

PAGA SETTLEMENT AGREEMENT

This Private Attorneys General Act (“PAGA”) Settlement Agreement (“Agreement”) is made by and between Plaintiff Mackenzie Heyman (“Plaintiff”) and Defendant Irvine Management Company. The Agreement refers to Plaintiff and Irvine Management Company collectively as “Parties,” or individually as “Party.”

This Agreement shall be binding on Plaintiff, on the Aggrieved Employees (as defined below), on the State of California and its state labor law enforcement agencies (including but not limited to the Labor and Workforce Development Agency (LWDA) and its department, divisions, commissions, boards, agencies and employees), and on Irvine Management Company, subject to the terms and conditions hereof and the approval of the Court.

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned *Heyman v. The Resort at Pelican Hill, LLC, et al.*, Case No. 30-2020-01145518-CU-OE-CXC initiated on May 26, 2020 and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Irvine Management Company at The Resort at Pelican Hill in California and classified as non-exempt employees during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.8. “Court” means the Superior Court of California, County of Orange.

- 1.9. “Defendants” means named Defendants The Resort at Pelican Hill, LLC, Irvine Management Company, and The Irvine Company, LLC.
- 1.10. “Defense Counsel” means Call & Jensen APC.
- 1.11. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement; and (b) the Judgment is final. The Judgment is final as of the day the Court enters Judgment.
- 1.12. “Gross Settlement Amount” means \$1,000,000.00, which is the total amount Defendant Irvine Management Company agree to pay under the Settlement, except as provided in Paragraph 8 below and the Plaintiff Individual Settlement Amount. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Service Award, and the Administrator’s Expenses Payment.
- 1.13. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.14. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.15. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.16. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Service Award, and the Administration Expenses Payment. The remainder is the Net Settlement Amount, to be paid to Aggrieved Employees as Individual PAGA Payments and to the LWDA as a LWDA PAGA Payment, which, together, are the PAGA Penalties.
- 1.18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*
- 1.19. “PAGA Counsel” means Schneider Wallace Cottrell Konecky LLP, the attorneys representing the Plaintiff in the Action.
- 1.20. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action. PAGA Counsel will not seek more than \$350,000 (35% of the Gross Settlement Amount) as the PAGA Counsel Fees Payment.

- 1.21. "PAGA Pay Periods" means the total number of Pay Periods that an Aggrieved Employee worked during the PAGA Period.
- 1.22. "PAGA Period" means the period from April 7, 2019 to January 2, 2024.
- 1.23. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).
- 1.24. "PAGA Notice" means Plaintiff's April 7, 2019 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.25. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated as 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.26. "Plaintiff" means Mackenzie Heyman, the named plaintiff in the Action.
- 1.27. "Plaintiff Individual Settlement Amount" means \$75,000.00, less deductions and other authorized payroll withholdings, and is the amount Defendants agree to pay to Plaintiff under the Settlement in exchange for a general release set forth in Paragraph 5.3 below. The Plaintiff Individual Settlement Amount shall be allocated as follows: \$18,500 to damages and penalties to be paid to Plaintiff, and \$56,500 to constitute compensation to PAGA Counsel for attorneys' fees and costs incurred by Plaintiff. The employer's share of payroll taxes shall not be paid from the Individual Settlement Amount and shall remain the sole responsibility of Defendant Irvine Management Company. This payment is contingent upon Court approval of the PAGA settlement. Plaintiff shall receive an IRS Form W-2 for the portion of the settlement allocated to wages and an IRS Form 1099 for the portion of the settlement allocated to penalties.
- 1.28. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.29. "Released Parties" means Defendants and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, divisions, trustees, employees, agents, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, joint employers, insurers and related corporations.
- 1.30. "Service Award" means the payment to named Plaintiff Mackenzie Heyman for her efforts in bringing and prosecuting this matter. The Service Award will not exceed Ten Thousand Dollars (\$10,000.00) for Plaintiff Mackenzie Heyman.
- 1.31. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. On May 26, 2020, Plaintiff commenced this Action by filing a Class Action Complaint, alleging causes of action against Defendants for (i) unlawful business practices for failure to pay all gratuities owed; (ii) intentional interference with prospective economic advantage; (iii) conversion; (iv) unjust enrichment; (v) failure to provide timely and accurate itemized wage statements; (vi) waiting time penalties; and (vii) unlawful business practices under Business & Professions Code section 17200, *et seq.* On July 16, 2020, Plaintiff filed a First Amended Class Action and Private Attorneys General Act Complaint (“First Amended Complaint”) alleging causes of action against Defendants for (i) unlawful business practices for failure to pay all gratuities owed; (ii) intentional interference with prospective economic advantage; (iii) conversion; (iv) unjust enrichment; (v) failure to provide timely and accurate itemized wage statements; (vi) waiting time penalties; (vii) unlawful business practices under Business & Professions Code section 17200, *et seq.*; (viii) failure to provide employee records; (ix) PAGA violations under Labor Code section 2699(a); and (x) PAGA violations under Labor Code 2699(f).
- 2.2. Defendants deny the allegations in the First Amended Complaint, deny any failure to comply with the laws identified in in the First Amended Complaint and deny any and all liability for the causes of action alleged. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law.
- 2.3. On November 16, 2020, the Court compelled Plaintiff’s individual wage and hour claims to arbitration, and stayed the representative PAGA claim and class claims pending the arbitration, ruling that the enforceability of the class action waiver would need to be determined by the arbitrator. On July 9, 2021, Plaintiff filed a Demand for Arbitration against Defendants asserting her individual claims but did not pursue class claims.
- 2.4. On August 4, 2023, in light of the holding in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, the Court further compelled Plaintiff’s individual PAGA claim to arbitration. On March 18, 2023, Plaintiff filed the First Amended Demand for Arbitration, adding her individual PAGA claim to the demand.
- 2.5. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.6. On May 17, 2023, the Parties participated in an all-day mediation presided over by Steve Pearl, which was not successful. Subsequently, on January 2, 2024, the Parties participated in an all-day mediation presided over by Steven Rottman, which led to this Agreement to settle the Action.
- 2.7. Prior to mediation, Plaintiff obtained, through informal discovery, a 10% sampling of payroll and time records for the Aggrieved Employees, relevant agreements, policies, and procedures, along with figures and information regarding the number of Aggrieved

Employees and PAGA Pay Periods. The Parties also exchanged formal written discovery in arbitration.

- 2.8. As a material term of this settlement, Plaintiff will formally dismiss her class claims and will amend the First Amended Complaint to assert all PAGA claims that were alleged in the PAGA Notice. That newly amended complaint will become the operative complaint.
- 2.9. Except as necessary in a proceeding to enforce the terms of this Settlement, this Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Irvine Management Company promises to pay \$1,000,000.00 and no more as the Gross Settlement Amount. Irvine Management Company has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 35% which is currently estimated to be \$350,000 and PAGA Counsel Litigation Expenses Payment as documented in PAGA Counsel's billing statements, currently estimated not to exceed \$30,000. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$13,550 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$13,550, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.3. To the Plaintiff: A Service Award of not more than \$10,000. To the extent the Service Award is less or the Court approves payment less than \$10,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties constituting 75% of the Net Settlement Amount allocated to the LWDA PAGA Payment and constituting 25% of the Net Settlement Amount allocated to the Individual PAGA Payments.
- 3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (the Individual PAGA Payments) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.3 Plaintiff Individual Settlement Amount: In addition to the Gross Settlement Amount, Defendant Irvine Management Company shall also pay Plaintiff the Plaintiff Individual Settlement Amount (\$75,000, less deductions and other authorized payroll withholdings) in exchange for the general release set forth in Paragraph 5.3. The employer's share of payroll taxes shall not be paid from the Plaintiff Individual Settlement Amount and shall remain the sole responsibility of the employer. This payment is contingent upon Court approval of the Settlement, and Defendant Irvine Management Company shall have no obligation to pay the Plaintiff Individual Settlement Amount if the Settlement is not approved.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 1,941 Aggrieved Employees who worked a total 58,496 PAGA Pay Periods. Defendants' counsel (or other authorized representative for Defendants) will provide a declaration stating the number of Aggrieved Employees and pay periods worked during the PAGA Period upon execution of this Agreement.
- 4.2. Aggrieved Employee Data. Within 10 days of preliminary approval of the Settlement, Defendant Irvine Management Company will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the

Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant Irvine Management Company has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant Irvine Management Company must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

- 4.3. Funding of Gross Settlement Amount. Irvine Management Company shall fully fund the Gross Settlement Amount and Plaintiff Individual Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Irvine Management Company funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Service Award, and the PAGA Counsel Expenses Payment.
 - 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. If deemed necessary by the court, simultaneous with the checks issued pursuant to paragraph 4.4.1 above, the Administrator will mail a letter explaining the reason why the Aggrieved Employee is receiving a check, substantially in the form attached as **Exhibit A**, to the Aggrieved Employees along with the Individual PAGA Payment checks.
 - 4.4.3. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, as requested by the Aggrieved Employee prior to the void date.
 - 4.4.4. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall tender one-half of the funds represented by such checks to Irvine Public School Foundation, and the

remaining half of the funds represented by such checks to the Legal Aid at Work as the *cy pres* designees, with approval by the Court. The Parties do not have a connection to or a relationship with Irvine Public School Foundation or the Legal Aid at Work that could reasonably create the appearance of impropriety as between the selection of Irvine Public School Foundation or Legal Aid at Work as the recipient of the unclaimed residuals and the interests of the class.

- 4.4.5. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- 4.5. Payment of the Plaintiff Individual Settlement Amount. Within 14 days after Irvine Management Company funds the Plaintiff Individual Settlement Amount, the Administrator will mail checks to Plaintiff and to PAGA Counsel, pursuant to Paragraph 1.27.

5. RELEASES OF CLAIMS. Effective on the date when Irvine Management Company fully funds the entire Gross Settlement Amount, the following claims will be released against all Released Parties as follows:

- 5.1 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all PAGA claims for civil penalties under California Labor Code Sections 2698, et seq., predicated on the California Labor Code violations that are asserted in the LWDA Notice and operative complaint (or PAGA claims that could have been asserted based on the alleged Labor Code violations as well as the facts alleged in the operative LWDA Notice and which will be reflected in the amended complaint) which are for civil penalties pursuant to Labor Code section 2699, et seq. for violations of Labor Code sections 201, 202, 203, 204, 225.5, 226, 226.3, 226.7, 256, 351, 432, 510, 512, 1194, 1197, 1198.5, 2802 and applicable Industrial Welfare Commission Wage Orders during the PAGA Period. The release does not include underlying Labor Code claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and workers' compensation, and claims outside of the PAGA Period. The Released Claims do not include any claims that cannot be released as a matter of law.
- 5.2 Release Language on Settlement Checks. The Administrator shall include the following release language on the back of each Individual PAGA Payment check, as appropriate for Plaintiff and the Aggrieved Employees:

“This check is your settlement payment in connection with the court approved Settlement in *Heyman v. The Resort at Pelican Hill, LLC, et al.*, Case No. 30-2020-01145518-CU-OE-CXC, Superior Court of California, County of Orange. You are receiving this check as an Aggrieved Employee as defined in the Settlement Agreement, for claims under the Private Attorneys General Act.”

5.3 Effective on the date when Irvine Management Company fully funds the entire Plaintiff Individual Settlement Amount, Plaintiff will also release claims against all Released Parties as follows:

5.3.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences arising from or related to her employment at The Resort at Pelican Hill or termination thereof, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on her employment at The Resort at Pelican Hill through the PAGA Period ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.3.2 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** Plaintiff's Counsel shall draft and file a motion for preliminary approval of this Settlement within thirty (30) days of execution of this Agreement.

6.1 Plaintiff's Responsibilities. Plaintiff will request that the Court dismiss without prejudice Plaintiff's class action claims.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel will prepare and deliver to Defense Counsel the following documents for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense

Counsel; and (iii) an amended complaint to include the facts, theories and alleged labor code violations set forth in Plaintiff's LWDA pre-filing notice letter, the operative complaint (Labor Code section 2699, subd. (1)(1)), and this Agreement (Labor Code section 2699, subd. (1)(2)). PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Tax Treatment of Settlement Amounts. With regard to the settlement payments to Aggrieved Employees, IRS Form 1099s will be issued. With regard to the Plaintiff Individual Settlement Amount, the payment of \$18,500 to Plaintiff shall be allocated as 40% to wages for which an IRS Form W-2 will be issued to Plaintiff; and 60% allocated to penalties and interest for which an IRS Form 1099 will be issued to Plaintiff. With regard to the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment, IRS Form 1099 will be issued to PAGA Counsel.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendants estimate that there were 1,941 Aggrieved Employees who worked 58,496 Pay Periods during the PAGA Period. If that amount of pay periods during the PAGA Period is determined to be more than 10% higher than the estimate at mediation of 56,564 pay periods, then the Gross Settlement Amount shall be increased proportionally by the amount of pay periods over the 10% increase.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the operative complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, 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 reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibit will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the

mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data. The copies and summaries of the PAGA Data and paper and electronic versions of Aggrieved Employee Data discussed in this paragraph does not include any notes, summaries, or other work product prepared by PAGA Counsel.

- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with 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, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Carolyn H. Cottrell
Ori Edelstein
Michelle S. Lim
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
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To Defendants:

Julie R. Trotter
Jacqueline Beaumont
L. Lisa Sandoval
CALL & JENSEN, A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
jtrotter@calljensen.com
jbeaumont@calljensen.com
lsandoval@calljensen.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 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. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330, the date to bring a case to trial under CCP section 583.310 is extended for the entire period of this settlement process.

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

READ CAREFULLY BEFORE SIGNING.



Plaintiff Mackenzie Heyman

Defendant The Resort at Pelican Hill, LLC

03 / 19 / 2024

Date

Date

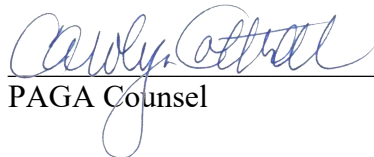
Defendant Irvine Management Company

Defendant The Irvine Company, LLC

Date

Date

APPROVED AS TO FORM:



PAGA Counsel

Counsel for Defendants

March 20, 2024

Date

Date

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APPROVED AS TO FORM:

PAGA Counsel

Date

Counsel for Defendants

Julie R. Trotter

March 20, 2024

Date