

JEAN-CLAUDE LAPUYADE (SBN 248676)

JLAPUYADE@JCL-LAWFIRM.COM

JCL LAW FIRM, APC

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: 619-599-8292

FAX: 619-599-8291

NORMAN B. BLUMENTHAL, ESQ. (SBN 68687)

KYLE R. NORDREHAUG, ESQ. (SBN 205975)

APARAJIT BHOWMIK, ESQ. (SBN 248066)

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW, LLP

2255 CALLE CLARA

LA JOLLA, CA 92037

TEL: 858-551-1223

FAX: 858-551-1232

ATTORNEYS FOR PLAINTIFF

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
AMERICAN 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 FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 27, 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

1 against WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY, and GRAND
2 AMERICAN HOTELS & RESORTS, INC. (hereinafter collectively “Defendants”).

3 2. This declaration is being submitted in support of Plaintiffs’ Motion for Final Approval of
4 Class Action Settlement.

5 3. Attached hereto as **Exhibit “A”** are true and correct copies of the fully executed Joint
6 Stipulation of Settlement of Class Action Claims and Release of Claims and the Amendment Number
7 1 to the Stipulation of Class Action Settlement and Release of Claims (hereinafter collectively
8 “Settlement Agreement”).

9 4. Attached hereto as **Exhibit “B”** is a true and correct copy of the conformed April 2, 2021,
10 Preliminary Approval Order.

11 5. Attached hereto as **Exhibit “C”** is a true and correct copy of the conformed July 28, 2021
12 Amended Order Granting Preliminary Approval of Class Action Settlement.

13 6. Attached hereto as **Exhibit “D”** is a true and correct copy of proof of filing the proposed
14 Settlement with the LWDA.

15 **I. INTRODUCTION**

16 7. An objective evaluation of the proposed settlement of \$740,000 (“Total Settlement
17 Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable.
18 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
19 experienced counsel, guided by the wisdom and experience of prominent mediator, and former San
20 Diego Superior Court Judge (Ret.) Hon. Steven Denton. After deducting any Court-approved attorneys’
21 fees and costs, class representative incentive payments, administration costs, and payments to the Labor
22 & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the
23 Settlement Class based on the number of Workweeks they worked while employed by Defendants
24 during the relevant time period. ***The Settlement Class greeted news of the Settlement with***
25 ***overwhelming approval as 100% of the Settlement Class choose to participate in the Settlement.*** There
26 are zero opt-outs and zero objections to the Settlement. The unanimous approval by the Settlement
27 Class evidences the clear fairness and reasonableness of the Settlement.

8. This Settlement provides substantial recovery for Defendants' alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of \$437,833.34. This will result in an average Individual Settlement Payment of **\$685.95** and high payment of **\$2,535.29**.

9. Additionally, if approved \$20,000.00 of the Total Settlement Amount will be allocated to Plaintiff's claims arising out of the Private Attorney General Act ("PAGA Settlement"). This will result in a \$15,000 payment to the Labor and Workforce Development Agency ("LWDA") ("LWDA Payment") to continue enforcing labor laws throughout California and providing education to employers and employees about their rights and responsibilities under the Labor Code. The remaining \$5,000 will be allocated to the Aggrieved Employees.

10. The relief offered by the Settlement is immediate and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation.

11. As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. Accordingly, Class Representative and Class Counsel respectfully request this Court grant final approval of the Settlement Agreement and, entry of the proposed Final Approval Order and Judgment.

II. OVERVIEW OF THE LITIGATION

12. Defendants own, operate and manage “The Westgate Hotel®” a 223-room, luxury hotel located in Downtown, San Diego. Defendants employed Plaintiff as an hourly, non-exempt employee at the Westgate Hotel in San Diego in the Food and Beverage Department between September 3, 2014 and April 22, 2016 and again between December 20, 2018 and December 2, 2019. As a non-exempt employee working in the Food and Beverage department, Plaintiff regularly worked shifts at the pool bar, delivering room service, at banquets, in the Plaza Bar and in the Westgate Room restaurant. At all times during her employment, Plaintiff earned an hourly wage plus gratuities, and was entitled to legally

1 complaint meal and rest periods, and minimum, regular and overtime wages for all hours worked.
2 Throughout her employment, Plaintiff was subject to Defendants' written policies and procedures
3 contained in, among other documents, the "Team Member Handbook – The Westgate Hotel."

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

11 14. On January 17, 2020, Plaintiff served Defendants and the Labor and Workforce
12 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA
13 Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions
14 of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and
15 of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
16 Code Sections 2698 et seq ("PAGA").

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

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

4 17. Shortly after answering Plaintiff’s written discovery, the Parties agreed to mediate this
5 action. In anticipation of mediation, the Parties stipulated to stay formal discovery. To prepare for
6 mediation, the Parties agreed to informally produce certain documents and data points subject to the
7 mediation privilege, including but not limited to, a sample of the Class Members’ time and payroll data.
8 As discussed *infra*, Plaintiff’s counsel retained the Berger Consulting Group, to analyze Defendants’
9 time and payroll data.

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

15 19. The Court preliminarily approved a Total Settlement Amount of \$740,000 based on a
16 total of approximately 38,984 Workweeks worked by the Settlement Class during the Class Period. The
17 Total Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the
18 Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
19 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

20 20. The Class Counsel Award is intended to compensate and reimburse Class Counsel for all
21 of the work already performed and all of the work remaining to be performed by Class Counsel in
22 documenting the settlement, securing Court approval of the settlement, administering the settlement,
23 and making sure that the settlement is fairly administered and implemented.

24 21. Further supporting final approval, the average Individual Settlement Payment of \$685.95
25 equals or exceeds settlement payments in similar wage and hour class actions. This result is particularly
26 favorable considering that liability and certification were far from certain. Given the complexities of
27 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
28

proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be granted final approval.

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. Adequate Investigation

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

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

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

25. After filing the First Amended Complaint, Plaintiff propounded written discovery. Prior to answering Plaintiff's written discovery, the Parties agreed to mediate the action. To prepare for mediation, Class Counsel requested a number of documents and data points to further evaluate Plaintiff's claims and Defendants' liability exposure to the Settlement Class. In response to Class

1 Counsel's request, Defendants produced the time and payroll records for approximately 10% of the
2 Settlement Class, aggregate workweek and pay period data for 100% of the Settlement Class, and copies
3 of applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal and rest period
4 policies. Additionally, Defendants produced the standard form catering contract and data detailing the
5 total amount of catering service charges collected and disbursed the Settlement Class during the Class
6 Period. In total, Defendants produced approximately 3,200 pages containing nearly one-half million
7 unique cells of time and payroll data for Class Counsel to analyze.

8 26. Class Counsel then retained the statisticians and economists at Berger Consulting Group
9 ("BCG"), to evaluate the Settlement Class members' payroll and time data. BCG provides data analysis
10 and damage modeling consulting services specializing in wage and hour class actions. BCG's team of
11 financial and data analysts are credentialed and experienced experts in their fields and have provided
12 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze
13 Defendants' time and payroll data.

14 27. BCG analyzed Defendants' time and payroll data to assist in the development of various
15 damage models. Among other things, BCG determined the approximate number of work shift, work
16 weeks, pay periods, average rate of pay, average length of shift and average number of hours worked
17 per week and pay period during the Class Period. BCG also estimated the number of missed, late or
18 truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class
19 Period, and the amount of off-the-clock work performed by the Settlement Class during the Class
20 Period. In April 2019, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class
21 Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview
22 process, Plaintiff produced nearly 100 pages of documents related to her employment for Defendant,
23 including portions of Defendant's handbooks, compensation policies and, time and payroll records. At
24 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
25 inquiry.

26 28. In advance of mediation, Class Counsel created several damage models predicated on
27 BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while
28

1 accounting for the uncertainties of continued litigation. These damage models informed and guided
2 Class Counsel during the mediated settlement discussions

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

14 30. As detailed at length in Plaintiff's Motion for Preliminary Approval, this investigation
15 informed Class Counsel's varied economic damages models measuring Defendants' liability exposure.
16 Class Counsel's damage models accounted for the strength and weaknesses of the Parties' respective
17 claims and defenses while also considering the uncertainties of continued litigation. The various models
18 were informed by Class Counsel's investigation, including the analysis of a significant sample of time
19 and payroll data. Class Counsel projected Defendants' liability exposure for the Settlement Class
20 ranged between \$2.5 million ("Conservative Model") and \$8.3 million ("Aggressive Model") if
21 successful at trial. This range reflects the uncertainty regarding several of Plaintiff's claims, together
22 with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time
23 penalties resulting from meal and rest period violations.

24 31. Given the extent of Plaintiff's pre-mediation discovery, and the depth of the
25 corresponding analysis, Class Counsel possessed sufficient information for an intelligent evaluation of
26 the case for settlement purposes. Prior to the initiation of settlement discussions, Class Counsel
27 reviewed and outlined the case based upon the provided information and determined the conditions of

1 settlement which would be fair and reasonable to the Settlement Class with the assistance of an expert.
2 Class Counsel's thorough investigation into the legal and factual basis of this class action, and diligent
3 evaluation into the Settlement Class members' claims, informed Class Counsel's mediation brief and
4 presentation at mediation.

5 32. Furthermore, Class Counsel previously negotiated settlements involving similar issues
6 and analogous defenses. Based on the foregoing data and their own independent investigation,
7 evaluation and experience, Class Counsel believes that the settlement with Defendants on the terms set
8 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement
9 Class considering all known facts and circumstances, including the risk of significant delay, defenses
10 asserted by Defendant, and numerous potential appellate issues.

11 **B. The Parties Settled at Mediation**

12 33. On December 9, 2020, the Parties agreed to conduct a full day of mediation with (Ret.)
13 Steven Denton, Esq., a highly regarded mediator and former San Diego County Superior Court Judge.
14 Hon. Denton helped to manage the Parties' expectations and provided a useful, neutral analysis of the
15 issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance.
16 Namely, the parties exchanged information regarding their respective claims and defense, including
17 their respective evaluation of the damages. After nearly eight hours arm's length and adversarial
18 negotiations, the mediation nearly concluded without a settlement. However, at the conclusion of the
19 mediation, Judge Denton issued a proposal for settlement that the Parties accepted. The complete and
20 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the
21 Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

22 **C. Class Counsel is Experienced in Similar Litigation**

23 34. Plaintiffs are represented by competent and experienced counsel to pursue their claims. I
24 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
25 aggrieved employees and consumers throughout California in wage and hour class actions and complex
26 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
27 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney) Tesla Stone (Paralegal), Leilani Edmunds
28

(Legal Secretary), Peyton Turner (Law Clerk), Amanda Rasmussen (Law Clerk), Sara Christensen (Legal Assistant).

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

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

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

a. *D Rodriguez v. RSI Home Product, Inc.*, San Bernardino Superior Court Case No. CIVDS 2023354 (July 30, 2021 – Hon. David Cohn approved a \$1,450,000 wage and hour class and PAGA action settlement for, *inter alia*, Defendants' failure to pay piece-rate employees for all non-productive time. The JCL Law Firm, APC was appointed and approved as Class Counsel.)

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

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

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

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

9 f. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
10 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law
11 Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*,
12 off-the-clock work.)

13 g. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
14 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel
15 and granted final approval of wage and hour class action for off-the-clock work.)

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

19 i. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
20 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA
21 Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead
22 counsel.)

23 j. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
24 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter*
25 *alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)
26
27
28

k. *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.)

l. *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.)

m. *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.)

n. *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)

o. *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.)

p. *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.)

q. *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)

r. *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);

s. *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.);

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

u. *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)

v. *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);

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

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

y. *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);

38. Additionally, since 2007, I have represented more than 2,000 (excluding class actions) separately retained individual clients in employment matters, complex construction product liability actions and mass tort actions. 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.

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

40. 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.

41. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

D. Strength of Plaintiff's Case

42. Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. (*Wershba*, 91 Cal. App. 4th at 250.) While the Total Settlement Amount of \$740,000 represents a discount on Defendants' potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because: (1) Defendants own and operate a hotel that was closed for nearly six months during the global COVID-19 pandemic, which resulted in a dramatic loss of revenue; (2) the formidable defenses raised by Defendants presented a risk that could award significantly less in damages than Plaintiff's estimate; and (3) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class.

43. Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendants could defense the action or, at least, drastically undercut Plaintiff's claims.

E. Risks of Continued Litigation

44. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded

1 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
2 the trial court to enter judgement in favor of the employer. (*See also O’Conner v. Uber Technologies,*
3 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
4 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
5 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
6 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
7 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
8 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
9 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
10 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
11 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
12 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
13 certification of driver meal and rest period claims based on the predominance of individual issues).)
14 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
15 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
16 settlement.

17 45. Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
18 recognizes that Defendants have factual and legal defenses that, if successful, would potentially defeat
19 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
20 drastically affect the value of Plaintiff’s claims and, in fact, already has. Recently, the California Court
21 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue
22 the derivative waiting time and itemized wage statement penalties. (*Naranjo v. Spectrum Security*
23 *Services, Inc.*, 40 Cal.App.5th 444 (2019) (*review granted*).) The *Naranjo* decision gutted Plaintiff’s
24 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties
25 predicated on rest period violations.

26 46. There is little doubt that if Defendants could support a large adverse judgement (a serious
27 question for a hospitality company dealing with a global pandemic), Defendants would undoubtedly
28

1 post a bond and appeal. A post-judgment appeal by Defendants would have required many more years
2 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
3 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
4 outweigh an uncertain result three or more years in the future.

5 47. Class Representative and Class Counsel recognize the expense and length of a trial
6 against Defendants through possible appeals which could take another three years. In arriving at their
7 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
8 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
9 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
10 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
11 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
12 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial
13 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
14 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
15 of the Class, is fair, reasonable and adequate, and should be granted final approval.

16 **F. The Gross Settlement is Fair and Reasonable**

17 48. The Total Settlement Amount of \$740,000 in this case is fair and well within the range
18 of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement
19 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
20 various potential impediments to recovery. Class Counsel developed varied economic damages models
21 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
22 The various models were informed by Class Counsel's investigation, including the analysis of a
23 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
24 process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on
25 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 8%
26 and 30% of the full *verdict* value.

1 49. Clearly the goal of this litigation to obtain redress for the class has been met by this
2 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
3 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
4 approval.

5 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

6 50. Here, Plaintiff and Defendants negotiated a good faith PAGA Settlement in the amount
7 of \$20,000.00 which is 2% of the Total Settlement Amount. This amount falls well within the range of
8 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$7,500) will be
9 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed
10 to the PAGA Group Members, which is within the range of PAGA penalties approved by courts and
11 should be approved.

12 51. Further, on August 2, 2021, Class Counsel gave the LWDA notice of this Settlement and
13 proposed allocation by filing a copy of the Settlement with the LWDA. On August 4, 2021, Plaintiff
14 gave the LWDA notice of Plaintiff's motion seeking final approval of this settlement.

15 I declare under the penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct. Executed this 4th day of August 2021, at San Diego, California.

17
18 **JCL LAW FIRM, APC**

19 By: 
20 Jean-Claude Lapuyade
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

EXHIBIT A

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

6 FAX: 619-599-8291

7 JLAPUYADE@JCL-LAWFIRM.COM

8 ATTORNEYS FOR PLAINTIFF JACQUELINE BALTAZAR

9 JAMES M. PETERSON, ESQ. (Bar No. 137837)

10 peterston@higgslaw.com

11 DEREK W. PARADIS, ESQ. (Bar No. 269556)

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

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

17
18 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC.

19
20 E. “Class Counsel Award” means the award of fees and expenses that the Court
21 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
22 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
23 third of the Total Settlement Amount currently estimated to be \$246,666.66 out of
24 \$740,000.00 plus costs and expenses not to exceed \$15,000.00

25
26 F. “Class Data” means information regarding Settlement Class Members that
27 Defendants will in good faith compile from its records and provide to the Settlement
28

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)
27
28

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
- 10 U. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
11 Plaintiff or Defendants, individually.
12
- 13 V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
14 divided by the sum total Workweeks for all Settlement Class Members.
15
- 16 W. "Plaintiff" shall mean JACQUELINE BALTAZAR.
17
- 18 X. "QSF" means the Qualified Settlement Fund established, designated and maintained
19 by the Settlement Administrator to fund the Total Settlement Amount.
20
- 21 Y. "Released Claims" means all class claims, actions, demands, causes of action, suits,
22 debts, obligations, damages, penalties, rights or liabilities, of any nature and
23 description whatsoever, that are asserted in the Action, or could have been asserted in
24 the Action based on the facts, claims and theories plead in the operative complaint on
25 file at the time of final approval, or raised during the mediation of this dispute,
26 including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210,
27 218.5, 218.6, 226, 226.3, 226.7, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
28 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders which

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,
25
26
27
28

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.
26
27
28

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.*;
27
28

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
28

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
25
26
27
28

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:
8

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 SETTLEMENT 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
27
28

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
28

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
26
27
28

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
26
27
28

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
15 a) The Notice Packet shall contain the Notice of Class Action Settlement
16 in a form substantially similar to the form attached as Exhibit A. The
17 Notice of Class Action Settlement shall inform Settlement Class
18 Members that they need not do anything in order to receive an
19 Individual Settlement Payment and to keep the Settlement
20 Administrator apprised of their current mailing address, to which the
21 Individual Settlement Payments will be mailed following the Funding
22 Date. The Notice of Class Action Settlement shall set forth the release
23 to be given by all members of the Settlement Class who do not request
24 to be excluded from the Settlement Class in exchange for an Individual
25 Settlement Payment, the number of Workweeks worked by each
26 Settlement Class Member during the Class Period, and the estimated
27
28

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
26
27
28

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
26
27
28

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
26
27
28

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
24
25
26
27
28

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.
26
27
28

- 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.

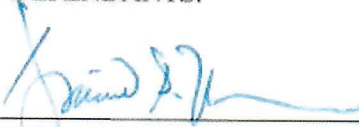
IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

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

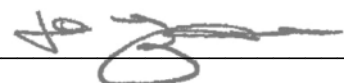
Title

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

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

JEAN-CLAUDE LAPUYADE (SBN 248676)
JCL LAW FIRM, APC
3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CA 92110
TEL: (619) 599-8292
FAX: (619) 599-8291
JLAPUYADE@JCL-LAWFIRM.COM

ATTORNEYS FOR PLAINTIFF JACQUELINE BALTAZAR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

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

[Complaint Filed: January 27, 2020]

**AMENDMENT NO. 1 TO THE
STIPULATION OF SETTLEMENT OF
CLASS ACTION CLAIMS AND
RELEASE OF CLAIMS**

Judge: Hon. Timothy Taylor
Dept.: 72

This Amendment No. 1 to the Stipulation of Class Action Settlement and Release of Claims is entered into by Plaintiff JACQUELINE BALTAZAR (“Plaintiff”), individually and on behalf of the Settlement Class, and Defendants WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY, and GRAND AMERICA HOTELS & RESORTS, INC. (hereinafter “Defendants”).

RECITALS

WHEREAS, on or about December 9, 2020, Plaintiff and Defendants (collectively the “Parties”) entered into the Settlement Agreement.

WHEREAS, the Settlement Agreement at ¶ III(R), permits the Parties to change, alter or modify the Settlement Agreement, by a signed written instrument, subject to Court approval.

WHEREAS, the Settlement Agreement at ¶ I(S), correctly states the PAGA period as the period between January 17, 2019 and February 14, 2021.

WHEREAS, the Settlement Agreement at ¶ I(EE), correctly states the class period as the period between January 27, 2016 and February 14, 2021.

WHEREAS, on or about June 14, 2021, counsel for the Parties discovered a scrivener's error at ¶ I(B) of the Settlement Agreement as it states the PAGA period as the period between January 17, 2019 and February 14, 2020.

WHEREAS, the Parties also discovered a scrivener's error at ¶ I(G) of the Settlement Agreement as it states the class period as the period between January 27, 2016 and February 14, 2020.

WHEREAS, the Parties now desire to change, alter, or modify ¶ I(B) of the Settlement Agreement to correct the scrivener's error through this Amendment No. 1 to the Settlement Agreement.

WHEREAS, the Parties also desire to change, alter, or modify ¶ I(G) of the Settlement Agreement to correct the scrivener's error through this Amendment No. 1 to the Settlement Agreement.

AMENDMENT

1. First Amendment: The Parties hereby agree to change, alter, and modify ¶ I(B) of the Settlement Agreement in its entirety as follows:

“B. ‘Aggrieved Employees’ shall mean 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, 2020~~ **February 14, 2021.**”

2. Second Amendment: The Parties hereby agree to change, alter, and modify ¶ I(G) of the Settlement Agreement in its entirety as follows:

“G. ‘Class Period’ means the period from January 27, 2016 and ~~February 14, 2020~~ **February 14, 2021.**”

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

DATED: 7/1/2021

DocuSigned by:
Jacqueline Baltazar
T: A75D459D601C42B...

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

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

DATED: _____

JACQUELINE BALTAZAR

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

DATED: June 30, 2021

WESTGATE HOTEL COMPANY

DAVID P. HIRASAKA

Printed Name

CFO

Title

DATED: June 29, 2021

SINCLAIR SERVICES COMPANY

SCOTT MAYGARD

Printed Name

Secretary & General Counsel

Title

DATED: June 30, 2021

GRAND AMERICA HOTELS & RESORTS, INC.

Printed Name

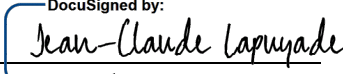
CEO

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

Dated: 7/1/2021

JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

Dated: June 29, 2021

HIGGS FLETCHER & MACK L.L.P.

By: 
James M. Peterson
Derek W. Paradis
Attorneys for WESTGATE HOTEL
COMPANY, SINCLAIR SERVICES
COMPANY, and GRAND AMERICA
HOTELS & RESORTS, INC.

EXHIBIT B

1 JEAN-CLAUDE LAPUYADE (SBN 248676)
2 JLAPUYADE@JCL-LAWFIRM.COM
3 **JCL LAW FIRM, APC**
4 3990 OLD TOWN AVENUE, SUITE C204
5 SAN DIEGO, CA 92110
6 TEL: 619-599-8292
7 FAX: 619-599-8291

8 ATTORNEYS FOR PLAINTIFF

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

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

14 Plaintiffs,

15 vs.

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

21 Defendants.

FILED
Clerk of the Superior Court

APR 02 2021

By: R. Willis

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego

03/03/2021 at 03:02:38 PM

Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

Case No. 37-2020-00005102

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: 04/02/2021

Time: 1:30 p.m.

Judge: Hon. Timothy Taylor

Dept.: 72

1 This matter having come before the Honorable Judge Timothy Taylor of the Superior Court of
2 the State of California, in and for the County of San Diego, at 1:30 p.m. on April 2, 2021, with Jean-
3 Claude Lapuyade, Esq., of the JCL Law Firm, APC, as counsel for Plaintiff JACQUELINE
4 BALTAZAR ("Plaintiff"), and Derek W. Paradis, Esq., of Higgs Fletcher & Mack, LLP appearing
5 for Defendants WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY, GRAND
6 AMERICA HOTELS & RESORTS, INC. (hereinafter collectively "Defendants"). The Court, having
7 carefully considered the briefs, argument of counsel and all the matters presented to the Court, and
8 good cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval of Class Action
9 Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
12 and Release of Claims ("Settlement Agreement" or "Agreement") a true and correct copy of which is
13 attached ~~hereto~~ ^{to ROA 32} as **Exhibit "1"**. This is based on the Court's determination that the Settlement
14 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
15 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that
19 Defendants shall pay is Seven Hundred and Forty Thousand Dollars (\$740,000). It appears to the
20 Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable
21 as to the entire Settlement Class when balanced against the probable outcome of further litigation
22 relating to certification, liability, and damages issues. It further appears that investigation and
23 research have been conducted such that counsel for the Parties are able to reasonably evaluate their
24 respective positions. It further appears to the Court that settlement at this time will avoid substantial
25 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
26 further prosecution of the litigation. It further appears that the Settlement has been reached as the
27 result of intensive, serious, and non-collusive arms-length negotiations.

4. The Court preliminarily finds that the Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Settlement Class are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. The Agreement specifies for an award of Attorneys' Fee and Costs in the amount of up to one-third of the Total Settlement Amount for attorneys' fees, currently estimated at Two Hundred Forty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$246,666.66) *and* an award of litigation expenses incurred not to exceed Fifteen Thousand Dollars (\$15,000.00), and proposed Class Representative Service Award to the Class Representative, Jacqueline Baltazar, in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award or Class Representative Service Award until the Final Approval Hearing.

6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Settlement Class:

"All of defendants WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY and GRAND AMERICA HOTELS & RESORTS, INC. current and former non-exempt employees employed in California at the Westgate Hotel in San Diego between January 27, 2016 and February 14, 2020. The Settlement Class excludes any person who submits a timely and valid request for exclusion.

7. The Court concludes that, for settlement purposes only, the Settlement Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Settlement Class is ascertainable and so numerous that joinder of all members of the Settlement

1 Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined
2 community of interest amongst the Settlement Class with respect to the subject matter of the
3 litigation; (c) the claims of the Class Representative are typical of the claims of the Settlement Class;
4 (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class;
5 (e) a class action is superior to other available methods for the efficient adjudication of this
6 controversy; and (f) Class Counsel are qualified to act as counsel for the Class Representative in their
7 individual capacity and as the representative of the Settlement Class Members.

8 8. The Court provisionally appoints plaintiff JACQUELINE BALTAZAR as the
9 representative of the Settlement Class.

10 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
11 A.P.C. as Class Counsel for the Settlement Class.

12 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency
13 of Class and Representative Action Settlement ("Class Notice") attached to the Agreement as **Exhibit**
14 **"A"**. The Court finds that both notices appear to fully and accurately inform the Settlement Class
15 and Aggrieved Employees of all material elements of the proposed Settlement, including right of any
16 Settlement Class member to be excluded from the Settlement Class by submitting a written request
17 for exclusion, and of each Settlement Class member's right and opportunity to object to the
18 Settlement. The Court further finds that the distribution of the notices substantially in the manner and
19 form set forth in the Agreement and this Order meets the requirements of due process, is the most
20 reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons
21 entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms
22 set forth in the Agreement.

23 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within
24 fourteen (14) calendar days of this order, Defendants shall provide, to the Settlement Administrator
25 the Class List, including information regarding Settlement Class Members that Defendants will in
26 good faith compile from their records, including each Settlement Class Member's full name; last
27 known address; Social Security Number; dates of employment, and number of Workweeks accrued

by each Settlement Class member during the Class Period and the PAGA Period. Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator shall mail the Class Notice to all identified, potential members of the Settlement Class via first class U.S. Mail using the most current mailing address information available.

12. The Court hereby preliminarily approves the proposed procedure for exclusion from the Settlement. Any Class Member may individually choose to opt out of and be excluded from the Settlement as provided in the Notice by following the instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date the Class Notice is mailed to the Settlement Class Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or comment thereon. Settlement Class members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted and will be deemed invalid.

13. Any Settlement Class member who has not opted out may appear at the final approval hearing and may object or express the Member's views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Settlement Class Members will have forty-five (45) days from the date the Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement Administrator.

14. A final approval hearing shall be held before this Court on August 27, 2021 at 1:30 PM in Department 72 of the San Diego County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be

1 finally approved by the Court; whether an Order Granting Final Approval should be entered herein;
2 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and
3 reasonable to the Settlement Class; and to finally approve the Class Counsel Award, Class
4 Representative Service Award, and the Settlement Administration Costs. All papers in support of the
5 motion for final approval and the motion for Attorneys' Fee and Costs and Class Representative
6 Enhancement Award shall be filed with the Court and served on all counsel no later than sixteen (16)
7 court days before the hearing.

8 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
9 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
10 evidence of, or used against Defendants as, an admission or indication in any way, including with
11 respect to any claim of any liability, wrongdoing, fault or omission by Defendants or with respect to
12 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
13 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
14 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or
15 admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the
16 Defendant, including, but not limited to, evidence of a presumption, concession, indication or
17 admission by Defendants of any liability, fault, wrongdoing, omission, concession or damage.

18 16. In the event the Settlement does not become effective in accordance with the terms of
19 the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
20 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the
21 Parties shall revert to their respective positions as of before entering into the Agreement. In such an
22 event, the Court's orders regarding the Settlement, including this Preliminary Approval Order, shall
23 not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter
24 the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is
25 not approved.

26 17. Pending final determination of whether the Settlement should be approved, Class
27 Representative and all members of the Settlement Class are barred and enjoined from filing,
28

1 commencing, prosecuting, intervening in, instigating or in any way participating in the
2 commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or
3 other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Class
4 Representative's Released Claims or the Settlement Class' Released Claims, unless and until they
5 submit a timely request for exclusion pursuant to the Agreement.

6 18. The Court reserves the right to adjourn or continue the date of the final approval
7 hearing and all dates provided for in the Agreement without further notice to Settlement Class and
8 retains jurisdiction to consider all further applications arising out of or connected with the proposed
9 Settlement.

10
11 Dated: 4/2/21

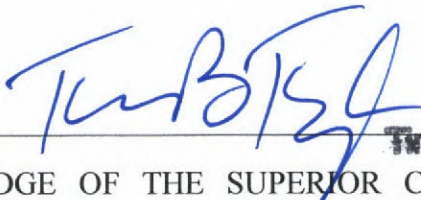
12 
13 Timothy B. Taylor
14 JUDGE OF THE SUPERIOR COURT
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

1 JEAN-CLAUDE LAPUYADE (SBN 248676)
2 JLAPUYADE@JCL-LAWFIRM.COM
3 **JCL LAW FIRM, APC**
4 3990 OLD TOWN AVENUE, SUITE C204
5 SAN DIEGO, CA 92110
6 TEL: 619-599-8292
7 FAX: 619-599-8291

8 ATTORNEYS FOR PLAINTIFF

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/28/2021 at 01:29:00 PM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

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

14 Plaintiffs,

15 vs.

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

21 Defendants.

Case No. 37-2020-00005102

~~[PROPOSED]~~ AMENDED ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

Date: 04/02/2021

Time: 1:30 p.m.

Judge: Hon. Timothy Taylor

Dept.: 72

1 This matter having come before the Honorable Judge Timothy Taylor of the Superior Court of
2 the State of California, in and for the County of San Diego, at 1:30 p.m. on April 2, 2021, with Jean-
3 Claude Lapuyade, Esq., of the JCL Law Firm, APC, as counsel for Plaintiff JACQUELINE
4 BALTAZAR (“Plaintiff”), and Derek W. Paradis, Esq., of Higgs Fletcher & Mack, LLP appearing for
5 Defendants WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY, GRAND
6 AMERICA HOTELS & RESORTS, INC. (hereinafter collectively “Defendants”). The Court, having
7 carefully considered the briefs, argument of counsel and all the matters presented to the Court, and
8 good cause appearing, hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action
9 Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
12 and Release of Claims (“Settlement Agreement” or “Agreement”) a true and correct copy of which is
13 attached hereto as **Exhibit “1”** together with Amendment No. 1 to the Stipulation of Settlement of
14 Class Action Claims and Release of Claims (“Amendment No. 1”) a true and correct copy of which is
15 attached hereto as **Exhibit “2”**. This is based on the Court’s determination that the Settlement
16 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
17 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

18 2. This Order incorporates by reference the definitions in the Agreement, and all terms
19 defined therein shall have the same meaning in this Order as set forth in the Agreement.

20 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that
21 Defendants shall pay is Seven Hundred and Forty Thousand Dollars (\$740,000). It appears to the Court
22 on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as to the
23 entire Settlement Class when balanced against the probable outcome of further litigation relating to
24 certification, liability, and damages issues. It further appears that investigation and research have been
25 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It
26 further appears to the Court that settlement at this time will avoid substantial additional costs by all
27 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the

litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and non-collusive arms-length negotiations.

4. The Court preliminarily finds that the Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Settlement Class are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. The Agreement specifies for an award of Attorneys' Fee and Costs in the amount of up to one-third of the Total Settlement Amount for attorneys' fees, currently estimated at Two Hundred Forty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$246,666.66) **and** an award of litigation expenses incurred not to exceed Fifteen Thousand Dollars (\$15,000.00), and proposed Class Representative Service Award to the Class Representative, Jacqueline Baltazar, in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award or Class Representative Service Award until the Final Approval Hearing.

6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Settlement Class:

“All of defendants WESTGATE HOTEL COMPANY, SINCLAIR SERVICES COMPANY and GRAND AMERICA HOTELS & RESORTS, INC. 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 Settlement Class excludes any person who submits a timely and valid request for exclusion.

7. The Court concludes that, for settlement purposes only, the Settlement Class meets the

requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Settlement Class is ascertainable and so numerous that joinder of all members of the Settlement Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the Settlement Class with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the Settlement Class; (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class; (e) a class action is superior to other available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified to act as counsel for the Class Representative in their individual capacity and as the representative of the Settlement Class Members.

8. The Court provisionally appoints plaintiff JACQUELINE BALTAZAR as the representative of the Settlement Class.

9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm, A.P.C. as Class Counsel for the Settlement Class.

10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of Class and Representative Action Settlement (“Class Notice”) attached to the Agreement as **Exhibit “A”**. The Court finds that both notices appear to fully and accurately inform the Settlement Class and Aggrieved Employees of all material elements of the proposed Settlement, including right of any Settlement Class member to be excluded from the Settlement Class by submitting a written request for exclusion, and of each Settlement Class member’s right and opportunity to object to the Settlement. The Court further finds that the distribution of the notices substantially in the manner and form set forth in the Agreement and this Order meets the requirements of due process, is the most reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the Agreement.

11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within fourteen (14) calendar days of this order, Defendants shall provide, to the Settlement Administrator the Class List, including information regarding Settlement Class Members that Defendants will in good

1 faith compile from their records, including each Settlement Class Member's full name; last known
2 address; Social Security Number; dates of employment, and number of Workweeks accrued by each
3 Settlement Class member during the Class Period and the PAGA Period. Within fourteen (14) calendar
4 days after receiving the Class List from Defendants, the Settlement Administrator shall mail the Class
5 Notice to all identified, potential members of the Settlement Class via first class U.S. Mail using the
6 most current mailing address information available.

7 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
8 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
9 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
10 Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be
11 postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date
12 the Class Notice is mailed to the Settlement Class Members or, in the case of a re-mailed Notice, not
13 more than fifteen (15) calendar days after the original Response Deadline. Any such person who
14 chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual
15 Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to
16 object, appeal or comment thereon. Settlement Class members who have not requested exclusion shall
17 be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may
18 only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass
19 of individuals is not permitted and will be deemed invalid.

20 13. Any Settlement Class member who has not opted out may appear at the final approval
21 hearing and may object or express the Member's views regarding the Settlement and may present
22 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and
23 determined by the Court as provided in the Notice. Settlement Class Members will have forty-five (45)
24 days from the date the Settlement Administrator mails the Class Notice to postmark their written
25 objections to the Settlement Administrator.

26 14. A final approval hearing shall be held before this Court on **August 27, 2021 at 1:30 PM**
27 in Department 72 of the San Diego County Superior Court to determine all necessary matters

concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an Order Granting Final Approval should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Settlement Class; and to finally approve the Class Counsel Award, Class Representative Service Award, and the Settlement Administration Costs. All papers in support of the motion for final approval and the motion for Attorneys' Fee and Costs and Class Representative Enhancement Award shall be filed with the Court and served on all counsel no later than sixteen (16) court days before the hearing.

15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder shall be construed as a concession or admission by Defendants in any way, and shall not be used as evidence of, or used against Defendants as, an admission or indication in any way, including with respect to any claim of any liability, wrongdoing, fault or omission by Defendants or with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendants of any liability, fault, wrongdoing, omission, concession or damage.

16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement. In such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

17. Pending final determination of whether the Settlement should be approved, Class Representative and all members of the Settlement Class are barred and enjoined from filing,

1 commencing, prosecuting, intervening in, instigating or in any way participating in the commencement
2 or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in
3 any forum, asserting any claims that are, or relate in any way to, the Class Representative's Released
4 Claims or the Settlement Class' Released Claims, unless and until they submit a timely request for
5 exclusion pursuant to the Agreement.

6 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
7 and all dates provided for in the Agreement without further notice to Settlement Class and retains
8 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

9
10 Dated: 7-28-21



11 JUDGE OF THE SUPERIOR COURT
12 Judge Timothy Taylor
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D