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on behalf of himself and all others similarly situated and aggrieved

[Additional Counsel Listed on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ALEJANDRO LOPEZ and NOELIA
LEYVA, on behalf of themselves and all
others similarly situated and aggrieved,

Plaintiffs,

v.

WALDORF ASTORIA MANAGEMENT
LLC., a Delaware limited liability company;
WALDORF=ASTORIA EMPLOYER LLC., a
Delaware limited liability company;
BEATRICE VATTIMA, an individual;
HOUSSEM TASCO, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV17212

[Assigned to the Hon. Maren E. Nelson in
Dept. 17]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: May 4, 2020
Trial Date: None Set

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WALDORF ASTORIA MANAGEMENT LLC; and
WALDORF=ASTORIA EMPLOYER LLC

This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among plaintiffs Alejandro Lopez (“Plaintiff Lopez”) and Noelia Leyva (“Plaintiff Leyva” and with Plaintiff Lopez, “Plaintiffs”), individually and on behalf of the Settlement Class, on the one hand; and defendants Waldorf Astoria Management LLC (“WA Management”) and Waldorf=Astoria Employer LLC (“WA Employer” and with WA Management, “Defendants”), on the other hand, in the lawsuits entitled *Lopez v. Waldorf Astoria Management LLC, et al.* filed in Los Angeles County Superior Court, Case No. 20STCV17212 and *Leyva v. Waldorf Astoria Management LLC, et al.* filed in Riverside County Superior Court, Case No. RIC2000943. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “**Actions**” means, collectively, *Lopez v. Waldorf Astoria Management et al.*, filed in Los Angeles County Superior Court, Case No. 20STCV17212 and *Leyva v. Waldorf Astoria Management LLC, et al.* filed in Riverside County Superior Court, Case No. RIC2000943.

B. “**Aggrieved Employees**” means Class Members who worked for Defendants at the La Quinta Resort & Club located at 49499 Eisenhower Drive, La Quinta, California 92253 during the PAGA Period in California as non-exempt, hourly-paid employees.

C. “**Class Counsel**” means David D. Bibiyan of Bibiyan Law Group, P.C. and Alexander I. Dychter of Dychter Law Offices, APC and Walter L. Haines of United Employees Law Group, PC. The term “Class Counsel” shall be used synonymously with the term “Plaintiffs’ Counsel.”

D. “**Class Period**” means the period from March 2, 2018 *through* 90 days after this Settlement Agreement is executed or the Preliminary Approval Date, whichever is earlier.

E. “**Court**” means the Superior Court of the State of California for the County of Los Angeles.

F. “**Defendants**” shall collectively refer to defendants Waldorf Astoria Management, LLC and Waldorf=Astoria Employer LLC.

1 **G. “Defendants’ Counsel”** means Cynthia L. Filla, Connie L. Chen and Paul J.
2 Cohen of Jackson Lewis P.C.

3 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
4 the wage portions of the Individual Settlement Payments under the Federal Insurance
5 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
6 and contributions required of employers, such as for unemployment insurance.

7 **I. “Effective Date”** means the later of: (1) this Settlement Agreement has been
8 executed by all parties and by counsel for the Settlement Class and Defendants; (ii) the Court has
9 given preliminary approval to the Settlement; (iii) notice has been given to the putative members
10 of the Settlement Class, providing them with an opportunity to object to the terms of the
11 Settlement or to opt-out of the Settlement; (iv) the Court has held a formal fairness hearing and
12 entered a final order (“Final Approval”) and judgment certifying the Class and approving this
13 Settlement Agreement; (v) if there is an objector, sixty (60) calendar days have passed following
14 the Court’s entry of a Final Approval order and judgment certifying the Settlement Class and
15 approving the settlement; and (vi) in the event there are written objections filed prior to the formal
16 fairness hearing which are not later withdrawn or denied, the later of the following events: (a)
17 five (5) business days after the period for filing any appeal, writ or other appellate proceeding
18 opposing the Court’s Final Approval order approving the Settlement has elapsed without any
19 appeal, writ or other appellate proceeding having been filed; or (b) five (5) business days after
20 any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally
21 and conclusively with no right to pursue further remedies or relief.

22 **J. “General Release”** means the general release of claims by Plaintiffs, which is in
23 addition to their limited release of claims as Participating Class Members.

24 **K. “Gross Settlement Amount”** means a non-reversionary settlement amount in the
25 sum of One Million, Six Hundred Ten Thousand Dollars and Zero Cents (\$1,610,000.00),¹ which
26 shall be paid by Defendants, and from which all payments for the Individual Settlement Payments
27 to Participating Class Members, the Court-approved amounts for attorneys’ fees and
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¹ As the same may be increased in accordance with Paragraph 17, below.

reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration Costs, the Service Awards, the Individual PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes, which shall be paid by Defendants separate, apart, and in addition to the Gross Settlement Amount.

L. “Individual PAGA Payment” means a payment made to an Aggrieved Employee for his or her share of the PAGA Payment, which may be in addition to his or her Individual Settlement Share if he or she is also a Participating Class Member.

M. “Individual Settlement Payment” means a payment to a Participating Class Member of his or her net share of the Net Settlement Amount.

N. “Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Settlement Class Member during the Class Period if he or she does not submit a timely and valid Request for Exclusion.

O. “LWDA Payment” means the payment to the State of California Labor and Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total amount allocated toward penalties under the PAGA all of which is to be paid from the Gross Settlement Amount. The Parties have agreed that Fifty Thousand Dollars and Zero Cents (\$50,000.00) shall be allocated toward PAGA penalties, of which Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in California in the PAGA Period (*i.e.* the PAGA Payment).

P. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to the Participating Class Members after deductions for the Court-approved allocations for Settlement Administration Costs, Service Awards to Plaintiffs, an award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA Payment, and the PAGA Payment.

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1 **Q. “Operative Complaint” or “Complaint”** means the Second Amended
2 Complaint to be filed with the Court in *Lopez v. Waldorf Astoria Management et al.*, filed in Los
3 Angeles County Superior Court, Case No. 20STCV17212 that effectively consolidates the
4 Actions for purposes of settlement approval.

5 **R. “PAGA Payment”** is the 25% portion of the Fifty Thousand Dollars and Zero
6 Cents (\$50,000.00) that is allocated toward PAGA penalties (Twelve Thousand Five Hundred
7 Dollars and Zero Cents (\$12,500.00) that will be paid to Aggrieved Employees on a *pro rata*
8 basis based on the Workweeks worked in the PAGA Period, which would be in addition to their
9 Individual Settlement Share if they are Participating Class Members, as well.

10 **S. “PAGA Period”** means the period from March 2, 2019 *through* 90 days after this
11 Settlement Agreement is executed or the Preliminary Approval Date, whichever is earlier.

12 **T. “Participating Class Members”** means all Settlement Class Members who do
13 not submit a timely and valid Request for Exclusion.

14 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
15 Settlement Amount that a Participating Class Member is eligible to receive based on the number
16 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
17 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
18 may be entitled if he or she is also an Aggrieved Employee.

19 **V. “Parties”** shall refer to Plaintiffs and Defendants collectively.

20 **W. “Plaintiffs, Named Plaintiffs, or Class Representatives”** shall refer to
21 Alejandro Lopez and Noelia Leyva.

22 **X. “Preliminary Approval Date”** means the date on which the Court enters an
23 Order granting preliminary approval of the Settlement.

24 **Y. “Released Parties”** shall mean Defendants, owners of the La Quinta Resort &
25 Club, including but not limited to BRE Iconic LQR Owner LLC, LQR Property LL, LQR Golf
26 LLC and LQR Resort Desert Real Estate Inc. f/k/a MSR Resort Desert Real Estate Inc., and each
27 of their past, present, and future respective subsidiaries, dba’s, related and affiliated entities, joint
28 ventures, parents, divisions, insurers and reinsurers, and company-sponsored employee benefit

1 plans of any nature, successors, predecessors in interest, and of their past and present officers,
2 directors, shareholders, employees, including management employees who could be held liable
3 for any of the released claims, agents, members, managers, joint employers, integrated
4 enterprises, principals, heirs, representatives, accountants, auditors, consultants, attorneys,
5 administrators, fiduciaries, trustees, agents, anyone acting for any of them.

6 **Z. “Response Deadline”** means the deadline for Settlement Class Members to mail
7 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
8 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
9 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
10 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
11 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
12 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
13 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
14 Workweek Dispute was submitted by the Response Deadline.

15 **AA. “Request for Exclusion”** means a written request to be excluded from the
16 Settlement Class pursuant to Section 9.C below.

17 **BB. “Service Award”** means monetary amount to be paid to Plaintiffs, in the amount
18 of up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) each to Plaintiff
19 Lopez and Plaintiff Leyva, subject to Court approval, which will be paid out of the Gross
20 Settlement Amount.

21 **CC. “Settlement Administration Costs”** means all costs incurred by the Settlement
22 Administrator in administration of the Settlement, including, but not limited to, translating the
23 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
24 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
25 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
26 taxes and withholdings, providing reports and declarations, generating Individual Settlement
27 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
28 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’

1 fees and reimbursement of litigation costs and expenses, to Plaintiffs for their Service Awards,
2 and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and
3 related information, and any other actions of the Settlement Administrator as set forth in this
4 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
5 are estimated not to exceed \$19,500.00. If the actual amount of the Settlement Administration
6 Costs is less than \$19,500.00, the difference between \$19,500.00 and the actual Settlement
7 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
8 Administration Costs exceed \$19,500.00 then such excess will be paid solely from the Gross
9 Settlement Amount and Defendants will not be responsible for paying any additional funds in
10 order to pay these additional costs.

11 **DD. “Settlement Administrator”** means the Third-Party Administrator mutually
12 agreed upon by the Parties that will be responsible for the administration of the Settlement
13 including, without limitation, translating the Class Notice in Spanish, the distribution of the
14 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
15 and related matters under this Agreement.

16 **EE. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
17 all current and former non-exempt, hourly-paid employees who worked for Defendants at the La
18 Quinta Resort & Club located at 49499 Eisenhower Drive, La Quinta, California 92253 at any
19 time during the Class Period.

20 **FF. “Workweeks”** means the number of weeks that a Settlement Class Member was
21 employed by and worked for the Defendants in a non-exempt, hourly position during the Class
22 Period in California, based on hire dates, re-hire dates, and termination dates. If a Settlement
23 Class Member disputes his/her Individual Settlement Share, it shall be termed a “Workweek
24 Dispute.”

25 **2. BACKGROUND**

26 **A.** On or around March 2, 2020, Plaintiff Leyva filed a putative wage-and-hour class
27 action against Defendants in the Superior Court of California County of Riverside, Case Number
28 RIC2000943 (the “Leyva Action”). Plaintiff Leyva alleged Defendants, *inter alia*, (1) failed to

1 pay straight-time and overtime wages; (2) failed to provide compliant meal breaks; (3) failed to
2 authorize and permit compliant rest periods; (4) failed to provide accurate wage statements; (5)
3 failed to pay all wages owed upon separation; and (6) engaged in unfair competition under the
4 Business and Professions Code. On or around March 2, 2020, Plaintiff Leyva also submitted a
5 PAGA notice letter to the LWDA under Labor Code section 2699.3 (“Leyva PAGA Notice”).
6 Thereafter, on or around July 2, 2020, Plaintiff Leyva filed a First Amended Complaint (“FAC”)
7 adding a cause of action under PAGA. Shortly thereafter, in light of Defendants’ contention that
8 there existed an enforceable agreement to arbitrate between Plaintiff Leyva and Defendants,
9 Plaintiff Leyva and Defendants entered into a stipulation to dismiss Plaintiff Leyva’s individual
10 and class claims *without prejudice* and proceed on a PAGA only basis.

11 **B.** On or around May 4, 2020, Plaintiff Lopez filed a putative wage-and-hour class
12 action against Defendants in the Superior Court of California for the County of Los Angeles,
13 Spring Street Courthouse, Case Number 20STCV17212 (the “Lopez Action”). Plaintiff Lopez
14 alleged that during the relevant statutory period, with respect to himself and similarly situated
15 employees, Defendants, *inter alia*: (1) failed to pay overtime wages; (2) failed to pay minimum
16 wages; (3) failed to provide compliant rest periods or compensation in lieu thereof; (4) failed to
17 provide compliant meal periods or compensation in lieu thereof; (5) failed to pay wages due at
18 termination or resignation; (6) failed to provide accurate wage statements; (7) failed to reimburse
19 employees for work related expenses; and (8) engaged in unfair competition.

20 **C.** On or around May 4, 2020, Plaintiff Lopez also filed with the LWDA and served
21 on Defendants a notice under Labor Code section 2699.3 (the “Lopez PAGA Notice”) stating
22 Plaintiff Lopez also intended to serve as a proxy of the LWDA to recover civil penalties against
23 Defendants for various Labor Code violations.

24 **D.** During the course of litigation, similar to Plaintiff Leyva, Defendants contended,
25 that Plaintiff Lopez and Defendants entered into an agreement to arbitrate their disputes.
26 Moreover, in or around the same time, Plaintiff Leyva and Plaintiff Lopez agreed to mediate both
27 matters on a PAGA only basis with Defendants. Thus, on or around November 6, 2020, Plaintiff
28 Lopez and Defendants entered into a stipulation to file a First Amended Complaint (“FAC”) to

1 add a PAGA claim, dismiss individual and class claims *without prejudice*, and to stay the Lopez
2 Action pending mediation. Pursuant to that stipulation, on November 23, 2020, Plaintiff Lopez
3 filed a FAC in the Lopez Action adding a cause of action under PAGA and removing class and
4 individual allegations.

5 **E.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
6 mediation for the purpose of reaching a global resolution of Plaintiffs' PAGA claims against
7 Defendants. Prior to mediation, Class Counsel was provided with, among other things: (1)
8 Plaintiff Lopez's personnel file; (2) Plaintiff Leyva's personnel file; (3) a sampling of 12.5% of
9 time and payroll records for all Aggrieved Employees; (4) hire dates and termination dates for
10 all Aggrieved Employees; and (5) Defendants' relevant written policies.

11 **F.** On May 14, 2021, the Parties attended an unsuccessful mediation before mediator
12 Lou Marlin, Esq. Thereafter, the parties engaged in further meet and confer efforts as to
13 allegations at issue and determined that a second day of mediation with another mediator may be
14 more fruitful.

15 **G.** On September 28, 2021, the Parties participated in a second mediation before
16 Mark Rudy, Esq. a well-regarded mediator experienced in mediating complex civil disputes.
17 With the aid of the mediator's evaluation and after weeks of further negotiations, the Parties
18 reached the Settlement to resolve the Action on both a class and PAGA basis.

19 **H.** Class Counsel has conducted significant investigation of the law and facts relating
20 to the claims asserted in the Actions and has concluded that that the Settlement set forth herein
21 is fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
22 the sharply contested issues involved, the expense and time necessary to litigate the Actions
23 through trial and any appeals, the risks and costs of further litigation of the Actions, the risk of
24 an adverse outcome, the uncertainties of complex litigation, the purported arbitration agreements
25 signed by putative class members, including the named Plaintiffs, the information learned
26 through informal discovery regarding Plaintiff's allegations, and the substantial benefits to be
27 received by the Settlement Class Members.

28 **I.** Defendants have concluded that, because of the substantial expense of defending

1 against the Actions, the length of time necessary to resolve the issues presented herein, and the
2 inconvenience involved, it is in their best interest to accept the terms of this Agreement.
3 Defendants deny each of the allegations and claims asserted against them in the Actions.
4 However, Defendants nevertheless desire to settle the Actions for the purpose of avoiding the
5 burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the
6 controversies engendered by the Actions.

7 **J.** This Agreement is intended to and does effectuate the full, final, and complete
8 resolution of all Class Released Claims of Plaintiffs and Participating Class Members, and all
9 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
10 and Aggrieved Employees.

11 **3. JURISDICTION**

12 The Court has jurisdiction over the Parties and the subject matter of the Actions. The
13 Actions includes claims that, if proven, would authorize the Court to grant relief pursuant to the
14 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
15 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
16 pursuant to California Rule of Court, rule 3.769, subdivision (h).

17 **4. STIPULATION OF CLASS CERTIFICATION**

18 The Parties stipulate to the certification of the Settlement Class under this Agreement for
19 purposes of settlement only.

20 **5. CONSOLIDATION OF ACTIONS AND MOTION FOR APPROVAL**

21 The Parties have stipulated to the filing of a Second Amended Complaint (“SAC”) in the
22 Lopez Action that: (1) effectively consolidates the Leyva Action and Lopez Action; and (2) adds
23 individual and class allegations for the causes of action originally alleged in the Leyva Action
24 and Lopez Action for the duration of the Class Period on behalf of Class Members. The
25 allegations of the SAC to be filed in the Lopez Action shall hereinafter be referred to as the
26 “Lawsuit” or “Litigation”. As part of the Agreement to effectively consolidate the Actions,
27 Plaintiff Leyva agrees to dismiss the Leyva Action in the Riverside Superior Court *without*
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1 *prejudice* upon the filing of the SAC in the Lopez Action. After the Effective Date, Plaintiff
2 Leyva will dismiss the Leyva Action without prejudice.

3 After execution of this Agreement, Plaintiffs will move for an order granting preliminary
4 approval of the Settlement, approving and directing the mailing of the proposed Notice of Class
5 Action Settlement (“Class Notice”), conditionally certifying the Settlement Class for settlement
6 purposes only, and approving the deadlines proposed by the Parties for the submission of
7 Objections, Requests for Exclusion, and Workweek Disputes. If and when the Court
8 preliminarily approves the Settlement, and after administration of the Class Notice in a manner
9 consistent with the Court’s Preliminary Approval Order, Plaintiffs will move for an order finally
10 approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties
11 may both respond to any Objections lodged to final approval of the Settlement up to five (5) court
12 days before the Final Approval Hearing.

13 The Parties hereby expressly agree that whether or not the Court finally approves the
14 Settlement, Plaintiff Leyva’s allegations from the Leyva Action will relate back to the date on
15 which Plaintiff Leyva filed the Leyva Action and Defendants will be estopped from making any
16 argument that there is any adverse effect on the statute of limitations caused by Plaintiff Leyva’s
17 dismissal of the Leyva Action without prejudice to effectuate this consolidation.

18 **6. STATEMENT OF NO ADMISSION**

19 A. Defendants deny any wrongdoing of any sort and further deny any liability to
20 Plaintiffs and the Settlement Class with respect to any claims or allegations asserted in the
21 Actions. This Agreement shall not be deemed an admission by Defendants of any claims or
22 allegations asserted in the Actions. Except as set forth elsewhere herein, in the event that this
23 Agreement is not approved by the Court, or any appellate court, is terminated, or otherwise fails
24 to be enforceable, Plaintiffs will not be deemed to have waived, limited or affected in any way
25 any claims, rights or remedies, or defenses in the Actions, and Defendants will not be deemed to
26 have waived, limited, or affected in any way any of its objections or defenses in the Actions. The
27 Parties shall be restored to their respective positions in the Actions prior to the entry of this
28 Settlement.

1 B. Defendants deny that they have engaged in any unlawful activity, have failed to
2 comply with the law in any respect, have any liability to anyone under the claims asserted in the
3 Actions, or that but for the Settlement a class should be certified in the Actions. This Agreement
4 is entered into solely for the purpose of compromising highly disputed claims. Nothing in this
5 Agreement is intended or will be construed as an admission of liability or wrongdoing by
6 Defendants or the Released Parties, or an admission by Plaintiffs that any of the claims were non-
7 meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact
8 that Plaintiffs and Defendants were willing to settle the Actions will have no bearing on, and will
9 not be admissible in connection with, any litigation (other than solely in connection with
10 effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be
11 construed as an admission by Defendants of any liability or wrongdoing as to Plaintiffs, Class
12 Members, PAGA Members or any other person, and Defendants specifically disclaim any such
13 liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of
14 fact or law in this matter or any other matter that a class action is appropriate. The Parties have
15 entered into this Settlement with the intention of avoiding further disputes and litigation with the
16 attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an
17 admission by Plaintiffs that Plaintiffs' claims do not have merit or that class action is
18 inappropriate.

19 C. Whether or not the Judgment becomes Final, neither the Settlement, this
20 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
21 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
22 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
23 Plaintiffs or Defendants or any of the Released Parties, including, but not limited to, evidence of
24 a presumption, concession, indication or admission by any of the Released Parties of any liability,
25 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
26 evidence against any of the Released Parties, in any further proceeding in the Action, or any other
27 civil, criminal or administrative action or proceeding except for purposes of effectuating the
28 Settlement pursuant to this Agreement.

1 D. This section and all other provisions of this Agreement notwithstanding, any and
2 all provisions of this Agreement may only be admitted in evidence and otherwise used in any
3 and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or
4 defending any claims released or barred by this Agreement.

5 **7. RELEASE OF CLAIMS**

6 **A. Release by All Participating Class Members.**

7 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
8 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
9 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiffs and
10 all Participating Class Members release, and discharge the Released Parties of all claims against
11 the Released Parties asserted in the Operative Complaint in the Lopez Action, and any and all
12 claims, demands, rights, liabilities, and/or causes of action, of any form whatsoever, that may be
13 asserted against the Released Parties based on or arising out of, the factual allegations and claims
14 in the Operative Complaint filed in the Lopez Action, including, but not limited to the following,
15 for the duration of the Class Period: (a) all claims for failure to pay overtime wages and/or failure
16 to pay overtime at the appropriate rate of pay; (b) all claims for failure to pay minimum wages;
17 (c) all claims for failure to provide compliant meal and rest periods and/or premiums for
18 noncompliant meal and/or rest periods; (d) all claims for failure to timely pay all wages due,
19 including upon termination or resignation; (e) all claims for failure to provide timely, accurate
20 and fully compliant wage statements; (f) all claims for failure to reimburse employees for work
21 related expenses; (g) all claims asserted through California Business & Professions Code § 17200
22 *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint; (h) all
23 claims for violation of Labor Code sections 200, 201, 202, 203, 226, 226.2, 226.3, 226.7, 510,
24 512, 1174, 1194, 1194.2, 1197, 2802, and applicable portions of California Code of Regulations,
25 Title 8, section 11070, Wage Order No. 5-2001; and (i) all claims and/or causes of action not
26 otherwise specified that were pleaded in the Operative Complaint or could have been pleaded
27 based on the facts alleged in the Operative Complaint or which arise out of or such facts ("Class
28 Released Claims").

1 **B. Release By Aggrieved Employees**

2 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
3 the release includes for the duration of the PAGA Period, all claims, demands, rights, liabilities,
4 and/or causes of action, of any form whatsoever, that were asserted or could have been asserted
5 against the Released Parties based on or arising out of the allegations and claims in the Leyva
6 PAGA Notice, the Lopez PAGA Notice (collectively, the “PAGA Notices”) and the Operative
7 Complaint, including but not limited to claims for PAGA civil penalties pursuant to Labor Code
8 sections 210, 226.3, 558, 1197.1, and 2699 in connection with alleged violations of Labor Code
9 sections 201, 202, 203, 204, 226, 226.7, 246, 432, 510, 512, 1174, 1194, 1197, 1198.5, 2802, and
10 2810.5 (the “PAGA Released Claims”). The release expressly excludes all other claims,
11 including claims for vested benefits, wrongful termination, unemployment insurance, disability,
12 social security, workers’ compensation, and any other claims outside of the Class Released
13 Claims of Participating Class Members arising during the Class Period and the PAGA Released
14 Claims of Aggrieved Employees (and, to the extent permitted by law, the State of California)
15 arising outside of the PAGA Period. The Class Released Claims and PAGA Released Claims
16 shall be referred to herein as the “Released Claims”.

17 **C. General Release.**

18 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
19 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
20 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
21 the Released Claims, Plaintiffs makes the additional following General Release: Plaintiffs,
22 individually and on behalf of Plaintiffs’ heirs, executors, administrators, representatives,
23 attorneys, successors, and assigns knowingly and voluntarily release and forever discharge the
24 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature
25 and description whatsoever, known or unknown, asserted or that might have been asserted,
26 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
27 arising out of, relating to, or in connection with any act or omission of the Released Parties
28 through the date of full execution of this Agreement in connection with their employment or the

1 termination thereof. With respect to the General Release, Plaintiffs stipulate and agree that,
2 through the Final Approval Date, Plaintiffs shall be deemed to have, and by operation of the Final
3 Judgment and payment to the Settlement Administrator, expressly waived and relinquished, to
4 the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
5 California Civil Code, or any other similar provision under federal or state law, which provides:

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

10 The release expressly excludes Plaintiff Lopez's claims under the Fair Employment and
11 Housing Act, the California Family Rights Act, discrimination, retaliation, harassment, wrongful
12 termination in violation of public policy, intentional infliction of emotional distress, negligent
13 infliction of emotional distress, and related claims that are the subject of a separate matter
14 between Plaintiff Lopez and Defendants.

15 **8. SETTLEMENT ADMINISTRATOR**

16 Plaintiffs and Defendants, through their respective counsel, have selected Phoenix
17 Settlement Administrators to administer the Settlement, which includes but is not limited to
18 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
19 Notice, reporting to counsel for the Parties, preparing necessary declarations, and calculating all
20 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
21 Administrator, currently estimated to be \$19,500.00 will be paid from the Gross Settlement
22 Amount. If the actual amount of the Settlement Administration Costs is less than \$19,500.00,
23 the difference between \$19,500.00 and the actual Settlement Administration Costs shall be a part
24 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$19,500.00 then
25 such excess will be paid solely from the Gross Settlement Amount and Defendants will not be
26 responsible for paying any additional funds in order to pay these additional costs.

27 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

28 **A. Notice to the Settlement Class Members.**

(1) Within twenty-one (21) calendar days after the Preliminary Approval Date, Defendants' Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) full name; (2) last known address(es) currently in Defendants' possession, custody, or control; (3) last known telephone number(s) currently in Defendants' possession, custody, or control; (4) employee identification number; (5) last known Social Security Number(s) in Defendants' possession, custody, or control; and (6) the dates of employment (*i.e.*, hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member ("Class List"). This information will remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, pursuant to Defendants' express written authorization, or by order of the Court. If Class Counsel believe it is necessary to access information in the Class List to fulfill their duties as Class Counsel under this Settlement Agreement, then Class Counsel and Defendants' Counsel are required to meet and confer on the issue; however, if Defendants object to such access, then Class Counsel must move *Ex Parte* regarding their request to access information in the Class List. The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any. Within fourteen (14) calendar days of receiving the Class List from Defendants, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain the Class List and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from the Final Approval Date.

(1) The Class Notice will set forth:

- (a) the Settlement Class Member's estimated Individual Settlement Payment and Individual PAGA Payment, and the basis for each;
- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);

- 1 (c) the material terms of the Settlement;
- 2 (d) the proposed Settlement Administration Costs;
- 3 (e) the definition of the Settlement Class;
- 4 (f) a statement that the Court has preliminarily approved the
- 5 Settlement;
- 6 (g) how the Settlement Class Member can obtain additional
- 7 information, including contact information for Class Counsel and
- 8 Defendants' Counsel;
- 9 (h) information regarding exclusion and objection procedures;
- 10 (i) the date and location of the Final Approval Hearing; and
- 11 (j) that the Settlement Class Member must notify the Settlement
- 12 Administrator no later than the Response Deadline if the
- 13 Settlement Class Member disputes the accuracy of the number of
- 14 Workweeks as set forth on his or her Class Notice ("Workweek
- 15 Dispute"). If a Settlement Class Member fails to timely dispute
- 16 the number of Workweeks attributed to him or her in conformity
- 17 with the instructions in the Class Notice, then he or she shall be
- 18 deemed to have waived any objection to its accuracy and any claim
- 19 to any additional settlement payment based on different data.

20 (2) If a Class Notice from the initial notice mailing is returned as

21 undeliverable, the Settlement Administrator will attempt to obtain a current address for the

22 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)

23 calendar days of receipt of the returned Class Notice, by undertaking skip tracing. If the

24 Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the

25 Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the

26 Settlement Administrator with a forwarding address before the Response Deadline shall be

27 promptly re-mailed to the forwarding address affixed thereto.

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1 (3) No later than seven (7) business days from the Response Deadline, the
2 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
3 completion of the notice process, including the number of attempts to obtain valid mailing
4 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
5 and copies of all Requests for Exclusion and objections/comments received by the Settlement
6 Administrator.

7 **B. Objections.**

8 Only Participating Class Members may object to the Settlement. In order for any
9 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
10 do so by mailing a written objection to the Settlement Administrator at the address or phone
11 number provided on the Class Notice no later than the Response Deadline. The Settlement
12 Administrator shall e-mail a copy of the Objection (including the mailing envelope evidencing
13 the postmark date) forthwith to Class Counsel and Defendants' counsel and attach copies of all
14 Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support
15 of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1) the
16 Objector's full legal name; (2) the Objector's mailing address; (3) the last four digits of the
17 Objector's Social Security Number (for identity verification purposes); (4) the Objector's
18 signature; (5) a statement of whether the Objector plans to appear at the Final Approval Hearing;
19 and (6) the reason(s) for the Objection, along with whatever legal authority, if any, the Objector
20 asserts in support of the Objection. If a Settlement Class Member objects to the Settlement, the
21 Settlement Class Member will remain a member of the Settlement Class and if the Court approves
22 this Agreement, the Settlement Class Member will be bound by the terms of the Settlement in
23 the same way and to the same extent as a Settlement Class Member who does not object. The
24 date of mailing of the Class Notice to the objecting Settlement Class Member shall be
25 conclusively determined according to the records of the Settlement Administrator. Settlement
26 Class Members need not object in writing to be heard at the Final Approval Hearing; they may
27 object or comment in person at the hearing at their own expense. Class Counsel and Defendants'
28

Counsel may respond to any objection lodged with the Court up to five (5) court days before the Final Approval Hearing.

C. Requesting Exclusion.

Any Settlement Class Member may request exclusion from (*i.e.*, “opt out” of) the Settlement by mailing a written request to be excluded from the Settlement (“Request for Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member’s full legal name; (2) the Class Member’s Social Security Number (for identity verification purposes); (3) the Class Member’s signature; and (4) the following statement: “Please exclude me from the Settlement Class in the *Lopez, et al. v. Waldorf Astoria Management LLC, et al.* matter” or any statement of similar meaning standing for the proposition that the Class Member does not wish to participate in the Settlement. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Defendants’ Counsel (including the mailing envelope evidencing the postmark date) and shall report the number of Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. If Class Counsel believe it is necessary to access information regarding who made a Request for Exclusion to fulfill their duties as Class Counsel under this Settlement Agreement, then Class Counsel and Defendants’ Counsel are required to meet and confer on the issue; however, if Defendants object to such access, then Class Counsel must move *Ex Parte* regarding their request to access information regarding who made a Request for Exclusion. Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will

control and the Objection will be overruled. Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Defendants' Counsel and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants' Counsel. If the dispute remains unresolved and Class Counsel believe it is necessary to access information regarding the unresolved dispute to fulfill their duties as Class Counsel under this Settlement Agreement, then Class Counsel and Defendants' Counsel are required to meet and confer on the issue; however, if Defendants object to such access, then Class Counsel must move *Ex Parte* regarding their request to access information regarding an unresolved dispute. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS MEMBERS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

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1 **A.** The Settlement Administrator will determine the total number of Workweeks
2 worked by each Settlement Class Member during the Class Period (“Class Member’s
3 Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class
4 Members during the Class Period (“Class Workweeks”). Additionally, the Settlement
5 Administrator will determine the total number of Workweeks worked by each Aggrieved
6 Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the
7 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
8 (“PAGA Workweeks”).

9 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
10 Settlement Administrator will use the following formula: Individual Settlement Share =
11 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

12 **C.** To determine each Participating Class Member’s Participating Individual
13 Settlement Share, the Settlement Administrator will determine the aggregate number of
14 Workweeks worked by all Participating Class Members during the Class Period (“Participating
15 Class Workweeks”) and use the following formula: Participating Individual Settlement Share
16 = (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net
17 Settlement Amount.

18 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
19 to Participating Class Members by way of check and is referred to as “Individual Settlement
20 Payment(s)”.

21 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
22 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
23 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$12,500.00
24 (the PAGA Payment).

25 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
26 to Participating Class Members and/or Aggrieved Employees by way of check. When a
27 Participating Class Member is also an Aggrieved Employee, one check may be issued that
28 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

1 **11. DISTRIBUTION OF PAYMENTS**

2 **A. Distribution of Individual Settlement Payments.**

3 Participating Class Members will receive an Individual Settlement Payment and
4 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
5 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
6 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
7 calendar days after expiration of the 180-day period, checks for such payments shall be
8 cancelled and funds associated with such checks will be distributed to the Controller of the
9 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
10 section 1500 et. seq., for the benefit of those Settlement Class Members and PAGA Members
11 who did not cash their checks until such time as they claim their property. The Parties agree
12 that this disposition results in no “unpaid residue” under the California Civil Procedure section
13 384, as Settlement Payments will be paid out to Settlement Class Members and PAGA
14 Members, whether or not they cashed their Settlement Checks, and that Defendants will not be
15 required to pay interest on said amount.

16 **B. Funding of Settlement.**

17 Defendants shall, within thirty (30) calendar days of the Effective Date, make payment
18 of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
19 Agreement) and Employer Taxes (which shall be determined by the Settlement Administrator),
20 to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit
21 in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured banking
22 institution, for distribution in accordance with this Agreement and the Court’s Orders and subject
23 to the conditions described herein.

24 **C. Time for Distribution.**

25 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
26 Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator
27 shall distribute Payments from the QSA for: (1) the Service Award to Plaintiffs as specified in
28 this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid

1 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
2 Administrator Costs, as specified in this Agreement and approved by the Court; (4) the LWDA
3 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
4 Payments as specified in this Agreement and approved by the Court. The balance remaining
5 shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be
6 made to Participating Class Members, less applicable taxes and withholdings. All interest
7 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
8 Participating Class Members based on the number of Workweeks worked by them in the Class
9 Period.

10 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

11 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
12 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
13 17 of this Agreement, amounts to Five Hundred, Sixty-Three Thousand, Five Hundred Dollars
14 and Zero Cents (\$563,500.00). Class Counsel shall further apply for, and Defendants shall not
15 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
16 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
17 up to Forty Thousand Dollars and Zero Cents (\$40,000.00). Awards of attorneys' fees and costs
18 shall be paid out of the Gross Settlement Amount for all past and future attorneys' fees and costs
19 necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action. The
20 "future" aspect of the amounts stated herein includes, without limitation, all time and expenses
21 expended by Class Counsel (including any appeals therein). There will be no additional charge
22 of any kind to either the Settlement Class Members or request for additional consideration from
23 Defendants for such work unless, Defendants materially breach this Agreement, including any
24 term regarding funding, and further efforts are necessary from Class Counsel to remedy said
25 breach, including, without limitation, moving the Court to enforce the Agreement. Should the
26 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than
27 the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net
28 Settlement Amount.

1 **13. SERVICE AWARDS TO PLAINTIFFS**

2 Named Plaintiffs shall seek, and Defendants shall not oppose, Service Awards in an
3 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) each,
4 for a total of Fifteen Thousand Dollars (\$15,000.00) to Plaintiff Lopez and Plaintiff Leyva, for
5 participation in and assistance with the Actions. Any Service Awards awarded to Plaintiffs shall
6 be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the
7 Court approves Service Awards to Plaintiffs in less than the amounts sought herein, then the
8 unapproved portion(s) shall be a part of the Net Settlement Amount.

9 **14. TAXATION AND ALLOCATION**

10 **A.** Each Individual Settlement Share shall be allocated as follows: 33% as wages (to
11 be reported on an IRS Form W-2); and 67% as interest, premiums, and penalties (to be reported
12 on an IRS Form 1099). The Individual PAGA Payments to the Aggrieved Employees shall be
13 characterized as non-wages (to be reported on an IRS Form 1099). The Parties agree that the
14 employee's share of taxes and withholdings with respect to the wage-portion of the Individual
15 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
16 Individual Settlement Payment. Income tax withholding will also be made pursuant to applicable
17 state and/or local withholding codes or regulations.

18 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator
19 at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
20 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
21 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
22 Section may be modified in a manner to bring Defendants into compliance with any such
23 changes.

24 **C.** All Employer Taxes shall be paid by Defendants separate, apart and above from
25 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
26 payroll taxes as described above.

27 **D.** The Parties make no representations as to the tax treatment or legal effect of the
28 payments specified herein, and Class Members are not relying on any statement or representation

1 by the Parties, Class Counsel or Defendants' Counsel in this regard. Participating Class
2 Members, Aggrieved Employees, and Class Counsel understand and agree that they shall be
3 responsible for the payment of all taxes and penalties assessed on the payments specified herein,
4 and shall hold the Parties, Class Counsel and Defendants' Counsel free and harmless from and
5 against any claims resulting from treatment of such payments as non-taxable, including the
6 treatment of such payments as not subject to withholding or deduction for payroll and
7 employment taxes.

8 **E.** The Parties acknowledge and agree that (1) no provision of this Agreement, and
9 no written communication or disclosure between or among the Parties, Class Counsel or
10 Defendants' Counsel and other advisers, is or was intended to be, nor shall any such
11 communication or disclosure constitute or be construed or be relied upon as, tax advice within
12 the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);
13 (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal
14 and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
15 entered into this Agreement based upon the recommendation of any other party or any attorney
16 or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure
17 by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
18 acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation
19 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
20 whether such limitation is legally binding) upon disclosure by the acknowledging party of the
21 tax treatment or tax structure of any transaction, including any transaction contemplated by this
22 Agreement.

23 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

24 The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the
25 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
26 (75%) of the amount allocated toward PAGA (\$37,500.00) will be paid to the LWDA (*i.e.*, the
27 LWDA Payment), and twenty-five percent (25%) (\$12,500.00) will be distributed to Aggrieved
28 Employees on a *pro rata* basis, based upon their respective Workweeks in the PAGA Period.

1 **16. COURT APPROVAL**

2 This Agreement is contingent upon an order by the Court granting Final Approval of the
3 Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event
4 it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the
5 Parties shall be restored to their respective positions in the Actions prior to entry of this
6 Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is
7 reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except
8 to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying
9 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
10 stated to survive the Settlement Agreement being voided or not approved, and which control in
11 such an event.

12 **17. INCREASE IN WORKWEEKS**

13 Defendants represent that there are approximately 136,000 Workweeks worked during
14 the Class Period. If there is a 10% increase in the number of workweeks, which is estimated
15 to be approximately 136,000 workweeks, it would trigger an escalator provision where
16 Defendants would have the choice between either (1) the gross settlement amount would
17 increase by 1% for every 1% increase in workweeks over the 10% threshold, or, at Defendants'
18 sole option (2) the post acceptance portion of the Covered Period of 90 days or the date of
19 preliminary approval would be scaled back to a date between the date the stipulation of
20 settlement is signed and the date the additional workweeks would reach a number that would
21 cause the escalator provision to be triggered.

22 **18. NOTICE OF JUDGMENT**

23 In addition to any duties set out herein, the Settlement Administrator shall provide
24 notice of the Final Judgment entered in the Actions by posting the same on its website for at
25 least three (3) years after the Judgment becomes final.

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1 **19. MISCELLANEOUS PROVISIONS**

2 **A. Interpretation of the Agreement.**

3 This Agreement constitutes the entire agreement between the Parties with respect to its
4 subject matter. Except as expressly provided herein, this Agreement has not been executed in
5 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
6 written representations or terms shall modify, vary or contradict its terms. In entering into this
7 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
8 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
9 enforced under the laws of the State of California, both in its procedural and substantive aspects,
10 without regard to its conflict of law provisions. Any claim arising out of or relating to the
11 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
12 Court of the State of California for the County of Los Angeles, and Plaintiffs and Defendants
13 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
14 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
15 and each of them, participated in the negotiation and drafting of this Agreement and had available
16 to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor
17 Defendants may claim that any ambiguity in this Agreement should be construed against the
18 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
19 approved by the Court.

20 **B. Further Cooperation.**

21 The Parties and their respective attorneys shall proceed diligently to prepare and execute
22 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
23 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
24 will not take any action inconsistent with this Agreement, including, without limitation,
25 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
26 Party has taken actions inconsistent with the Settlement, including, without limitation,
27 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
28 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*

1 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
2 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
3 opt-outs and/or objections.

4 **C. Counterparts.**

5 The Agreement may be executed in one or more actual or non-original counterparts, all
6 of which will be considered one and the same instrument and all of which will be considered
7 duplicate originals.

8 **D. Authority.**

9 Each individual signing below warrants that he or she has the authority to execute this
10 Agreement on behalf of the party for whom or which that individual signs.

11 **E. No Third-Party Beneficiaries.**

12 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,
13 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
14 party beneficiaries.

15 **F. Deadlines Falling on Weekends or Holidays.**

16 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
17 or legal holiday, that deadline shall be continued until the following business day.

18 **G. Severability.**

19 In the event that one or more of the provisions contained in this Agreement shall for any
20 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
21 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
22 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
23 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

24 **H. Confidentiality.**

25 The Parties hereby expressly agree that any settlement that occurs between the Parties,
26 including this Settlement Agreement, shall remain confidential until a stipulation for preliminary
27 approval is filed with the Court.

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1 **I. Publicity.**

2 Neither Plaintiffs nor Class Counsel will publicize the Settlement in any way. Class
3 Counsel will take all steps necessary to ensure the Class Representatives are aware of, and will
4 encourage them to adhere to, the restriction against any publicity. After preliminary approval,
5 neither Plaintiffs nor Class Counsel will issue any press release or initiate any communication
6 with and, if contacted by media will only discuss information publicly available related in any
7 way to the Settlement. Class Counsel will not include or use the settlement for any marketing or
8 promotional purposes or through any social media, website and/or professional organization such
9 as CELA.

10 **J. Binding Nature of Notice of Class Action Settlement.**

11 It is agreed that, because the Class Members are so numerous, it is impossible or
12 impractical to have each Class Member execute the Agreement. The Class Notice shall advise
13 all Class Members of the binding nature of the Settlement, and the release of Released Claims
14 and shall have the same force and effect as if this Agreement were executed by each Participating
15 Class Member.

16 **K. Settlement Payments Do Not Trigger Additional Benefits.**

17 All settlement payments to Class Members and Aggrieved Employees shall be deemed
18 to be paid to such Class Members and Aggrieved Employees solely in the year in which such
19 payments actually are received by the Class Members and Aggrieved Employees. It is
20 expressly understood and agreed that the receipt of such individual settlement payments will
21 not entitle any Class Member or Aggrieved Employee to additional compensation or benefits
22 under any of Released Parties' bonus, commission or other compensation or benefit plan or
23 agreement in place during the period covered by the Settlement, including but not limited to
24 any collective bargaining agreement or related benefit agreement, nor will it entitle any Class
25 Member or Aggrieved Employee to any increased retirement fund, 401K benefits or matching
26 benefits, benefit plan, or deferred compensation benefits. It is the intent of this Settlement that
27 the individual settlement awards provided for in this Settlement are the sole payments to be
28 made by Defendants to the Class Members and Aggrieved Employees, and that the Class

1 Members and Aggrieved Employees are not entitled to any new or additional compensation or
2 benefits as a result of having received the individual settlement awards (notwithstanding any
3 contrary language or agreement in any benefit or compensation plan document that might have
4 been in effect during the period covered by this Settlement).

5 **L. No Prior Assignments.**

6 The Plaintiffs and their counsel represent, covenant, and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
8 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
9 action or right herein released and discharged.

10 **M. Rescission of Settlement Agreement by Defendants.**

11 If Class Members comprising more than three percent (3%) of the total Workweeks
12 worked by Class Members during the Class Period opt-out of the Settlement by submitting
13 Request for Exclusion forms, Defendants may, at their option, rescind and void the Settlement
14 and all actions taken in furtherance of it will thereby be null and void. Defendants must
15 exercise this right of rescission, in writing, to Class Counsel within twenty-one (21) calendar
16 days after the Settlement Administrator notifies the Parties of the total number of Requests for
17 Exclusion received by the Response Deadline and total number of shifts associated with such
18 Requests for Exclusion.

19 **N. Nullification of Settlement Agreement.**

20 In the event that: (a) the Court does not finally approve the Settlement as provided
21 herein; or (b) the Settlement does not become final for any other reason, then this Settlement
22 Agreement, and any documents generated to bring it into effect, will be null and void. Any
23 order or judgment entered by the Court in furtherance of this Settlement Agreement will
24 likewise be treated as void from the beginning.

25 **O. Acknowledgement that the Settlement is Fair and Reasonable.**

26 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable
27 settlement of the Action and have arrived at this Settlement after arm's-length negotiations and
28 in the context of adversarial litigation, taking into account all relevant factors, present and

1 potential. The Parties further acknowledge that they are each represented by competent counsel
2 and that they have had an opportunity to consult with their counsel regarding the fairness and
3 reasonableness of this Agreement.

4 **P. Invalidity of Any Provision.**

5 Before declaring any provision of this Settlement Agreement invalid, the Court will
6 first attempt to construe the provision as valid to the fullest extent possible consistent with
7 applicable precedents so as to define all provisions of this Settlement Agreement valid and
8 enforceable.

9 **Q. Plaintiffs' Waiver of Right to Be Excluded and Object.**

10 Plaintiffs agree to sign this Settlement Agreement and, by signing this Settlement
11 Agreement, are hereby bound by the terms herein. For good and valuable consideration,
12 Plaintiffs further agree that they will not request to be excluded from the Settlement Agreement,
13 nor object to any terms herein. Any such request for exclusion or objection by Plaintiffs will
14 be void and of no force or effect. Any efforts by Plaintiffs to circumvent the terms of this
15 paragraph will be void and of no force or effect.

16 **R. Captions/Headings.**

17 The captions, headings and section numbers in this Agreement are inserted for the
18 reader's convenience, and in no way define, limit, construe or describe the scope or intent of
19 the provisions of this Agreement.

20 **S. Waiver.**

21 No waiver of any condition or covenant contained in this Agreement or failure to
22 exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
23 a further waiver by such party of the same or any other condition, covenant, right or remedy.

24 **T. Mutual Preparation.**

25 The Parties have had a full opportunity to negotiate the terms and conditions of this
26 Agreement. Accordingly, this Agreement will not be construed more strictly against one party
27 than another merely by virtue of the fact that it may have been prepared by counsel for one of
28 the Parties, it being recognized that, because of the arms-length negotiations between the

Parties, all Parties have contributed to the preparation of this Agreement.

U. Integration Clause.

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

V. Notice.

All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

W. To Plaintiffs and the Class:

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)
david@tomorrowlaw.com
Diego Aviles (Cal. Bar No. 315533)
diego@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

Alexander I. Dychter (SBN 234526)
S. Adam Spiewak (SBN 230872)
DYCHTER LAW OFFICES, APC
180 Broadway, Suite 1835
San Diego, California 92101
Tel: (619) 487-0777; Fax: (619) 330-1827
E-Mail: alex@dychterlaw.com
E-Mail: adam@dychterlaw.com

Walter L. Haines (SBN 71075)
United Employees Law Group, PC
4276 Katella Ave., Suite 301
Los Alamitos, California 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006
E-Mail: admin@uelglaw.com

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To Defendants:

Cynthia L. Filla (SBN 184638)
Connie L. Chen (SBN 275649)
Paul J. Cohen (SBN 293797)
Jackson Lewis, PC
715 S. Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
E-Mail: Cynthia.Filla@jacksonlewis.com
Connie.Chen@jacksonlewis.com
Paul.Cohen@jacksonlewis.com

X. Stay of Litigation.

The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

IT IS SO AGREED:

Dated: Aug 12, 2022, 2022


Alejandro Lopez (Aug 12, 2022 14:55 PDT)

ALEJANDRO LOPEZ
Plaintiff and Class Representative

Dated: _____, 2022

NOELIA LEYVA
Plaintiff and Class Representative

Dated: _____, 2022

Name: _____
Its: _____ of
WALDORF ASTORIA MANAGEMENT
LLC

Dated: _____, 2022

Name: _____
Its: _____ of
WALDORF=ASTORIA EMPLOYER
LLC

1 **AGREED AS TO FORM:**

2
3 Dated: August 12, 2022

Vedang J. Patel
DAVID D. BIBIYAN
VEDANG J. PATEL
Bibiyon Law Group, P.C.
Counsel for Plaintiffs Alejandro Lopez

4
5
6
7 Dated: _____, 2022

Alexander I. Dychter
Dychter Law Offices, APC
Co-Counsel for Plaintiff Noelia Leyva

8
9
10
11 Dated: _____, 2022

Walter L. Haines
United Employees Law Group, PC
Co-Counsel for Plaintiff Noelia Leyva

12
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14
15 Dated: _____, 2022

Cynthia L. Filla
Jackson Lewis P.C.
**Counsel for Defendants Waldorf Astoria
Management LLC; and Waldorf=Astoria
Employer LLC**

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To Defendants:

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Paul.Cohen@jacksonlewis.com

X. Stay of Litigation.

The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

IT IS SO AGREED:

Dated: _____, 2022

ALEJANDRO LOPEZ
Plaintiff and Class Representative

Dated: **Aug 8, 2022**, 2022



NOELIA LEYVA
Plaintiff and Class Representative

Dated: _____, 2022

Name: _____
Its: _____ of
WALDORF ASTORIA MANAGEMENT
LLC

Dated: _____, 2022

Name: _____
Its: _____ of
WALDORF=ASTORIA EMPLOYER
LLC

1 **AGREED AS TO FORM:**

2
3 Dated: _____, 2022

4 _____
5 DAVID D. BIBIYAN
6 VEDANG J. PATEL
7 Bibiyan Law Group, P.C.
8 **Counsel for Plaintiffs Alejandro Lopez**

9
10 Dated: August 8, 2022

11 
12 Alexander I. Dychter
13 Dychter Law Offices, APC
14 **Co-Counsel for Plaintiff Noelia Leyva**

15 Dated: August 8, 2022

16 
17 Walter L. Haines
18 United Employees Law Group, PC
19 **Co-Counsel for Plaintiff Noelia Leyva**

20 Dated: _____, 2022

21 _____
22 Cynthia L. Filla
23 Jackson Lewis P.C.
24 **Counsel for Defendants Waldorf Astoria**
25 **Management LLC; and Waldorf=Astoria**
26 **Employer LLC**

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To Defendants:

Cynthia L. Filla (SBN 184638)
Connie L. Chen (SBN 275649)
Paul J. Cohen (SBN 293797)
Jackson Lewis, PC
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X. Stay of Litigation.

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IT IS SO AGREED:

Dated: _____, 2022

ALEJANDRO LOPEZ
Plaintiff and Class Representative

Dated: _____, 2022

NOELIA LEYVA
Plaintiff and Class Representative

Dated: August 8, 2022, 2022


Name: W. STEVEN STANDERFER
Its: SVP of
WALDORF ASTORIA MANAGEMENT
LLC

Dated: August 8, 2022, 2022


Name: W. STEVEN STANDERFER
Its: SVP of
WALDORF=ASTORIA EMPLOYER
LLC

1 **AGREED AS TO FORM:**

2
3 Dated: _____, 2022

DAVID D. BIBIYAN
VEDANG J. PATEL
Bibiyon Law Group, P.C.
Counsel for Plaintiffs Alejandro Lopez

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5
6
7 Dated: _____, 2022

Alexander I. Dychter
Dychter Law Offices, APC
Co-Counsel for Plaintiff Noelia Leyva

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10
11 Dated: _____, 2022

Walter L. Haines
United Employees Law Group, PC
Co-Counsel for Plaintiff Noelia Leyva

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15 Dated: August 19 _____, 2022



Cynthia L. Filla
Jackson Lewis P.C.
**Counsel for Defendants Waldorf Astoria
Management LLC; and Waldorf=Astoria
Employer LLC**