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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL COURTHOUSE

JANTZ ELLIOT, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

SAGE HOSPITALITY RESOURCES,
LLC, a limited liability company; SAGE
CLIENT 349, LLC, a limited liability
company; SAGE CLIENT 349B, LLC, a
limited liability company; SAGE CLIENT
417, LLC a limited liability company;
SAGE CLIENT 417B, LLC, a limited
liability company; SAGE CLIENT 439,
LLC, a limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 37-2020-00043180-CU-OE-CTL
[Designated Complex – Unlimited Jurisdiction]

*Assigned for all purposes to the Honorable
Timothy Taylor, Department C-72*

**JOINT STIPULATION AND SETTLEMENT
AGREEMENT OF CLASS ACTION AND
PAGA REPRESENTATIVE CLAIMS**

Complaint Filed: January 6, 2020
Transferred from L.A.S.C.: November 19, 202
Trial Date: Not Set

This Stipulation is made by the Class Representative on behalf of himself and each of the
other Class Members, on the one hand, and Defendants, on the other hand, in this Action, and is

subject to the approval of the Superior Court.

1. DEFINED TERMS

1.1 “Action” means the civil action being resolved by this settlement entitled *Jantz Elliot v. Sage Hospitality Resources, LLC, et al.* (San Diego County Superior Court Case No. 37-2020-00043180-CU-OE-CTL).

1.2 “Agreement,” “Settlement,” or “Stipulation” means this Stipulation and Settlement Agreement of Class Action and PAGA Representative Claims.

1.3 “Claims” means any and all claims asserted in the Action or any other claims that could have been asserted in the Action, based on the facts alleged, including but not limited to any and all claims concerning without limitation: violations or damages relating to meal periods, rest periods, pay stubs, off the clock and other unpaid regular and overtime wages, time rounding, late payment of wages, record keeping, and waiting time penalties. Specifically, and without limitation, the Claims include claims under or penalties (including PAGA) for violations of California Labor Code, FLSA, IWC Wage Orders, or any law or regulation related to wage and hour law, including without limitation California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, and 1198, so long as such claims were asserted in the Action, or could have been asserted based on the facts alleged therein.

1.4 “Class” or “Class Members” means the following class: All persons who were employed by any Defendant at SpringHill Suites by Marriott San Diego Oceanside/Downtown located at 110 N. Myers St., Oceanside, California 92054 as an hourly paid, non-exempt employee at any time during the period beginning January 6, 2016 through September 1, 2021.

1.5 “Class Counsel” means Kane Moon, Allen V. Feghali, and Edwin Kamarzarian of Moon & Yang APC.

1.6 “Class Period” means the period from January 6, 2016 through September 1, 2021. “PAGA Period” means the period from January 6, 2019 through September 1, 2021.

1.7 “Class Notice” means the Court-approved Notice of Proposed Class Action Settlement, substantially in the form attached hereto as **Exhibit A** and incorporated by reference herein, which will notify Class Members of, among other things, the following: Preliminary

1 Approval of the Settlement, the basic terms of the Settlement, the calculation of the Settlement
2 Award, the procedures for disputing and objecting to the Settlement, and requesting exclusion
3 from the Settlement Class, and the scheduling of the Final Approval Hearing. Following the
4 Court's Preliminary Approval of the Settlement, the Settlement Administrator shall mail the
5 Class Notice to all Class Members.

6 1.8 "Class Representative" means Plaintiff Jantz Elliot.

7 1.9 "Complaint" means the operative First Amended Class Action and Representative
8 Action Complaint filed in the Action.

9 1.10 "Costs Award" means the amount of litigation expenses Class Counsel has
10 incurred in prosecuting the Action and awarded by the Court. The amount requested for
11 reimbursement of costs shall not exceed \$15,000.00.

12 1.11 "Court" means the Superior Court for the State of California, for the County of
13 San Diego, which is the Court that the Parties will be submitting this Settlement to for purposes
14 of obtaining court approval.

15 1.12 "Database Report" means a confidential list of Class Members that Defendants
16 will diligently and in good faith compile from their records and provide to the Settlement
17 Administrator only. Plaintiff's counsel will not receive a copy of the confidential list. The
18 Database Report shall be in computer-readable format, and shall include each Class Member's
19 full name; employee ID while employed with Defendants; dates of employment during which he
20 or she worked in a class position for Defendants in California; last known home address and last
21 known telephone number to the extent available in the Human Resources employee information
22 database; Social Security number to perform a skip trace in order to obtain the best possible
23 address for Class Members prior to mailing the Class Notice to Class Members.

24 1.13 "Defendants" means Sage Hospitality Resources, LLC; Sage Client 349, LLC;
25 and Sage Client 349B, LLC.

26 1.14 "Defendants' Counsel" means Chris C. Hoffman and Phillip G. Simpler of Fisher
27 & Phillips LLP.

28 1.15 "Effective Date" means the later of: (a) if any Class Member validly submits a

1 Notice of Objection, the date on which the time for appeals from any Order ruling on the
2 objections or granting Final Approval of the Settlement has run; (b) the resolution of any appeal,
3 filed by a Class Member who validly submitted a Notice of Objection, from any Orders ruling
4 on any objection or granting Final Approval of the Settlement; or (c) in the event there are no
5 objections submitted and/or all objections submitted have been withdrawn, then the date the
6 Court signs an Order granting Final Approval of the Settlement.

7 1.16 “Excluded Class Members” means all Class Members who timely and validly
8 submit a written request for exclusion from the Settlement Class on or before the
9 Objection/Exclusion Deadline Date.

10 1.17 “Fees and Costs Award” means the aggregate total of the Fees Award and the
11 Costs Award to Class Counsel approved by the Court.

12 1.18 “Fees Award” means the fee amount authorized by the Court to be paid to Class
13 Counsel for the services they have rendered in prosecuting the Action, in an amount not to exceed
14 thirty-five percent (35%) of the Total Settlement Amount, i.e., the Fees Award shall not exceed
15 One Hundred Fifty-Seven Thousand Five Hundred Dollars and Zero Cents (\$157,500.00).

16 1.19 “Final Approval” and/or “Final Approval Order” means the Court’s order
17 granting final approval of the Settlement and “Final Approval Date” means the date that the Court
18 signs the Final Approval Order.

19 1.20 “Final Approval Hearing” means the hearing at which the Court considers
20 whether to issue an order granting final approval to the Settlement.

21 1.21 “Net Settlement Fund” means the funds available to pay the Settlement Awards
22 to all Participating Settlement Class Members. The Net Settlement Fund shall constitute the
23 Total Settlement Amount minus the sum of the (1) Fees and Cost Award, (2) the Service Award,
24 (3) the Settlement Administration Costs, and (4) the PAGA Payment made to the Labor and
25 Workforce Development Agency (“LWDA”).

26 1.22 “Non-Participating Class Member” means a Class Member who submits a timely
27 and valid Request for Exclusion.

28 1.23 “Objection/Exclusion Deadline” means the date, no later than thirty (30) calendar

1 days after the date the Notice is mailed (judged by the postmark date) by the Settlement
2 Administrator, prior to which a Class Member may validly submit a Notice of Objection or a
3 Class Member may submit a Request for Exclusion.

4 1.24 "PAGA Payment" shall constitute Forty-Five Thousand Dollars (\$45,000.00)
5 which, pursuant to Labor Code Section 2699(i), will be distributed as follows: 25% to the
6 applicable Participating Settlement Class Members and 75% to the California Labor and
7 Workforce Development Agency. The 25% portion of the PAGA Payment that shall be paid to
8 the Participating Settlement Class Members shall remain within the Net Settlement Fund so that
9 it is available to be included within the calculation of the Participating Settlement Class
10 Members' Settlement Awards. If it should later be determined by the Court that an additional
11 amount is needed to effectuate a full and complete release of all California Labor Code Private
12 Attorneys General Act claims, Labor Code Section 2698 et seq., that amount shall be deducted
13 from the Total Settlement Amount.

14 1.25 "Participating Settlement Class Member" means any Class Members who did not
15 submit a timely and valid Request for Exclusion.

16 1.26 "Parties" means Defendants and the Class Representative.

17 1.27 "Preliminary Approval Order" means the Order issued by the Court preliminarily
18 approving the terms of the Settlement set forth in this Stipulation, in a form to be agreed upon by
19 the Parties prior to the hearing on the Motion for Preliminary Approval and "Preliminary
20 Approval Date" means the date that the Court signs the Preliminary Approval Order.

21 1.28 "Qualifying Workweek" means a workweek where a Participating Settlement
22 Class Member worked at least one day during that workweek and was not on a leave of absence
23 or vacation. The Qualifying Workweek will be calculated by using Defendants' payroll data
24 during the Class Period. Workweeks of Non-Participating Class Members will be excluded from
25 the total number of Workweeks that are reported to the Settlement Administrator.

26 1.29 "Qualified Settlement Fund" or "QSF" means the account set up by the Settlement
27 Administrator and from which the individual Settlement Awards to Participating Settlement
28 Class Members shall be made. The QSF shall be an interest-bearing account within the meaning

1 of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section
2 1.468B-1, et seq., at a federally-insured bank that is mutually acceptable to the Parties and the
3 Settlement Administrator. The Settlement Administrator shall serve as a Trustee of the QSF and
4 shall act as a fiduciary with handling of all tax-related issues, reporting and payments. The
5 Settlement Administrator shall act in a manner necessary to qualify and maintain the QSF as a
6 Qualified Settlement Fund and the Parties shall cooperate to ensure such treatment and shall not
7 take a position in any filing or before any tax authority inconsistent with such treatment. The
8 Parties agree that the QSF shall be a non-reversionary fund and that under no circumstance will
9 there be any reversion to Defendants of any of the funds from the QSF or the Total Settlement
10 Amount.

11 1.30 “Released Claims” means all claims asserted under any applicable laws and/or
12 regulations relating to any and all facts and claims asserted in the Action or any other claims that
13 could have been asserted in the Action based on the facts alleged, including without limitation
14 violations or damages relating to meal periods, rest periods, pay stubs, off the clock and other
15 unpaid regular and overtime wages, time rounding, late payment of wages, record keeping,
16 waiting time penalties, and any related claims for violations of the California Labor Code, FLSA,
17 IWC Wage Orders, California Business and Professions Code and any other laws or regulations
18 concerning wage and hour laws, and for penalties under the California Private Attorneys General
19 Act (“PAGA”), arising during the Class Period and/or PAGA Period. The Released Claims do
20 not cover or include (1) claims for Workers’ Compensation, (2) claims for unemployment or
21 disability payments, (3) tort claims, or any other claims that cannot be released as a matter of
22 law. The Released Claims shall run during the entire Class Period. As of the Effective Date of
23 Settlement, each Class Member who has not filed a valid Request for Exclusion shall be deemed
24 to have fully, finally, and forever released, relinquished, and discharged all Released Claims
25 during the Class Period. This waiver and release of claims shall be binding on the Class
26 Representative and all members of the Class who have not timely submitted a valid Request for
27 Exclusion, including each of their respective attorneys, agents, spouses, executors,
28 representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit

1 of the Released Parties.

2 1.31 “Request for Exclusion” means a letter or written request to be excluded from the
3 Settlement Class submitted by a Class Member to the Settlement Administrator and postmarked
4 by the Objection/Request for Exclusion Deadline. In order to be valid, the Request for Exclusion
5 must include the Class Member’s name, address, telephone number, last four digits of the Social
6 Security number, location and years of his or her employment, and signature, and contain a
7 statement to the effect of: “I wish to be excluded from the Settlement Class.”

8 1.32 “Released Parties” means Defendants, all related companies, and each of
9 Defendants’ subsidiaries, owners, shareholders, members, agents (including, without limitation,
10 GFP Oceanside Block 21, LLC, GF Properties Group, LLC, Sage Enterprise Holdings, LLC and
11 any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or
12 future officers, directors and employees), predecessors, successors and assigns.

13 1.33 “Settlement Administrator” means ILYM Group, Inc., as well as any other
14 provider that is mutually agreed to by the Parties and approved by the Court.

15 1.34 “Settlement Administration Costs” means the amount that will be paid to the
16 Settlement Administrator for actual and direct fees and expenses reasonably incurred by the
17 Settlement Administrator in administering the Settlement. Settlement Administration Costs will
18 include, but are not limited to, fees and costs payable to the Settlement Administrator for printing,
19 distributing (including with appropriate postage), and tracking documents for this Settlement,
20 any searches to locate any Class Members, calculating estimated amounts per Class Member, tax
21 reporting, distributing the individual Settlement Awards, the Class Representative’s Service
22 Award, Class Counsel Fees and Costs, payment to the LWDA, and providing necessary
23 certification of completion of notice, reports and declarations, establishing and administering a
24 QSF account, required tax reporting and withholding on the individual Settlement Awards, the
25 issuing of 1099 and W-2 IRS forms, as well as determining the validity of any disputes (and
26 communicating the determination of those disputes to the disputing Class Member, Class
27 Counsel and Defendants’ Counsel) and opt-outs, calculating all amounts to be paid from the Total
28 Settlement Amount, and such other responsibilities and duties as reasonably and customarily

1 performed by third-party settlement administrators or as requested by the Parties. This amount is
2 estimated not to exceed \$18,000.00.

3 1.35 “Service Award” means the amount that the Court authorizes to be paid to the
4 Class Representative in the Action over and above his Settlement Award, in recognition of his
5 efforts in assisting with the prosecution of the Action on behalf of the Class Members. This
6 amount is not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) to the Class
7 Representative.

8 1.36 “Settlement Award” means the total portion of the Net Settlement Award payable
9 to each member of the Settlement Class after deduction of the employee’s portion of all state and
10 federal employment withholding taxes, FICA and FUTA contributions and any other applicable
11 payroll deductions required by law.

12 1.37 “Settlement Class” means the Class Members who have not submitted a timely
13 and valid Request for Exclusion and are therefore entitled to receive his or her individual portion
14 of the Settlement Award.

15 1.38 “Total Settlement Amount” means the total amount that Defendants will be
16 required by this Stipulation to pay to: Participating Settlement Class Members (which includes
17 the employee payroll taxes withheld from the Wage Component of each Participating Settlement
18 Class Member’s Settlement Award); the Class Representative; Class Counsel; the Settlement
19 Administrator; and the Labor and Workforce Development Agency (i.e., the PAGA Payment).
20 The Total Settlement Amount is Four Hundred Fifty Thousand Dollars (\$450,000.00). The Total
21 Settlement Amount is non-reversionary, meaning that, if the settlement is approved and becomes
22 effective, no part of this amount shall be returned to Defendants. Defendant shall contribute the
23 employer-side payroll taxes separately and in addition to the Total Settlement Amount.

24 **2. BACKGROUND AND PRELIMINARY REPRESENTATIONS**

25 2.1 Certification. This Court has not yet Certified the Class. The Parties intend for
26 the Class to be certified through the preliminary approval process for settlement purposes only.
27 If the Court should for any reason fail to approve the Settlement, this Agreement shall be
28 considered null and void, the Class will not be certified, and Defendants shall have the right to

1 challenge any further certification efforts, including by seeking to compel individual arbitration
2 of Plaintiffs' claims and seeking to strike the class action allegations. The Parties agree that
3 Defendants have not waived the right to compel arbitration of Plaintiffs' or any other Class
4 Members' claims by entering into this Agreement or by their delay in seeking to enforce any
5 such rights with respect to the Action.

6 2.2 Investigation. The Parties have conducted significant investigation of the facts
7 and law. Such discovery and investigation included interviews with the Class Representative
8 and other percipient witnesses as well as the review of documents and data necessary to calculate
9 potential damages. Counsel for the Parties investigated the law as applied to the facts discovered
10 regarding the alleged claims of the Class Members and potential defenses thereto, and the
11 damages claimed by the Class Members.

12 2.3 Defendants' Reasons for Settlement. Defendants concluded that any further
13 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts
14 of time, energy and resources of Defendants have been and, unless this Settlement is made, will
15 continue to be devoted to the defense of the claims asserted by the Class Representative.
16 Defendants have also taken into account the risks of further litigation in reaching their decision
17 to enter into this Settlement. Defendants have, therefore, agreed to settle in the manner and upon
18 the terms set forth in this Agreement to put to rest the Claims as set forth in the Complaint.

19 2.4 Defendants' Denials of Wrongdoing. Defendants have denied and continue to
20 deny each of the claims and contentions alleged by Class Members in the Action. Defendants
21 have repeatedly asserted, and continue to assert, defenses thereto, and have expressly denied and
22 continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct
23 alleged in the Action. Defendants also have denied and continue to deny, inter alia, the
24 allegations that the Class Members have suffered damage; that Defendants violated any laws;
25 that Defendants engaged in any wrongful conduct as alleged in the Action; or that Class Members
26 were harmed by the conduct alleged in the Action. Neither this Agreement, nor any document
27 referred to or contemplated herein, nor any action taken to carry out this Agreement, is, may be
28 construed as, or may be used as an admission, concession or indication by or against Defendants

1 of any fault, wrongdoing or liability whatsoever.

2 2.5 Class Representative's Claims. The Class Representative has claimed and
3 continues to claim that the Released Claims have merit and give rise to liability on the part of
4 Defendants. This Agreement is a compromise of disputed claims, and the Class Representative's
5 Agreement takes into account Defendants' defenses to liability, including the joint employer
6 status of the various defendant entities and to class certification. Nothing contained in this
7 Agreement and no documents referred to herein and no action taken to carry out this Agreement
8 may be construed or used as an admission by or against the Class Representative or Class Counsel
9 as to the merits or lack thereof of the claims asserted.

10 2.6 It is the desire of the Parties to fully, finally and forever settle, compromise and
11 discharge all disputes and claims against the Released Parties arising from or related to this
12 Action, and that this Settlement Agreement shall constitute a full and complete settlement and
13 release of all the Released Parties from all of the claims asserted in this Action.

14 **3. CLASS AND PAGA SETTLEMENT AGREEMENT**

15 3.1 Settlement Components. The Settlement shall have six components: (1) the
16 Participating Settlement Class Members' Settlement Awards; (2) the Class Representative's
17 Service Award; (3) Class Counsel's Fees and Costs Award; (4) the Settlement Administration
18 Costs; (5) the PAGA Payment; and (6) Defendants' Payroll Taxes. The first five of these
19 components are included in the Total Settlement Amount. Defendants' Payroll Taxes shall be
20 contributed separately by Defendants in addition to the Total Settlement Amount.

21 3.2 Creation of the Settlement Fund. Within fourteen (14) calendar days after the
22 Effective Date, Defendants shall deliver the Total Settlement Amount and the employer share of
23 payroll taxes to the Settlement Administrator to create the Settlement Fund. All payments that
24 Defendants are required to make pursuant to the Settlement Agreement shall be made from the
25 Fund by the Settlement Administrator. Defendants will retain exclusive authority over, and
26 responsibility for, those funds until required to deliver them to the Settlement Administrator in
27 accordance with this paragraph.

28 3.3 Calculation of Participating Settlement Class Members' Settlement Awards. The

1 Settlement Administrator shall have the authority and obligation to calculate the amounts of
2 individual Settlement Awards in accordance with the methodology set forth in this Stipulation of
3 Settlement and any Orders of the Court. The Parties agree that the formula for the individual
4 Settlement Awards to Participating Settlement Class Members provided herein is reasonable and
5 that the payments provided herein are designed to provide a fair settlement to such persons, in
6 light of the uncertainties of the damages and penalties alleged to be owed to the Class and the
7 calculation of such amounts.

8 3.3.1 The Parties agree that Class Members will not have to submit a claim form in
9 order to participate in the Settlement. Each Class Member who does not submit a Request for
10 Exclusion will be mailed a check representing their individual Settlement Award. Therefore, the
11 individual Settlement Awards will be paid from the Net Settlement Fund to all Class Members
12 unless the Class Member submits a valid and timely written Request for Exclusion from the
13 Settlement Class. Note, any Class Member who worked during the PAGA Period will receive a
14 check representing their portion of the PAGA Payment regardless of whether they request
15 exclusion from the Class.

16 3.3.2 After deducting (i) the Court-approved Class Representative's Service Award, (ii)
17 the Court-approved Fees and Costs Award, (iii) the Settlement Administration Costs, and (iv) the
18 PAGA Payment to the LWDA, then the remainder of the Total Settlement Amount, or the Net
19 Settlement Fund, will be distributed to the Participating Settlement Class Members. Relying on
20 the Database Report, the Settlement Administrator will calculate the number of Qualifying
21 Workweeks for each Participating Settlement Class Member of the Class. Each Participating
22 Settlement Class Member shall be entitled to receive a pro-rata portion based upon their
23 respective number of Qualifying Workweeks in the Class and PAGA Periods. Thus, each Class
24 Member that does not request exclusion from the Settlement shall be entitled to a pro-rata share
25 of the Net Settlement Fund based on the ratio of the number of Qualifying Workweeks that he or
26 she worked to the total number of Qualifying Workweeks that all Participating Settlement Class
27 Members worked during the Class Period.

28 3.3.3 Class Members will have the opportunity, should they disagree with Defendants'

1 records regarding the number of Qualifying Workweeks as presented on the Notice, to provide
2 documentation and/or an explanation to show contrary employment dates. Class Members must
3 notify the Settlement Administrator of the dispute and submit documentation to support their
4 dispute (such as, without limitation, offer letters, payroll or time keeping records, paycheck stubs)
5 prior to the Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her
6 number of Qualifying Workweeks if he/she does not exclude himself/herself from the Settlement
7 Class. Absent evidence rebutting Defendants' records, Defendants' records will be presumed
8 determinative. However, if there are no corresponding records, or the Class Member produces
9 evidence contrary to Defendants' records, the Settlement Administrator will evaluate the
10 evidence and will make the final decision as to the number of eligible Qualifying Workweeks
11 that should be applied.

12 3.3.4 Each Participating Settlement Class Member will have one hundred eighty (180)
13 calendar days from the date of the mailing of the individual Settlement Award check to cash the
14 check sent to the Participating Settlement Class Member. Failure to cash the check within one
15 hundred eighty (180) calendar days will result in the Participating Settlement Class Member
16 forgoing all eligibility to receive any payment from the Settlement, but the Participating
17 Settlement Class Member shall remain bound by the Settlement and the Released Claims.

18 3.3.5 The checks will state they are void if not cashed within 180 calendar days of
19 mailing.

20 3.3.6 The Parties recognize that the individual Settlement Awards to be paid to
21 Participating Settlement Class Members reflect in part a settlement of a dispute over claimed
22 wages, interest, and penalties. The individual Settlement Awards to Participating Settlement
23 Class Members shall be allocated as follows: Ten percent (10%) of each Participating Settlement
24 Class Member's Settlement Award from the Class portion of the Settlement Payments shall be
25 considered wages ("Wage Component") and ninety percent (90%) shall be considered penalties
26 and interest (the "Non-Wage Component"). The Wage Component shall be reported on a W-2
27 Form and will be provided to each Participating Settlement Class Member. From each Class
28 Member's Wage Component, the employee's portion of employment taxes shall be made,

1 including payroll deductions for state and federal withholding taxes, and any other applicable
2 payroll deductions, owed by the Participating Settlement Class Member as a result of the
3 payment, resulting in a "Net Wage Component." No withholding shall be made on the Non-
4 Wage Component of the settlement. The Non-Wage Component shall be reported on a 1099
5 Form and will be provided to each Participating Settlement Class Member. The Net Wage
6 Component shall be added to the Non-Wage Component resulting in each Participating
7 Settlement Class Member's Settlement Award.

8 3.4 Class Representative's Service Award. Subject to Court approval and the
9 execution of the general release by the Class Representative, the Parties agree to a payment from
10 the Total Settlement Amount to the Class Representative for the Class Representative's Service
11 Award in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00). The
12 Parties agree that a decision by the Court to award the Class Representative an amount less than
13 Seven Thousand Five Hundred Dollars (\$7,500.00) shall not be a basis for the Class
14 Representative or Class Counsel to void this Stipulation. Defendants agree not to oppose the
15 Class Representative's Service Award request if consistent with this Agreement. Defendants,
16 via the Administrator, shall issue the Class Representative a Form 1099 for his Service Award.
17 The Class Representative shall be solely and legally responsible to pay his applicable taxes on
18 this payment and shall hold harmless Defendants from any claim or liability for taxes, penalties,
19 or interest owed by the Class Representative as a result of this payment. The Service Award shall
20 be in addition to the Class Representative's individual Settlement Awards. If the Court approves
21 a Service Award to the Class Representative that is less than the amount sought, the remainder
22 will be retained in the Net Settlement Fund for distribution to Participating Settlement Class
23 Members.

24 3.4.1 Class Representative's Service Award is for the Class Representative's services
25 and assistance to the Class and additionally, in recognition for his willingness to provide a full
26 and separate general release individually of any and all claims against Defendants regardless of
27 whether such claims have been alleged against Defendants, including without limitation known
28 or unknown claims, whether for economic damages, non-economic damages, punitive damages,

1 restitution, tort, contract, penalties, injunctive or declaratory relief, attorney's fees, costs, or other
2 monies or remedies. This release by the Class Representative includes all federal and state
3 statutory claims, and federal and state common law claims (including but not limited to those for
4 contract, tort, and equity), including, without limitation, the Americans with Disabilities Act,
5 Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended),
6 42 U.S.C. §1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the Employee Retirement
7 Security Income Act of 1974, the California Constitution, the California Fair Employment and
8 Housing Act, the California Unfair Competition Act (California Business and Professions Code
9 section 17200 et seq.), the California Labor Code, and claims for additional compensation
10 relating to stock options.

11 3.4.2 General Release by Class Representative Only. In addition to the releases made
12 by the Participating Settlement Class Members set forth in 4.1 below and in consideration for the
13 Service Award, the Class Representative, as of the Effective Date, in his individual capacity for
14 himself, his heirs, executors, administrators, successors and assigns and with respect to his
15 individual claims only, agrees to release the Released Parties from all claims, demands, rights,
16 liabilities and causes of action of every nature and description whatsoever, known or unknown,
17 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
18 or federal statute, rule or regulation arising out of, relating to, or in connection with their
19 employment by and termination from Released Parties and any act or omission by or on the part
20 of any of the Released Parties committed or omitted prior to the Effective Date of this Agreement
21 (the "General Release"). This total release includes, but is not limited to, all claims arising
22 directly or indirectly from Class Representative's employment with Released Parties and the
23 termination of that employment; claims or demands related to wages, bonuses, vacation pay,
24 benefits and expense reimbursements pursuant to any federal, state or local law or cause of action,
25 including, but not limited to, breach of contract, breach of the implied covenant of good faith and
26 fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy,
27 defamation and impairment of economic opportunity; violation of the California Fair
28 Employment and Housing Act, the California Labor Code, the California Constitution; and any

1 claims for violation of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964,
2 the Americans With Disabilities Act of 1990 and any private attorney general action under the
3 California Business & Professions Code §17200.

4 3.4.3 The General Release includes any unknown claims that the Class Representative
5 does not know or suspect to exist in his favor at the time of the General Release, which, if known
6 by him, might have affected his settlement with, and release of, the Released Parties or might
7 have affected his decision not to object to this Settlement or the General Release. With respect
8 to the General Release, the Class Representative stipulates and agrees that, upon the Effective
9 Date, he shall be deemed to have, and by operation of the Court's Final Approval Order, shall
10 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
11 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision
12 under federal or state law, which provides:

13 **A general release does not extend to claims that the creditor or releasing party does**
14 **not know or suspect to exist in his or her favor at the time of executing the release and that,**
15 **if known by him or her, would have materially affected his or her settlement with the debtor**
16 **or released party.**

17 3.4.4 The Class Representative may hereafter discover facts in addition to or different
18 from those he now knows or believes to be true with respect to the subject matter of the General
19 Release, but upon the Effective Date, shall be deemed to have, and by operation of the Court's
20 Final Approval Order, shall have, fully, finally, and forever settled and released any and all of
21 the claims released pursuant to the General Release whether known or unknown, suspected or
22 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
23 theory of law or equity now existing or coming into existence in the future, including, but not
24 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
25 law or rule, without regard to the subsequent discovery or existence of such different or additional
26 facts.

27 3.4.5 Notwithstanding the above, the scope of the General Release provided to the
28 Released Parties by the Class Representative does not include any claims for state disability

1 benefits, workers compensation benefits, or unemployment benefits, or any claims that cannot
2 be released as a matter of law.

3 3.5 Class Counsel's Fees and Costs Award. Defendants agree not to oppose or
4 impede any application or motion by Class Counsel for attorneys' fees not to exceed thirty-five
5 percent (35%) of the Total Settlement Amount (i.e., \$157,500.00) and actual litigation costs not
6 to exceed Fifteen Thousand Dollars (\$15,000). The Parties agree that a decision by the Court to
7 award Class Counsel an amount less than \$157,500.00 shall not be a basis for the Class
8 Representative or Class Counsel to void this Agreement. The aggregate attorneys' fees and costs
9 awarded by the Court shall be the "Fees and Costs Award." Class Counsel shall be solely and
10 legally responsible to pay their applicable taxes on the payment made pursuant to this Paragraph.
11 Class Counsel further agrees that Class Counsel shall be solely responsible for any allocation of
12 the Fees and Costs Award as between or among attorneys who have claims for such fees. Forms
13 1099 shall be provided to Class Counsel for the payments made pursuant to this Paragraph. If
14 the amount awarded to Class Counsel for attorneys' fees is less than the amount sought, the
15 remainder will be retained in the Net Settlement Fund for distribution to Participating Settlement
16 Class Members.

17 3.6 Settlement Administration Costs. The Settlement Administrator shall be paid for
18 the costs of administration of the settlement from the Settlement Fund. The costs of
19 administration for the disbursement of the Total Settlement Amount shall not exceed \$18,000.00.
20 The Settlement Administration Costs include all tasks required of the Settlement Administrator
21 by this Agreement including performing a skip trace as well as basic searches on the National
22 Change of Address Database in order to obtain the best possible address for Class Members prior
23 to mailing the Class Notice to Class Members, the issuance of the Notice, the required tax
24 reporting on the settlement amounts, the issuance of checks, including the issuing of W-2 and
25 1099 forms (if any), the handling of Class Member questions and disputes, as well as calculation
26 of employee withholding taxes and the employer payroll taxes for Defendants to be remitted to
27 the tax authorities. At least fourteen (14) calendar days prior to the Final Approval Hearing, the
28 Settlement Administrator shall provide the Court and all counsel for the Parties with a statement

1 detailing the due diligence the Settlement Administrator has undertaken with regard to the
2 mailing of the Class Notice, including any attempts to obtain valid mailing addresses for and re-
3 mailing of any returned Class Notices, the final costs of administration, and reporting on the
4 number of objections and exclusions submitted by Non-Participating Class Members, as well as
5 any disputes (and explain the status of the disputes).

6 3.7 Payment to the Labor and Workforce Development Agency. Subject to Court
7 approval, Forty-Five Thousand Dollars (\$45,000.00) will be allocated to cover any and all claims
8 for civil penalties associated with the Released Claims that were, or could have been, brought in
9 the Action under PAGA; 75% of which is Thirty-Three Thousand Seven Hundred Fifty Dollars
10 (\$33,750.00) that will be paid directly to the LWDA, and the remaining 25% of which is Eleven
11 Thousand Two Hundred Fifty Dollars (\$11,250.00), which will be retained in the Net Settlement
12 Fund for distribution to Participating Settlement Class Members as penalties.

13 3.8 Tax Liability. Defendants make no representations as to the tax treatment or legal
14 effect of the payments called for hereunder, and the Class Representative is not relying on any
15 statement or representation by Defendants in this regard. The Class Representative understands
16 and agrees that Participating Settlement Class Members will be solely responsible for the
17 payment of employee taxes and penalties predicated on the payments described herein. The Class
18 Representative shall hold harmless Released Parties from and against any claims resulting from
19 treatment of such payments as non-taxable damages, including the treatment of such payment as
20 not subject to withholding or deduction for payroll and employment taxes.

21 3.9 Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
22 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
23 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
24 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
25 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
26 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
27 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
28 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX

1 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
2 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
3 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
4 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
5 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED
6 UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
7 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
8 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
9 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
10 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
11 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
12 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
13 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
14 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
15 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
16 AGREEMENT.

17 **4. RELEASE BY THE CLASS MEMBERS**

18 4.1 Release as to All Participating Settlement Class Members. As of the Effective
19 Date, all Participating Settlement Class Members, including the Class Representative, release the
20 Released Parties from the Released Claims. The Participating Settlement Class Members agree
21 not to make, participate, encourage or support any action asserting or alleging any of the Released
22 Claims against any of the Released Parties.

23 **5. PRELIMINARY APPROVAL**

24 5.1 As part of this Settlement, the Parties agree to the following procedures for
25 obtaining preliminary Superior Court approval of the Settlement, notifying Class Members,
26 obtaining final Superior Court approval of the Settlement, and processing the Settlement Awards:

27 5.1.1 Preliminary Settlement Hearing. The Class Representative shall seek preliminary
28 approval of the Settlement before the Superior Court and to request the entry of the Preliminary

1 Approval Order. In conjunction with this hearing, the Class Representative will submit this
2 Agreement, which sets forth the terms of this Settlement, and will include the proposed Class
3 Notice.

4 5.1.2 Order Granting Preliminary Approval of Proposed Settlement. Simultaneous with
5 the filing of the Stipulation of Settlement and solely for purposes of this Settlement, the Class
6 Representative will request that the Court enter an order preliminarily approving the proposed
7 Settlement and setting a date for a Final Approval Hearing. The Order shall be in a form to be
8 agreed upon by the Parties prior to the hearing on the Motion for Preliminary Approval and
9 provide for Notice of the Settlement to be sent to Class Members as specified herein.

10 5.1.3 Statement of Non-Opposition: The Defendants may file a statement of non-
11 opposition to the motion for preliminary approval.

12 **6. NOTICE PROCESS**

13 6.1 Notice Process. Notice of the Settlement shall be provided to Class Members,
14 and Class Members shall submit objections to the Settlement and/or requests for exclusion from
15 the Settlement Class, using the following procedures:

16 6.1.1 The Defendants shall provide the Settlement Administrator and Class Counsel
17 with the Database Report within twenty-one (21) calendar days after the Preliminary Approval
18 Order.

19 6.1.2 Within fourteen (14) calendar days of receiving the Database Report, the
20 Settlement Administrator shall mail a copy of the Notice to each Class Member via First Class
21 regular U.S. mail.

22 6.1.3 Prior to mailing, the Settlement Administrator shall check all addresses on the
23 Database Report against the National Change of Address (NCOA) database. Additionally, the
24 Settlement Administrator shall undertake reasonable address verification using Accurint, or a
25 substantially similar skip tracing to ascertain the accuracy of the last known addresses and to
26 obtain the best possible address for the Class Members before mailing the notices. To the extent
27 these processes yield an updated or better address, that updated address shall replace the last
28 known address and be treated as the new last known address for purposes of this Settlement

1 Agreement.

2 6.1.4 Procedure for Undeliverable Notices. Any Notices returned to the Settlement
3 Administrator as non-delivered shall be promptly re-sent to the forwarding address affixed
4 thereto. If no forwarding address is provided, then the Settlement Administrator shall promptly
5 attempt to determine a correct address using a single skip-trace, computer or other search using
6 the name, address and/or Social Security number of the individual involved and shall then
7 perform a single re-mailing. The deadline for Class Members who receive a re-mailed Notice to
8 object to the Class Action Settlement or request an Exclusion from the Settlement Class is ten
9 (10) calendar days from the date of re-mailing if that date is beyond the original deadline. When
10 re-mailing any Notices, the Settlement Administrator should include a brief letter stating that the
11 recipient of the Class Notice has until the original deadline set forth on the Notice or ten (10)
12 calendar days after the date of re-mailing of the Class Notice (whichever is later) to object or
13 submit a Request for Exclusion. In the event the procedures in this Paragraph are followed and
14 the intended recipient of a Notice still does not receive the Notice, the intended recipient shall be
15 a Participating Settlement Class Member and will be bound by all terms of the Settlement and
16 any Final Approval Order entered by the Superior Court if the Settlement is approved by the
17 Superior Court. If any Class Notice is returned from any mailing and/or re-mailed, the Settlement
18 Administrator will note for its own records and notify the Parties' Counsel of the date of such re-
19 mailings as part of a weekly status report provided to the Parties.

20 6.1.5 The Notice shall provide that Class Members who wish to exclude themselves
21 from the Settlement Class must submit a Request for Exclusion postmarked by the
22 Objection/Exclusion Deadline. The Objection/Exclusion Deadline is thirty (30) calendar days
23 following the initial mailing of the Notice. Any Class Member who properly requests exclusion
24 using this procedure will not receive any payment from the Settlement and will not be bound by
25 the Stipulation of Settlement or have any right to object, appeal or comment thereon. Class
26 Members who do not submit a valid and timely Request for Exclusion shall be bound by all terms
27 of the Stipulation of Settlement and any judgment entered in the Action once the Settlement is
28 approved by the Court.

1 6.1.6 Procedure for Objecting. The Notice shall provide that Class Members who wish
2 to object to the settlement must mail a written statement of objection (“Notice of Objection”) to
3 the Settlement Administrator no later than the Objection/Exclusion Deadline Date. Only Class
4 Members (i.e., not Non-Participating Class Members) may submit objections and have the
5 objections heard. The postmark date of the mailing shall be deemed the exclusive means for
6 determining that a Notice of Objection is timely. The Notice of Objection must state the basis
7 for the objection. Class Members who fail to make objections in the manner specified above
8 shall be deemed to have waived any objections and shall be foreclosed from making any
9 objection (whether by appeal or otherwise) to the Settlement Agreement and/or from appealing
10 any order by the Court approving the Settlement. No later than fourteen (14) calendar days before
11 the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties
12 with complete copies of all objections received, including the postmark dates for each objection.
13 Class Members who submit a timely Notice of Objection will have a right to appear at the Final
14 Approval Hearing in order to have their objections heard by the Court. At no time shall any of
15 the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit
16 written objections to the settlement or to appeal from any order of the Court approving the
17 settlement. Class Counsel shall not represent any Class Member with respect to any such
18 objection.

19 6.1.7 Procedure for Requesting Exclusion. The Notice shall provide that Class
20 Members who wish to exclude themselves from the Settlement Class and, in so doing, become a
21 Non-Participating Class Member, must submit a written request to be excluded from the
22 Settlement Class on or before the Objection/Exclusion Deadline Date. Such request for
23 exclusion: (1) must contain the name, address, telephone number, the last four digits of the Social
24 Security number of the person requesting exclusion, signature, and contain a statement to the
25 effect of: “I wish to be excluded from the Settlement Class.”; (2) must be returned by mail to the
26 Settlement Administrator at the specified address; (3) and must be postmarked on or before the
27 Objection/Exclusion Deadline Date. The date of the postmark shall be the exclusive means used
28 to determine whether a request for exclusion has been timely submitted. Any Class Member who

requests an exclusion from the Settlement Class will not be entitled to submit objections to the Settlement, will not be entitled to any recovery under the Settlement, and will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline Date shall be Participating Settlement Class Members and shall be bound by all terms of the Settlement, if the Settlement is approved by the Court. No later than fourteen (14) calendar days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of all Non-Participating Class Members who have timely requested exclusion from the Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit requests for exclusion from the Settlement Class.

6.1.8 Claims Deemed Waived. Any Class Member who does not request exclusion as set forth above is deemed to have released all Released Claims against Released Parties as set forth herein.

7. SETTLEMENT ADMINISTRATION

7.1 The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

7.2 The Settlement Administrator shall be responsible for: printing and mailing the Notices to the Class Members as directed by the Superior Court; receiving and reporting the requests for exclusion submitted by Non-Participating Class Members; issuing and mailing Settlement Awards to Class Members; remitting all amounts due to the appropriate federal, state, and local tax authorities, and other tasks as the Parties mutually agree or the Superior Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel timely apprised of the performance of all Settlement Administrator responsibilities. The Settlement Administrator shall provide the Parties' Counsel with a weekly report showing: (1) the number of Class Notices mailed to Class Members; (2) the number of Class Notices returned as undeliverable; (3) the number of re-mailed Class Notices; (4) the

1 number of Non-Participating Class Members who have submitted Requests for Exclusion; (5)
2 the number of Class Members who have submitted objections; and (6) the number of Class
3 Members who have disputed the number of Qualifying Workweeks being credited to that Class
4 Member. Additionally, the Settlement Administrator shall provide to the Parties' Counsel any
5 updated reports regarding the administration of the Settlement as needed or requested.

6 7.3 The Settlement Administrator, on Defendants' and Class Counsel's collective
7 behalf, shall have the authority and obligation to calculate the amounts of the Settlement Awards,
8 make payments, credits and disbursements, including payments and credits in the manner set
9 forth herein, to Class Members calculated in accordance with the methodology set out in this
10 Agreement and orders of the Court.

11 7.4 No person shall have any claim against Defendants, Defendants' Counsel, the
12 Class Representative, the Class, Class Counsel, or the Settlement Administrator based on any
13 errors or omissions in the distributions and payments that are required to be made in accordance
14 with the terms of this Agreement.

15 7.5 Any tax return filing required by this Agreement shall be made by the Settlement
16 Administrator. Any expenses incurred in connection with such filing shall be a cost of
17 administration of the Settlement.

18 **8. PROCEDURE FOR FUNDING OF SETTLEMENT**

19 8.1 Defendants shall fund the Settlement via one lump sum payment equaling the
20 Total Settlement Amount (i.e., the payment shall be \$450,000.00) plus the amount of the
21 employer's side payroll tax.

22 8.2 The Total Settlement Amount was calculated with, and is premised on, the
23 understanding that there are approximately 454 putative class members and 31,852 workweeks
24 during the Class Period. If the final accounting of the number of weeks worked during the Class
25 Period increases by more than 10%, Defendants will increase the Fund by a proportional amount
26 or, if the Defendants choose, the Class Period shall be deemed to end on the date that the total
27 number of workweeks in the Class Period exceeds 31,852 weeks by 10% other than due to the
28 passage of time. For example, if the total number of workweeks in the Class Period increases by

eleven percent (11 %) other than due to the passage of time, then Defendants agree to increase the Fund by eleven percent (11 %), unless Defendants exercise the right to end the Class Period on the date that the total workweeks increased by 11 % more than 31,852 other than due to passage of time.

8.3 Within fourteen (14) calendar days of the Effective Date, Defendants shall provide the Settlement Administrator with the Total Settlement Amount plus the additional payment of the employer's side payroll tax amount as calculated by the administrator.

9. PROCEDURE FOR PAYMENT OF SETTLEMENT AWARDS

9.1 Distributions of funds and Settlement Payments to Participating Settlement Class Members shall occur no later than fifteen (15) calendar days after the funding, as follows: 100% of the Costs Award; 100% of the Service Award; 100% of the Settlement Administration Costs; 100% of the portion of the PAGA Payment to be paid to the LWDA; and the remainder of the funds to be distributed pro rata in the amount of 100% to the Fees Award and 100% to the Settlement Payments to Participating Settlement Class Members.

9.2 To ensure that they receive their Settlement Payment checks for each distribution, Participating Settlement Class Members must notify the Settlement Administrator if they change their mailing address.

9.3 Participating Settlement Class Members shall have one hundred and eighty (180) calendar days from the date each Settlement Payment check is mailed by the Settlement Administrator to cash the Settlement Payment check. Class Members who fail to cash a Settlement Payment check within one hundred and eighty (180) calendar days will not receive the amount of the uncashed check, will not receive their pro-rata share of the subsequent distributions, and the Settlement Payments that they would otherwise have been entitled to receive in subsequent distributions shall be reallocated, on a pro-rata basis, to Participating Settlement Class Members who cashed their Settlement Payment check from the prior distribution. Participating Settlement Class Members who do not cash any or all of their Settlement Payment checks, and who have not excluded themselves from the Settlement Class, will nevertheless be bound by the terms of the release by Class Members, as detailed herein. For

1 good cause, the Parties are permitted to allow the late negotiation of the uncashed Settlement
2 Payment check of any Participating Settlement Class Member, subject to approval by the Court
3 in case of any disagreement between the Parties.

4 9.4 Any amounts remaining from uncashed Settlement Payment checks shall be paid
5 consistent with Code of Civil Procedure section 384 to Casa Cornelia - <https://casacornelia.org/>.

6 9.5 Except for Non-Participating Class Members, all Class Members will become
7 eligible to receive Settlement Payments from Defendants, distributed through the Settlement
8 Administrator.

9 9.6 Should any question arise regarding the determination of eligibility for, or the
10 amounts of, any Settlement Payments under the terms of this Agreement, Class Counsel and
11 Defendants' Counsel shall meet and confer in an attempt to reach agreement. Absent evidence
12 rebutting Defendants' records, Defendants' records will be presumed determinative. However,
13 if there are no corresponding records, or the Class Member produces evidence contrary to
14 Defendants' records, the Settlement Administrator will evaluate the evidence and will make the
15 final decision as to the eligibility for, or the amounts of, any Settlement Payments under the terms
16 of this Agreement.

17 9.7 Certification by Settlement Administrator. Upon completion of administration of
18 the distributions, the Settlement Administrator shall provide written certification of such
19 completion to the Court and counsel for all Parties.

20 **10. FINAL SETTLEMENT APPROVAL HEARING**

21 10.1 Upon expiration of the Objection/Exclusion Deadline Date, with the Court's
22 permission, a Final Approval Hearing shall be conducted to determine final approval of the
23 Settlement along with the amount properly payable for (i) reasonable attorneys' fees and costs,
24 (ii) the Class Representative's Service Award, (iii) the PAGA Payment to the State of California
25 Labor and Workforce Development Agency; and (iv) cost of administration. The Final Approval
26 Hearing shall not be held earlier than thirty (30) calendar days after the Objection/Exclusion
27 Deadline Date. After entry of an order finally approving the settlement, the Court shall have
28 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement

of the terms of the settlement, (ii) settlement administration matters and (iii) such other matters as may be appropriate under court rules or as set forth in this Agreement.

11. VOIDING THE SETTLEMENT

11.1 Defendants' Option to Terminate Settlement. If the number of Class Members who have submitted timely requests for exclusion from the Settlement Class exceeds ten percent of the Class Members or more of the Class under this Settlement, then Defendants shall have, in their sole discretion, the option to terminate this Settlement within fourteen (14) calendar days after expiration of the Objection/Exclusion Deadline Date, provided the Settlement Administrator has provided Defendants the number and percentage of valid and timely Requests for Exclusion. In the event that Defendants terminate the agreement pursuant to this provision, then Defendants shall be solely responsible for payment of all costs incurred by the Settlement Administrator through the date that Defendants notify the Settlement Administrator in writing (with a copy to Class Counsel) that they are exercising this Option.

11.2 Nullification of Settlement Agreement. In the event: (i) the Court does not enter the Order specified herein; (ii) the Court does not issue an order finally approving the Settlement, as provided herein, or said order does not become final as a result of the occurrence of the Effective Date; (iii) Defendants or the Class Representative elect to terminate the Settlement as set forth herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that in the event Defendants elect to terminate the Settlement, any fees already incurred by the Settlement Administrator shall be paid by Defendants and shall not be repaid to Defendants. In the event appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal.

12. NO EFFECT ON EMPLOYEE BENEFITS

12.1 The Settlement Awards paid to the Class Representative or other Participating

1 Settlement Class Members shall not have any effect on the eligibility for, or calculation of, any
2 of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Class
3 Representative or Participating Settlement Class Members. The Parties agree that any Settlement
4 Awards to Participating Settlement Class Members under the terms of this Agreement do not
5 represent any modification of Participating Settlement Class Members' previously credited hours
6 of service or other eligibility criteria under any employee pension benefit plan or employee
7 welfare benefit plan sponsored by Defendants. Further, any Settlement Awards or Service Award
8 hereunder shall not be considered "compensation" in any year for purposes of determining
9 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare
10 benefit plan, or incentive compensation plan sponsored by Defendants.

11 **13. PUBLICITY**

12 13.1 The Class Representative and Class Counsel agree that they have not and will not
13 publish the resolution of this case apart from taking steps necessary to obtain preliminary and
14 then final approval. In response to any media inquiries, Class Representative and Class Counsel
15 will state that "the case was resolved with Court approval." Class Counsel shall not report the
16 resolution of this case in any medium or in any publication, shall not post or report anything
17 regarding the claims of Class Representative or the Class Members or the resolution of this case
18 on their website, and shall not contact any reporters or media regarding the resolution of this
19 case. However, Class Counsel are authorized to make a limited disclosure to the Court and the
20 LWDA for the purposes of obtaining the approval of the settlement. This disclosure is limited to
21 court filings and electronic submission of settlement documents to the LWDA. Neither Class
22 Representative nor his counsel or representatives are permitted to disseminate, publish, or
23 distribute the information provided to the Court in those filings outside the filings themselves
24 and any hearing held on those filings, unless ordered otherwise by the Court. Nothing in this
25 provision is intended to prohibit: (i) the Class Representative from discussing this settlement with
26 his spouse, attorneys, or tax advisors; (ii) Class Counsel from citing the settlement in this case as
27 evidence supporting their competence as counsel in wage/hour and/or class action matters in
28 public court filings; or (iii) Class Counsel from communicating the terms of the Settlement with

1 the Class Representative, Class Members, the LWDA, or with the Superior Court in which this
2 Action is pending. In the event the Class Representative violates this confidentiality provision,
3 Defendants may, in their sole discretion, elect to request that the Court deny the Class
4 Representative his Service Award set forth herein.

5 **14. EXHIBIT(S) AND HEADINGS**

6 14.1 The terms of this Agreement include the terms set forth in any attached Exhibit(s),
7 which are incorporated by this reference as though fully set forth herein. Any Exhibit(s) to this
8 Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or
9 sections of this Agreement are inserted for convenience of reference only and do not constitute a
10 part of this Agreement.

11 **15. INTERIM STAY OF PROCEEDINGS**

12 15.1 The Parties agree to hold all proceedings and deadlines in the Action, except such
13 proceedings necessary to implement and complete the Settlement, in abeyance pending the
14 Preliminary and Final Approval Hearings to be conducted by the Superior Court. Said stay shall
15 terminate if and when (1) the Court permanently denies approval (preliminary or final) of the
16 Settlement or, (2) the Court issues an Order terminating the stay.

17 **16. AMENDMENT OR MODIFICATION**

18 16.1 This Agreement may be amended or modified only by a written instrument signed
19 by counsel for all Parties or their successors-in-interest.

20 **17. ENTIRE AGREEMENT**

21 17.1 This Agreement and any attached Exhibit(s) constitute the entire agreement
22 among these Parties, and no oral or written representations, warranties or inducements have been
23 made to any Party concerning this Agreement or its Exhibit(s) other than the representations,
24 warranties and covenants contained and memorialized in such documents. Defendants shall not
25 be required as part of the Settlement to modify or eliminate any of their personnel, compensation
26 or payroll practices, or adopt any new personnel, compensation or payroll practices.

27 **18. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**

28 18.1 Counsel for all Parties warrant and represent they are expressly authorized by the

Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Superior Court to resolve such disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant that they are authorized to sign this Agreement on behalf of Defendants.

19. BINDING ON SUCCESSORS AND ASSIGNS

19.1 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

20. CALIFORNIA LAW GOVERNS

20.1 All terms of this Agreement and the Exhibit(s) hereto shall be governed by and interpreted according to the laws of the State of California.

21. COUNTERPARTS

21.1 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

22. THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

22.1 The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

23. JURISDICTION OF THE COURT

23.1 The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders entered in

1 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the
2 Court for purposes of interpreting, implementing and enforcing the settlement embodied in this
3 Agreement and all orders entered in connection therewith.

4 **24. COOPERATION AND DRAFTING**

5 24.1 Each of the Parties has cooperated in the drafting and preparation of this
6 Agreement. Hence, in any construction made to this Agreement, the same shall not be construed
7 against any of the Parties. The Parties agree to take all necessary measures to effectuate this
8 Agreement according to its terms and scope.

9 **25. INVALIDITY OF ANY PROVISION**

10 25.1 Before declaring any provision of this Agreement invalid, the Court shall first
11 attempt to construe the provisions valid to the fullest extent possibly consistent with applicable
12 precedents so as to define all provisions of this Agreement valid and enforceable.

13 **26. CLASS REPRESENTATIVE'S WAIVER OF RIGHT TO BE EXCLUDED AND** 14 **OBJECT**

15 26.1 The Class Representative agrees to sign this Agreement and by signing this
16 Agreement is bound by the terms herein stated and further agrees not to request to be excluded
17 from the Settlement Class and agrees not to object to any of the terms of this Agreement. Non-
18 compliance by the Class Representative with this Paragraph shall be void and of no force or
19 effect. Any such requests for exclusion or objections shall therefore be void and of no force or
20 effect.

21 **27. FAX/ELECTRONIC SIGNATURES**

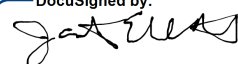
22 27.1 A fax or electronic signature, such as DocuSign, on this Agreement shall be as
23 valid as an original signature.

24 **28. DISMISSAL OF OTHER ENTITIES**

25 28.1 The proposed order granting preliminary approval shall include the dismissal
26 without prejudice from the Action the following non-signatory entities: Sage Client 417, LLC;
27 Sage Client 417B, LLC; and Sage Client 439, LLC. If the Court does not dismiss the foregoing
28 entities at the time of Preliminary Approval, the Class Representative shall take all necessary

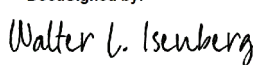
steps to dismiss them within five Court days.

DATE: 5/20/2022

DocuSigned by:


Plaintiff
Jantz Elliot

DATE: 5/20/2022

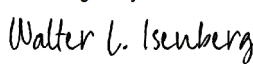
DocuSigned by:


Defendant
Sage Hospitality Resources, LLC

By: Walter L. Isenberg

Its: President

DATE: 5/20/2022

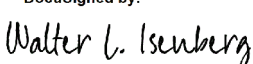
DocuSigned by:


Defendant
Sage Client 349, LLC

By: Walter L. Isenberg

Its: President

DATE: 5/20/2022

DocuSigned by:


Defendant
Sage Client 349B, LLC

By: Walter L. Isenberg

Its: President

APPROVED AS TO FORM:

DATE: May 20, 2022

FISHER & PHILLIPS LLP

By: 

Chris C. Hoffman
Kevin Simon
Phillip G. Simpler
Attorneys for Sage Hospitality Resources, LLC;
Sage Client 349, LLC; and Sage Client 349B, LLC

DATE: May 20, 2022

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