 Settlement.
9

10
11 c) Allocation of Individual Settlement Payments. For tax purposes,
12 Individual Settlement Payments shall be allocated and treated as
13 follows: 25% as wages (“Wage Portion”); 75% as penalties and
14 interest (“Non-Wage Portion”). The Wage Portion is subject to wage
15 withholdings and shall be reported on IRS Form W-2. The Non-Wage
16 Portion shall not be subject to wage withholdings and shall be reported
17 on IRS Form 1099.
18

19 d) Allocation of Aggrieved Employee Payments. For tax purposes,
20 Aggrieved Employee Settlement Payments shall be allocated and
21 treated as 100% penalties and shall be reported on IRS Form 1099.
22

23 e) Mailing. Individual Settlement Payments and Aggrieved Employee
24 Payments shall be mailed by regular First-Class U.S. Mail to
25 Settlement Class Members’ last known mailing address no later than
26 fifteen (15) calendar days after the Funding Date.
27
28

1 f) Expiration. Any checks issued to Settlement Class Members shall
2 remain valid and negotiable for one hundred and eighty (180) days
3 from the date of their issuance. If a Settlement Class Member does not
4 cash his or her settlement check within 90 days, the Settlement
5 Administrator will send a letter to such persons, advising that the
6 check will expire after the 180th day, and invite that Settlement Class
7 Member to request reissuance in the event the check was destroyed,
8 lost or misplaced. In the event an Individual Settlement Payment
9 check has not been cashed within one hundred and eighty (180) days,
10 all funds represented by such uncashed checks, plus any interest
11 accrued thereon, shall be distributed consistent with California Code
12 of Civil Procedure Section 384 as follows: San Diego County Bar
13 Foundation (SDCBF). The SDCBF provides services to over 50 legal
14 aid and public interest organizations – and include abused women and
15 children, immigrants seeking political asylum, the working poor who
16 cannot afford legal representation, and others who are in desperate
17 need of legal assistance and have nowhere to turn. SDBBF grants also
18 support programs that educate children and adults about the legal
19 system and individuals’ rights and responsibilities. More information
20 on the SDCBF can be found at <https://sdcbf.org/about/>. Defendants’
21 counsel serves as a board of director for the SDCBF.
22
23
24
25

26 2. Class Representative Service Award. In addition to the Individual Settlement
27 Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award
28 of not more than \$7,500 as the Class Representative Service Award.

1 Defendants do not presently intend to oppose a Class Representative Service
2 Award of no more than \$7,500 for Plaintiff. The Settlement Administrator
3 shall pay the Class Representative Service Award, either in the amount stated
4 herein if approved by the Court or some other amount as approved by the
5 Court, to Plaintiff from the Total Settlement Amount no later than ten (10)
6 calendar days after the Funding Date. Any portion of the requested Class
7 Representative Service Award that is not awarded to the Class Representatives
8 shall be part of the Net Settlement Amount and shall be distributed to
9 Settlement Class Members as provided in this Agreement. The Settlement
10 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her Class
11 Representative Service Award. Plaintiff shall be solely and legally
12 responsible to pay any and all applicable taxes on their Class Representative
13 Service Awards and shall hold harmless the Released Parties from any claim
14 or liability for taxes, penalties, or interest arising as a result of the Class
15 Representative Service Awards. The Class Representative Service Awards
16 shall be in addition to Plaintiff's Individual Settlement Payment as a
17 Settlement Class Member. Approval of this Settlement shall not be
18 conditioned on Court approval of the requested amount of the Class
19 Representative Service Award. In the event that the Court reduces or does not
20 approve the requested Class Representative Service Award, Plaintiff shall not
21 have the right to revoke the Settlement, and it will remain binding.
22
23
24

- 25
26 3. Class Counsel Award. Defendants understand a motion by Class Counsel for
27 attorneys' fees not to exceed one-third of the Total Settlement Amount
28 currently estimated to be \$246,666.66 plus costs and expenses supported by

1 declaration not to exceed Fifteen Thousand Dollars (\$15,000.00), from the
2 Total Settlement Amount will be filed. Any portion of the requested Class
3 Counsel Award that is not awarded to Class Counsel shall be part of the Net
4 Settlement Amount and shall be distributed to Settlement Class Members as
5 provided in this Agreement. The Settlement Administrator shall allocate and
6 pay the Class Counsel Award to Class Counsel from the Total Settlement
7 Amount no later than five (5) calendar days after the Funding Date. Class
8 Counsel shall be solely and legally responsible to pay all applicable taxes on
9 the payment made pursuant to this paragraph. The Settlement Administrator
10 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
11 made pursuant to this paragraph. In the event that the Court reduces or does
12 not approve the requested Class Counsel Award, Plaintiff and Class Counsel
13 shall not have the right to revoke the Settlement, or to appeal such order, and
14 the Settlement will remain binding.
15
16

- 17
18 4. PAGA Settlement. Twenty Thousand Dollars (\$20,000) shall be allocated
19 from the Total Settlement Amount for settlement of claims for civil penalties
20 under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
21 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
22 Settlement (\$15,000) to the California Labor and Workforce Development
23 Agency no later than twenty-five (25) calendar days after the Funding Date
24 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
25 (\$5,000) will be distributed to the Aggrieved Employees as described in this
26 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of
27 distributing the PAGA Settlement to the Aggrieved Employees, each
28

1 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
2 Employee Payment using the PAGA Payment Ratio as defined above.

- 3
4 5. Settlement Administration Costs. The Settlement Administrator shall be paid
5 for the costs of administration of the Settlement from the Total Settlement
6 Amount. The estimate of the Settlement Administration Costs is Thirteen
7 Thousand Dollars (\$13,000). The Settlement Administrator shall be paid the
8 Settlement Administration Costs no later than twenty-five (25) calendar days
9 after the Funding Date.
10

11 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
12 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
13 twenty-eight (28) days following the expiration of the Response Deadline, which
14 motion shall request final approval of the Settlement and a determination of the
15 amounts payable for the Class Representative Service Award, the Class Counsel
16 Award, the PAGA Settlement, and the Settlement Administration Costs.
17

- 18
19 1. Declaration by Settlement Administrator. No later than fourteen (14) days
20 after the Response Deadline, the Settlement Administrator shall submit a
21 declaration in support of Plaintiffs' motion for final approval of this
22 Settlement detailing the number of Notice Packets mailed and re-mailed to
23 Settlement Class Members, the number of undeliverable Notice Packets, the
24 number of timely requests for exclusion, the number of objections received,
25 the amount of the average Individual Settlement Payment, the Settlement
26 Administration Costs, and any other information as the Parties mutually agree
27 or the Court orders the Settlement Administrator to provide.
28

1 2. Final Approval Order and Judgment. Class Counsel shall present an Order
2 Granting Final Approval of Class Action Settlement to the Court for its
3 approval, and Judgment thereon, at the time Class Counsel files the Motion
4 for Final Approval.
5

6 N. Defendants' Option to Revoke Settlement. Defendants have the unilateral right to
7 revoke the Settlement and Defendants shall have, in its sole discretion, the option to
8 terminate this Settlement if, after the Response Deadline, the number of Settlement
9 Class Members who submitted timely and valid written requests for exclusion from
10 the Settlement is at least five percent (5%) of all Settlement Class Members. If
11 Defendants exercise the option to terminate this Settlement, Defendants shall: (a)
12 provide written notice to Class Counsel within five (5) calendar days after (i)
13 providing the Class Data to the Settlement Administrator or (ii) the Settlement
14 Administrator provides information regarding opt outs (which is to occur no later than
15 fourteen (14) calendar days after the Response Deadline, and (b) pay all Settlement
16 Administration Costs incurred up to the date or as a result of the termination; and the
17 Parties shall proceed in all respects as if this Agreement had not been executed.
18
19

20 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
21 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
22 Final Approval, including the Order Granting Final Approval of Class Action
23 Settlement, and Judgment before filing with the Court. The Parties and their counsel
24 will cooperate with each other and use their best efforts to affect the Court's approval
25 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
26 Judgment.
27
28

- 1 P. Cooperation. The Parties and their counsel will cooperate with each other and use
2 their best efforts to implement the Settlement.
3
- 4 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
5 except such proceedings necessary to implement and complete the Settlement, pending
6 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
7
- 8 R. Amendment or Modification. This Agreement may be amended or modified only by
9 a written instrument signed by counsel for all Parties or their successors-in-interest.
10
- 11 S. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
12 Agreement among these Parties, and no oral or written representations, warranties or
13 inducements have been made to any Party concerning this Agreement or its Exhibit
14 other than the representations, warranties and covenants contained and memorialized
15 in this Agreement and its Exhibit.
16
- 17 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
18 represent they are expressly authorized by the Parties whom they represent to negotiate
19 this Agreement and to take all appropriate Action required or permitted to be taken by
20 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
21 documents required to effectuate the terms of this Agreement. The persons signing
22 this Agreement on behalf of Defendants represent and warrant that he/she is authorized
23 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that
24 she is authorized to sign this Agreement and that she has not assigned any claim, or
25 part of a claim, covered by this Settlement to a third-party.
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- 1 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
2 to the benefit of, the successors or assigns of the Parties, as previously defined.
3
- 4 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
5 shall be governed by and interpreted according to the laws of the State of California.
6
- 7 W. Counterparts. This Agreement may be executed in one or more counterparts. All
8 executed counterparts and each of them shall be deemed to be one and the same
9 instrument provided that counsel for the Parties to this Agreement shall exchange
10 among themselves copies or originals of the signed counterparts.
11
- 12 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
13 is a fair, adequate and reasonable settlement of this Action and have arrived at this
14 Settlement after extensive arms-length negotiations, taking into account all relevant
15 factors, present and potential.
16
- 17 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
18 respect to the interpretation, implementation and enforcement of the terms of this
19 Agreement and all orders and judgments entered in connection therewith, and the
20 Parties and their counsel submit to the jurisdiction of the Court for purposes of
21 interpreting, implementing and enforcing the settlement and all orders and judgments
22 entered in connection with this Agreement.
23
- 24 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
25 the Court shall first attempt to construe the provisions valid to the fullest extent
26 possible consistent with applicable precedents so as to define all provisions of this
27 Agreement valid and enforceable.
28

1 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
2 intend to pursue any claims against the Released Parties, including, but not limited to,
3 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
4 regardless of whether Class Counsel is currently aware of any facts or legal theories
5 upon which any claims or causes of action could be brought against Released Parties,
6 including those facts or legal theories alleged in the operative complaint in this Action.
7 The Parties further acknowledge, understand and agree that this representation is
8 essential to the Agreement and that this Agreement would not have been entered into
9 were it not for this representation.
10

11
12 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
13 certification for purposes of this settlement only.
14

15 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
16 Released Claims have merit and give rise to liability on the part of Defendants.
17 Defendants claim that the Released Claims have no merit and do not give rise to
18 liability. This Agreement is a compromise of disputed claims. Nothing contained in
19 this Agreement and no documents referred to and no action taken to carry out this
20 Agreement may be construed or used as an admission by or against the Defendants or
21 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
22 than as may be specifically set forth herein, each Party shall be responsible for and
23 shall bear its/his own attorney's fees and costs.
24

25
26 DD. No Effect on Employee Benefits. Amounts paid to Plaintiff, the Class
27 Representative, or Settling Class Members pursuant to this Settlement Agreement
28

do not count as earnings or compensation for purposes of any benefits provided or sponsored by Defendant.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 1/28/2021

DocuSigned by:
Jacqueline Baltazar
JACQUELINE BALTAZAR

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED:

WESTGATE HOTEL COMPANY

Printed Name

Title

DATED:

SINCLAIRE SERVICES COMPANY

Printed Name

Title

DATED:

GRAND AMERICA HOTELS & RESORTS, INC.

Printed Name

Title

do not count as earnings or compensation for purposes of any benefits provided or sponsored by Defendant.

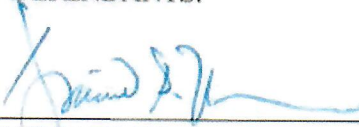
IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: _____

JACQUELINE BALTAZAR

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: JANUARY 29, 2021


WESTGATE HOTEL COMPANY

DAVID P. HIRASAWA
Printed Name

CFO
Title

DATED: FEB 2, 2021


SINCLAIR SERVICES COMPANY

SCOTT MAYEDA
Printed Name

SECRETARY & GENERAL COUNSEL
Title

DATED: Jan 29, 2021


GRAND AMERICA HOTELS & RESORTS, INC.

Bruce Perry
Printed Name
CEO

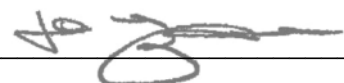
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IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: January 27, 2021

JCL LAW FIRM, A.P.C.

By: 

Attorneys for the Named Plaintiffs and the Plaintiff Class

DATED: January 27, 2021

HIGGS, FLETCHER & MACK

By: 

Attorneys for Defendants

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

***Baltazar v. Westgate Hotel Company, et al.*, currently pending in the Superior Court for the County of San Diego, Case No. 37-2020-00005102**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below, except that you will still receive your Aggrieved Employee Payment.
Object	You may write to the Court about why you do not like the settlement. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit entitled *Baltazar v. Westgate Hotel Company, et al.*, Case No. 37-2020-00005102, currently pending in the Superior Court for the County of San Diego (the “Court”) has been reached between JACQUELINE BALTAZAR (“Plaintiff”) and WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY, and GRAND AMERICA HOTELS & RESORTS, INC (“Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a Settlement Class Member, which is defined as:

All of Defendants’ current and former non-exempt employees employed in California at the Westgate Hotel in San Diego between January 27, 2016 and February 14, 2021.

The “Class Period” is the period of time running from January 27, 2016 and February 14, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On January 17, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants.

On January 27, 2020, Rodriguez filed a class action complaint in the San Diego Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to pay gratuities in violation of California Labor Code section 351; (5) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (6) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (7) failure to reimburse employees for required business expenses in violation of California Labor Code sections 2802; (8) failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (9) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203.

On May 28, 2020, Plaintiff filed the operative First Amended Complaint alleging a tenth cause of action for violations of the California Labor Code Private Attorney General Act (“PAGA”). Thereafter, Defendants answered the First Amended Complaint.

On December 9, 2020, the Parties participated in mediation presided over by the Honorable Judge Steven R. Denton (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based on a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representatives, and the law firm of JCL Law Firm, APC to serve as Class Counsel.

Defendants deny and dispute all claims asserted in the Action. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants provided accurate, itemized wage statements to members of the class; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendants are not liable for any of the penalties claimed or that could be claimed in the Action.

3. What are the terms of the Settlement?

Total Settlement Amount. Defendants have agreed to pay an “all in” amount of Seven Hundred Forty Thousand Dollars (\$740,000) (the “Total Settlement Amount”) to fund the settlement. The Total Settlement Amount includes the payment of all Individual Settlement Payments to participating Settlement Class Members, the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Award to the Plaintiff.

Within ten (10) calendar days of the Effective Date, Defendants will fund the Total Settlement Amount by depositing the money into a Qualified Settlement Fund maintained by the third party Settlement Administrator.

Amounts to be Paid From the Total Settlement Amount. The Settlement provides for certain payments to be made from the Total Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Total Settlement Amount before settlement payments are made to Settlement Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$_____, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Subject to Court approval, Class Counsel shall seek a Class Counsel Award in an amount equal to one-third of the Total Settlement Amount currently estimated to be \$266,666.66 for reasonable attorneys' fees, plus costs and expenses supported by declaration not to exceed \$15,000.00. The Class Counsel Award is intended to compensate and reimburse Class Counsel for all of the work already performed and all of the work remaining to be performed by Class Counsel in documenting the settlement, securing Court approval of the settlement, administering the settlement, and making sure that the settlement is fairly administered and implemented.
- Class Representative Service Award. Class Representative Service Award of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Settlement. A payment of \$20,000 relating to Plaintiff's claim under the Private Attorney General's Act ("PAGA"), \$15,000 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$5,000 will be distributed to Aggrieved Employees which are all of Defendants' current and former non-exempt employees employed in California at the Westgate Hotel in San Diego between January 17, 2019 and February 14, 2021.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Settlement Administration Expenses, Class Counsel Award, the Class Representative Service Award and the PAGA Settlement are deducted from the Total Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Settlement Class Members"). The Individual Settlement Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks worked that occurred during the Class Period.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 25% of each Settlement Share constitutes wages in the form of back-pay (and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment) and 75% of each Settlement Share constitutes interest, penalties and other non-wage payments (and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment). Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon the Funding Date, each of the Participating Class Members shall release all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are asserted in the Action, or could have been asserted in the Action based on the claims and theories plead in the operative complaint on file at the time of final approval, or raised during the mediation of this dispute, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders which occurred during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. Upon the Funding Date, each Aggrieved Employee, the LWDA and Plaintiff shall release any and all claims for relief under PAGA, of whatever kind or nature, whether known or unknown, arising during the PAGA Period, based on the facts alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff's notice letters to the LWDA including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Periods.

5. How much will my payment be?

Defendants' records reflect that you have <<____>> work-weeks/work-days worked during the Class Period.

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendants' records reflect that you have <<____>> work-weeks/work-days worked during the PAGA Period.

Based on this information, your estimated Individual Settlement Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, 2021 [forty-five (45) days after the Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms.**

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____, 2021. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: “I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Baltazar v. Westgate Hotel Company, et al.*, currently pending in the Superior Court for the County of San Diego, Case No. 37-2020-00005102. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, 2021, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don’t like the Settlement?

Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member’s name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Baltazar v. Westgate Hotel Company, et al.*, currently pending in the Superior Court for the County of San Diego, Case No. 37-2020-00005102.

To object to the Settlement, you must not opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The objections must be delivered or mailed to the Settlement Administrator no later than _____, 2021 with copies to the Parties’ counsel. The address for the Settlement Administrator is _____.

The addresses for the Parties’ counsel are as follows:

Class Counsel: Jean-Claude Lapuyade The JCL Law Firm, APC 3990 Old Town Ave., Suite C204 San Diego, CA 92110 Tel: 619-599-8292 Email: jlapuyade@jcl-lawfirm.com Website: www.jcl-lawfirm.com	Defense Counsel James M. Peterson Derek Paradis HIGGS FLETCHER & MACK 401 W. A St., Suite 2600 San Diego, CA 92101 Tel: 619-236-1551 Email: peterston@higgslaw.com Website: www.higgslaw.com
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The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101 in Department 72 before Judge Timothy Taylor. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing. This hearing may be rescheduled by the Court without further notice to you. **You**

are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Baltazar v. Westgate Hotel Company, et al.*, currently pending in the Superior Court for the County of San Diego, Case No. 37-2020-00005102, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to the JCL LAW FIRM, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to San Diego County Bar Foundation in accordance with Code of Civil Procedure Section 384 in the name of the Participating Class Member. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2