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Attorneys for Plaintiffs, KENIA BARAHONA, ANA MARIA GUARNIZO, ANEYSI REYES, and JUANA VALENCIA ROJAS on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

KENIA BARAHONA, ANA MARIA GUARNIZO, ANEYSI REYES, and JUANA VALENCIA ROJAS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE BELVEDERE HOTEL PARTNERSHIP, d.b.a. THE PENINSULA BEVERLY HILLS, a California partnership; PENINSULA BEVERLY HILLS HOTEL MANAGEMENT, INC., a Delaware corporation; PENINSULA BEVERLY HILLS, INC., a Delaware corporation; PENINSULA BEVERLY HILLS HOLDINGS, LLC, a Delaware limited liability company; and DOES 1 through 100 inclusive,

Defendants,

CASE NO.: 20STCV17148

[Assigned to the Hon. Daniel J. Buckley
Dept. 1]

CLASS ACTION

JOINT STIPULATION RE: CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT

Action Filed: April 30, 2020

Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among plaintiff Juana Valencia Rojas (“Plaintiff”), individually and on behalf of the Settlement Class, as defined below, on the one hand; and defendant All Day Service, Inc., (“ALDI”), (“Defendant”), on the other hand, in the lawsuit entitled *Barahona, et al. v. The Belvedere Hotel Partnership, et al.* filed in Los Angeles County Superior Court, Case No. 20STCV17148 (the “Action”). Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties.”

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. “**Action**” means *Barahona, et al. v. The Belvedere Hotel Partnership, et al.* filed in Los Angeles County Superior Court, Case No. 20STCV17148.

B. “**Aggrieved Employees**” means Class Members working for Defendant during the PAGA Period as non-exempt, hourly-paid employees at the Peninsula Beverly Hills Hotel, located at 9882 S. Santa Monica Boulevard, Beverly Hills, California, 90212.

C. “**Class Counsel**” means: David D. Bibiyan, Diego Aviles and Sara Ehsani-Nia of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “**Class Period**” means the period from April 30, 2016, through and including May 5, 2021.

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

F. “**Defendant**” shall refer to defendant All Day Service, Inc.

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

H. “**Final Approval Date**” means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

I. “**General Release**” means the general release of claims by Plaintiff, which is in addition to her limited release of claims as a Participating Class Member and Aggrieved Employee.

1 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Two
2 Hundred Thousand Dollars and Zero Cents (\$200,000.00),¹ which shall be paid by Defendant in
3 two installments. As for the first payment, Defendant shall have until the later of: (1) thirty (30)
4 days after final approval; or (2) January 1, 2022, to make a payment of half of the Gross
5 Settlement Amount. As for the second payment, Defendant shall have until January 1, 2023, to
6 make a payment of the second half of the Gross Settlement Amount, as well as the Employer
7 Taxes necessary to effectuate the Settlement, and from which all payments for the Individual
8 Settlement Payments to Participating Class Members, Individual PAGA Payments to Aggrieved
9 Employees and the Court-approved amounts for attorneys’ fees and reimbursement of litigation
10 costs and expenses to Class Counsel, Settlement Administration Costs, a Service Award to
11 Plaintiff, and the payment made to the Labor and Workforce Development Agency (“LWDA”)
12 for resolution of Plaintiff’s cause of action for civil penalties under the Labor Code Private
13 Attorneys’ General Act, codified at Labor Code Section 2698, *et seq.* (“PAGA”), interest and
14 certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by
15 Defendant separate and apart from the Gross Settlement Amount.

16 **K. “Individual PAGA Payment”** means a payment made to an Aggrieved
17 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
18 Individual Settlement Share.

19 **L. “Individual Settlement Payment”** means a payment to a Participating Class
20 Member of his or her net share of the Net Settlement Amount, excluding any Individual PAGA
21 Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

22 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
23 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
24 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
25 submit a timely and valid Request for Exclusion, excluding any Individual PAGA Payment to
26 which he or she may be entitled if he or she is also an Aggrieved Employee.

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¹ As the same may be increased in accordance with Paragraph 16, below.

1 **N. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
2 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
3 from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
4 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties, of which Seven Thousand,
5 Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA
6 Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00) will remain a
7 part of the Net Settlement Amount for payment to Participating Class Members on a *pro rata*
8 basis (*i.e.*, the PAGA Payment).

9 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
10 that is available for distribution to Participating Class Members after deductions for the Court-
11 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
12 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
13 Payment, and the PAGA Payments.

14 **P. “PAGA Payment”** is the payment made to Aggrieved Employees in addition to
15 their Individual Settlement Share.

16 **Q. “PAGA Period”** means the period from April 30, 2019 through and including
17 May 5, 2021.

18 **R. “Participating Class Members”** means all Settlement Class Members who do
19 not submit a timely and valid Request for Exclusion.

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

25 **T. “Parties”** shall refer to Plaintiff and Defendant collectively.

26 **U. “Plaintiff”** shall refer to Plaintiff Juana Valencia Rojas.

27 **V. “Preliminary Approval Date”** means the date on which the Court enters an
28 Order granting preliminary approval of the Settlement.

1 **W. “Released Parties”** shall mean Defendant and each of its past, present, and future
2 respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and
3 assigns, and each of these entities’ past or present directors, officers, employees, partners,
4 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and
5 personal or legal representatives.

6 **X. “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, or, if the Class Notice is re-mailed, fifteen (15)
10 calendar days after remailing, whichever is later. The date of the postmark shall be the exclusive
11 means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was
12 submitted by the Response Deadline.

13 **Y. “Request for Exclusion”** means a written request to be excluded from the
14 Settlement Class pursuant to Section 9.C below.

15 **Z. “Service Award”** means monetary amount to be paid to Plaintiff of up to Five
16 Thousand Dollars and Zero Cents (\$5,000.00) which, subject to Court approval, will be paid out
17 of the Gross Settlement Amount.

18 **AA. “Settlement Administration Costs”** means all costs incurred by the Settlement
19 Administrator in administration of the Settlement, including, but not limited to, translating the
20 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
21 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
22 Individual PAGA Payments and associated taxes and withholdings, providing declarations,
23 generating Individual Settlement Payment and/or Individual PAGA Payment checks and related
24 tax reporting forms, doing administrative work related to unclaimed checks, transmitting
25 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
26 of litigation costs and expenses, to Plaintiff for her Service Award, and to the LWDA from the
27 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
28 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to

1 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
2 \$8,000. If the actual amount of the Settlement Administration Costs is less than \$8,000, the
3 difference between \$8,000 and the actual Settlement Administration Costs shall be a part of the
4 Net Settlement Amount. If the Settlement Administration Costs exceed \$8,000 then such excess
5 will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for
6 paying any additional funds in order to pay these additional costs.

7 **BB. “Settlement Administrator”** means the Third-Party Administrator chosen that
8 will be responsible for the administration of the Settlement including, without limitation,
9 translating the Class Notice in Spanish, the distribution of the Individual Settlement Payments to
10 be made by Defendant from the Gross Settlement Amount and related matters under this
11 Agreement.

12 **CC. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
13 all current and former non-exempt, hourly paid employees who worked at the Peninsula Beverly
14 Hills Hotel, located at 9882 S. Santa Monica Boulevard, Beverly Hills, California, 90212. for
15 Defendant at any time during the Class Period.

16 **DD. “Workweeks”** means the number of weeks that a Settlement Class Member was
17 employed by Defendant, using hire and termination dates, at the Peninsula Beverly Hills Hotel,
18 in a non-exempt, hourly position during the Class Period. If a Settlement Class Member disputes
19 his/her Individual Settlement Share or Individual PAGA Payment, it shall be termed a
20 “Workweek Dispute.”

21 **2. BACKGROUND**

22 **A.** On April 29, 2020, Plaintiff filed with the LWDA and served on Defendant a
23 notice under Labor Code section 2699.3 (the “PAGA Notice”) stating Plaintiff intended to serve
24 as a proxy of the LWDA to recover civil penalties for Aggrieved Employees.

25 **B.** On April 30, 2020, Plaintiff filed a putative wage-and-hour class action complaint
26 against Defendant. The alleged that during the Class Period, with respect to themselves and those
27 similarly situated, Defendant, *inter alia*, (1) failed to pay overtime wages; (2) failed to pay
28 minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to

1 provide rest periods or compensation in lieu thereof; (5) failed to pay wages due at termination
2 or resignation; (6) failed to provide accurate wage statements; and (7) unfairly competed under
3 the Business and Professions Code in the Superior Court of California, County of Los Angeles,
4 Case number 20STCV17148 (the “Class Action”)

5 **C.** On October 23, 2020, when 65 days passed without any communication from the
6 LWDA, Plaintiff filed a First Amended Complaint (“FAC”) in the Class Action (hereinafter, the
7 “Litigation”, “Action”, or “Lawsuit”). Plaintiff, as a proxy of the LWDA, sought PAGA civil
8 penalties from Defendant under Labor Code sections 210, 226.3, 558, 1197.1 and 2699 for the
9 Labor Code violations set out in the PAGA Notice for Plaintiff and other Aggrieved Employees.

10 **D.** Shortly after the filing of the Action, the Parties agreed to exchange informal
11 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
12 among other things: (1) Ms. Rojas personnel file; (2) a random assortment of time and payroll
13 records for 40 of 213 Class Members placed by All Day Service at Peninsula (“Class Members”);
14 (3) the Employee Handbook and standalone policies; and (4) hire dates, terminations dates and
15 contact information for Class Members.

16 **E.** On May 4, 2021, the Parties attend a second session of mediation before Ms.
17 Frank after the exchange of further documents and information, including information regarding
18 Defendant’s financial condition, time and pay records, as well as clarification of the workweeks
19 worked and pay periods worked by Class Members and Aggrieved Employees during the relevant
20 statutory periods.

21 **F.** With the aid of the mediator’s evaluation and of further negotiations, the Parties
22 reached the Settlement to resolve the Action. The Parties therein negotiated the terms of a
23 Memorandum of Understanding thereafter, which set forth the basic terms of the settlement
24 reached subject to Court approval, with an understanding that those deal points would be
25 expanded upon in this long form settlement agreement.

26 **G.** Class Counsel has conducted significant investigation of the law and facts relating
27 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is
28 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account

1 the sharply contested issues involved, the expense and time necessary to litigate the Action
2 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
3 adverse outcome, the uncertainties of complex litigation, the information learned through
4 informal discovery regarding Plaintiff's allegations, Defendant's financial condition and the
5 substantial benefits to be received by the Settlement Class Members.

6 **H.** Defendant has concluded that, because of the substantial expense of defending
7 against the Action, the length of time necessary to resolve the issues presented herein, the
8 inconvenience involved, and the concomitant disruption to their business operations, it is in their
9 best interest to accept the terms of this Agreement. Defendant denies each of the allegations and
10 claims asserted against them in the Action. However, Defendant nevertheless desires to settle
11 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing
12 litigation and for the purpose of putting to rest the controversies engendered by the Action.

13 **I.** This Agreement is intended to and does effectuate the full, final, and complete
14 resolution of all claims for Plaintiff, Class Released Claims of Participating Class Members and
15 of the PAGA Released Claims for Aggrieved Employees.

16 **3. JURISDICTION**

17 The Court has jurisdiction over the Parties and the subject matter of the Action. The
18 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
19 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
20 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
21 pursuant to California Rule of Court, rule 3.769, subdivision (h).

22 **4. STIPULATION OF CLASS CERTIFICATION**

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

25 **5. MOTION FOR PRELIMINARY APPROVAL AND EVIDENCE OF FINANCIAL**
26 **STRAIN**

27 The Parties agree that Defendant has provided Plaintiff with financial records that reflect
28 Defendant's contention that their financial condition cannot withstanding a larger Gross

1 Settlement Amount to resolve this Action, which Plaintiff agrees to represent to the Court for the
2 purpose of achieving approval. To that end, Plaintiff will move for an order granting preliminary
3 approval of the Settlement, approving and directing the mailing of the proposed Notice of Class
4 Action Settlement (“Class Notice”) attached hereto as Exhibit “A”, conditionally certifying the
5 Settlement Class for settlement purposes only, and approving the deadlines proposed by the
6 Parties for the submission of Requests for Exclusion, Workweek Disputes, and Objections, the
7 papers in support of Final Approval of the Settlement, and any responses to Objections or
8 opposition papers to the Motion for Final Approval.

9 **6. STATEMENT OF NO ADMISSION**

10 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff
11 and the Settlement Class with respect to any claims or allegations asserted in the Action. This
12 Agreement shall not be deemed an admission by Defendant of any claims or allegations asserted
13 in the Action. Except as set forth elsewhere herein, in the event that this Agreement is not
14 approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable,
15 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or
16 remedies, or defenses in the Action, and Defendant will not be deemed to have waived, limited,
17 or affected in any way any of its objections or defenses in the Action. The Parties shall be restored
18 to their respective positions in the Action prior to the entry of this Settlement.

19 **7. RELEASE OF CLAIMS**

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

21 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
22 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
23 Settlement Amount and Employer’s Taxes necessary to effectuate the Settlement, Plaintiff and
24 all Participating Class Members release the Released Parties of all claims against the Released
25 Parties asserted in the Complaint filed in the Action, or any and all claims that may be asserted
26 against the Released Parties based on the factual allegations in the Complaint filed in the Action,
27 as follows: For the duration of the Class Period, the release includes: (a) all claims for failure to
28 pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to

1 provide compliant meal periods or compensation in lieu thereof (d) all claims for failure to
2 provide compliant rest periods or compensation in lieu thereof (e) all claims failure to timely pay
3 all wages due upon termination or resignation; (f) all claims for non-compliant wage statements;
4 and (g) all claims asserted through California Business & Professions Code § 17200 *et seq.*
5 arising out of the Labor Code violations referenced in the Complaint. (“Class Released Claims”).
6 For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims
7 released during the Class Period, as well as all claims for civil penalties under PAGA arising out
8 of Labor Code Sections 210, 226.3, 558, 1197.1, and 2699 based on the factual allegations and
9 Labor Code sections alleged to have been violated in the Complaint, which includes, without
10 limitation, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 246, 432, 510,
11 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802 and 2810.5 (“PAGA Released Claims”).
12 The Class Released Claims and PAGA Released Claims shall collectively be referred to as the
13 “Released Claims”.

14 **B. General Release.**

15 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
16 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
17 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
18 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases
19 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
20 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
21 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
22 arising out of, relating to, or in connection with any act or omission of the Released Parties
23 through the date of full execution of this Agreement in connection with his employment or the
24 termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that,
25 through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final
26 Judgment and payment to the Settlement Administrator shall have, expressly waived and
27 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
28

1 1542 of the California Civil Code, or any other similar provision under federal or state law, which
2 provides:

3 A general release does not extend to claims which the creditor does
4 not know or suspect to exist in his or her favor at the time of
5 executing the release, which if known by him or her must have
6 materially affected his or her settlement with the debtor or released
7 party.

8 **8. SETTLEMENT ADMINISTRATOR**

9 Plaintiff and Defendant, through their respective counsel, have selected ILYM Group,
10 Inc. to administer the Settlement, which includes but is not limited to translating the Class Notice
11 to Spanish, distributing and responding to inquiries about the Class Notice and calculating all
12 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
13 Administrator, currently estimated to be \$8,000 will be paid from the Gross Settlement Amount.
14 If the actual Settlement Administrator fees are less than \$8,000 the difference will remain a part
15 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,000 then such
16 excess will be paid solely from the Gross Settlement Amount and Defendant will not be
17 responsible for paying any additional funds in order to pay these additional costs.

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

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

20 (1) Within ten (10) calendar days after the Preliminary Approval Date,
21 Defendant's Counsel shall provide the Settlement Administrator with information with respect
22 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
23 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social
24 Security Number in Defendant's possession, custody, or control; and (3) the hire dates and
25 termination dates for each Settlement Class Member ("Class List"). The Settlement
26 Administrator shall perform an address search using the United States Postal Service National
27 Change of Address ("NCOA") database and update the addresses contained on the Class List
28 with the newly found addresses, if any. Within seven (7) calendar days of receiving the Class
List from Defendant, the Settlement Administrator shall mail the Class Notice in English and

1 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current
2 mailing address information available. The Settlement Administrator shall maintain a list with
3 names and all addresses to which notice was given, and digital copies of all the Settlement
4 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
5 least four (4) years from the Final Approval Date. Such information shall be available to Class
6 Counsel and Defendant's Counsel upon request.

7 (2) The Class Notice will set forth:

- 8 (a) the Settlement Class Member's estimated payment and the basis
9 for it;
- 10 (b) the information required by California Rule of Court, rule 3.766,
11 subdivision (d);
- 12 (c) the material terms of the Settlement;
- 13 (d) the proposed Settlement Administration Costs;
- 14 (e) the definition of the Settlement Class;
- 15 (f) a statement that the Court has preliminarily approved the
16 Settlement;
- 17 (g) how the Settlement Class Member can obtain additional
18 information, including contact information for Class Counsel;
- 19 (h) information regarding opt-out and objection procedures;
- 20 (i) the date and location of the Final Approval Hearing; and
- 21 (j) that the Settlement Class Member must notify the Settlement
22 Administrator no later than the Response Deadline if the
23 Settlement Class Member disputes the accuracy of the number of
24 Workweeks as set forth on his or her Class Notice ("Workweek
25 Dispute"). If a Settlement Class Member fails to timely dispute
26 the number of Workweeks attributed to him or her in conformity
27 with the instructions in the Class Notice, then he or she shall be
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1 deemed to have waived any objection to its accuracy and any claim
2 to any additional settlement payment based on different data.

3 (3) If a Class Notice from the initial notice mailing is returned as
4 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
5 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
6 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
7 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
8 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
9 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
10 Administrator with a forwarding address before the Response Deadline shall be promptly re-
11 mailed to the forwarding address affixed thereto.

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

18 **B. Objections.**

19 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
20 Class Members) may object to the Settlement. In order for any Settlement Class Member to
21 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written
22 objection to the Settlement Administrator at the address or phone number provided on the Class
23 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of
24 the Objection forthwith to Class Counsel and Defendant's Counsel, and attach the same to the
25 declaration it provides to Class Counsel, which Class Counsel shall file with Plaintiffs' Motion
26 for Final Approval of the Settlement. The Objection should set forth in writing: (1) the objector's
27 name and address, and (2) the reason(s) for the Objection, along with whatever legal authority,
28 if any, the objector asserts in support of the Objection. If a Settlement Class Member objects to

1 the Settlement, the Settlement Class Member will remain a member of the Settlement Class and
2 if the Court approves this Agreement, the Settlement Class Member will be bound by the terms
3 of the Settlement in the same way and to the same extent as a Settlement Class Member who
4 does not object. The date of mailing of the Class Notice to the objecting Settlement Class
5 Member shall be conclusively determined according to the records of the Settlement
6 Administrator. Settlement Class Members need not object in writing to be heard at the Final
7 Approval Hearing; they may object or comment in person at the hearing at their own expense.
8 Class Counsel and Defendant's Counsel may respond to any objection lodged with the Court up
9 to five (5) court days before the Final Approval Hearing.

10 **C. Requesting Exclusion.**

11 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
12 Settlement by mailing a written request to be excluded from the Settlement ("Request for
13 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
14 To be valid, a Request for Exclusion must include the Class Member's name, social security
15 number and signature and the following statement or something to its effect: "Please exclude me
16 from the Settlement Class in the *Barahona, et al. v. The Belvedere Hotel Partnership et al.*
17 matter" or a statement of similar meaning. The Settlement Administrator shall immediately
18 provide copies of all Requests for Exclusion to Class Counsel and Defendant's Counsel and shall
19 report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided
20 in advance of the Final Approval Hearing. Any Settlement Class Member who requests
21 exclusion using this procedure will not be entitled to receive any payment from the Settlement
22 and will not be bound by the Settlement Agreement or have any right to object to, appeal, or
23 comment on the Settlement. Any Settlement Class Member who does not opt out of the
24 Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of
25 the Settlement, including those pertaining to the Released Claims, as well as any Judgment that
26 may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class
27 Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class
28 Member submits an objection and a Request for Exclusion, the Request for Exclusion will control

1 and the Objection will be void. Aggrieved Employees who submit a valid Request for Exclusion
2 will still be deemed Aggrieved Employees, will still receive Individual PAGA Payments and will
3 be deemed to have released the PAGA Released Claims.

4 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

5 Class Members will have an opportunity to dispute the information provided in their Class
6 Notice, so long as they do so before the Response Deadline. To the extent Class Members dispute
7 the number of Workweeks to which they have been credited, Class Members may produce
8 evidence to the Settlement Administrator showing that such information is inaccurate. Absent
9 evidence rebutting Defendant's records, Defendant's records will be presumed determinative.
10 However, if a Class Member produces evidence to the contrary, the Settlement Administrator
11 will evaluate the evidence submitted by the Class Member and will make the final decision as to
12 the number of Workweeks that should be applied. All such disputes are to be resolved not later
13 than seven (7) calendar days after the Response Deadline.

14 **E. Extension of Response Deadline for Remailing**

15 Class Members who are re-mailed a Class Notice shall have an additional fifteen (15)
16 calendar days from the remailing thereof, to submit a Request for Exclusion, objection or to
17 dispute estimated payments. However, no Class Member shall have more than sixty (60) days
18 in total to respond to respond in any manner to the Class Notice.

19 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
20 **MEMBERS**

21 Individual Settlement Payments will be calculated and distributed to Participating Class
22 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
23 Members' respective number of Workweeks during the Class Period. Individual PAGA
24 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
25 on a *pro rata* basis based on Aggrieved Employees' respective number Workweeks during the
26 PAGA Period. Specific calculations of the Individual Settlement Shares and PAGA Payments
27 to PAGA Aggrieved Employees will be made as follows:
28

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 \$6,2500.00
24 (*i.e.*, the PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of
25 check.

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

aggregates both the Individual Settlement Payment and the Individual PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee who submits a valid Request for Exclusion will nevertheless be bound by any release of claims under PAGA related to the Released Claims and will still receive their Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments and Individual PAGA Payments.

Participating Class Members who do not submit a timely and valid Request for Exclusion will receive an Individual Settlement Payment. All PAGA Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not, will receive their portion of the PAGA Payment. Individual Settlement Payment checks and checks to PAGA Aggrieved Employees for their portion of the PAGA Payment shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, Located at 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.

B. Funding of Settlement.

Defendant shall pay the Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), unless the same is escalated pursuant to Paragraph 16 below (and in such event, the escalated amount) to the Settlement Administrator in addition to Employer’s Taxes. All amounts must be paid to the Settlement Administrator pursuant to Internal Revenue

Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this Agreement and the Court’s Orders and subject to the conditions described herein. Individual Settlement Payments for Class Members and Individual PAGA Payments to Aggrieved Employees shall be paid exclusively from the QSA, pursuant to the settlement formula set forth herein.

Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA Payments, as specified in this Agreement and approved by the Court. The balance any and any accrued interest thereon remaining shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be made to Participating Class Members, less applicable taxes and withholdings. All interest accrued shall be for the benefit of the Participating Class Members and distributed on a *pro rata* basis based on their workweeks worked during the Class Period..

C. Time for Distribution.

No more than seven (7) calendar days after payment of the full Gross Settlement Amount (as the same may be escalated by Paragraph 16 below) by Defendant, as well as Employer Taxes, the Settlement Administrator shall distribute all payments due under the Settlement, including the Individual Settlement Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved payments for the Service Award to Plaintiff, attorneys’ fees and litigation costs and expenses to Class Counsel, administration costs to the Settlement Administrator, and the LWDA Payment.

11. ATTORNEYS’ FEES AND LITIGATION COSTS

Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys’ fees of up to thirty five percent (35%) of the Gross Settlement Amount, as the same may be escalated pursuant to this Agreement. Class Counsel shall further apply for, and Defendant shall

1 not oppose, an application or motion by Class Counsel for reimbursement of actual costs
2 associated with Class Counsel's prosecution of this matter as set forth by declaration testimony
3 in an amount up to Twenty Thousand Dollars and Zero Cents (\$20,000.00). Awards of attorneys'
4 fees and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys'
5 fees and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the
6 Action. The "future" aspect of the amounts stated herein includes, without limitation, all time
7 and expenses expended by Class Counsel (including any appeals therein). There will be no
8 additional charge of any kind to either the Settlement Class Members or request for additional
9 consideration from Defendant for such work unless Defendants materially breach this Agreement
10 and Plaintiffs are required to move the Court or initiate a separate action for enforcement of this
11 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
12 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
13 be a part of the Net Settlement Amount.

14 **12. SERVICE AWARD TO PLAINTIFF**

15 Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to
16 exceed Five Thousand Dollars and Zero Cents (\$5,000.00) for participation in and assistance
17 with the Action. Any Service Award awarded to Plaintiff shall be paid from the Gross Settlement
18 Amount and shall be reported on an IRS Form 1099. If the Court approves Service Award to
19 Plaintiff in less than the amounts sought herein, then the unapproved portion shall be a part of
20 the Net Settlement Amount.

21 **13. TAXATION AND ALLOCATION**

22 A. Each Individual Settlement Payment shall be allocated as follows: 20% as wages
23 (to be reported on an IRS Form W2); and 80% as interest, premiums, and penalties (to be reported
24 on an IRS Form 1099). The Individual Payments to the Aggrieved Employees shall be
25 characterized as non-wages (to be reported on an IRS Form 1099). The Parties agree that the
26 employee's share of taxes and withholdings with respect to the wage-portion of the Individual
27 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
28 Individual Settlement Payment. The amount of federal income tax withholding will be based

upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

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

C. All Employer Taxes shall be paid by Defendant separate, apart and above from the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of payroll taxes as described above.

D. Neither Counsel for Plaintiff nor Defendant intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

14. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION

The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement Amount (\$2,500.00) (the “PAGA Payment”), to be distributed to Aggrieved Employees on a *pro rata* basis, based upon their respective Workweeks in the PAGA Period (*i.e.*, the Individual PAGA Payments).

15. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the

Parties shall be restored to their respective positions in the Action prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

16. INCREASE IN WORKWEEKS

Defendant represents that there are no more than 4,277 workweeks worked between April 30, 2019, through January 22, 2021. In the event the number of workweeks worked increases by more than 10%, or 427 workweeks worked, then the GFV shall be increased proportionally by the workweeks in excess of 4,277 multiplied by the workweek value. The workweek value shall be calculated by dividing the GFV by 4,277. The parties agree that the workweek value amounts to and the settlement amounts to \$46.76 per workweek (\$200,000 / 4,277 workweeks). Thus, for example, should there be 4,500 workweeks in the Class Period. Then the GFV shall be increased by \$10,427.28 (4,500 workweeks – 4,277 workweeks x \$46.76/workweek.)

17. NOTICE OF JUDGMENT

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

18. MISCELLANEOUS PROVISIONS

A. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Plaintiff and Defendant with respect to its subject matter. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its

1 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
2 interpreted and enforced under the laws of the State of California, both in its procedural and
3 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
4 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
5 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
6 Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in
7 connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement Class,
8 and Defendant participated in the negotiation and drafting of this Agreement and had available
9 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
10 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
11 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
12 by the Court.

13 **B. Further Cooperation.**

14 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare and
15 execute all documents, to seek the necessary approvals from the Court, and to do all things
16 reasonably necessary to consummate the Settlement as expeditiously as possible.

17 **C. Counterparts.**

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

21 **D. Authority.**

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

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

25 Plaintiff, Participating Class Members, Class Counsel, and Defendant are direct
26 beneficiaries of this Agreement, but there are no third-party beneficiaries.

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

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

4 **G. Severability.**

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

10 **H. Confidentiality.**

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

14 **IT IS SO AGREED:**

15
16
17 Dated: _____, 2022

Juana Valencia Rojas
Plaintiff and Class Representative

18
19
20 Dated: _____, 2022

All Day Service, Inc.
Defendant
By:
Its:

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22
23 **AGREED AS TO FORM:**

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25 Dated: _____, 2022

DAVID D. BIBIYAN
Bibiyon Law Group, P.C.
Counsel for Plaintiff Juana Valencia Rojas

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Dated: _____, 2022

ALFRED J. LANDEGGER, ESQ.
KRISTINA KOURASIS ESQ.
Landegger Baron Law Group
Counsel for Defendant All Day Service, Inc.

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