

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (Cal. Bar No. 287811)
david@tomorrowlaw.com
Diego Aviles (Cal. Bar No. 315533)
diego@tomorrowlaw.com
Sara Ehsani-Nia (Cal. Bar No. 326501)
sara@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

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 plaintiffs Kenia Barahona (“Plaintiff Barahona”), Aneysi Reyes (“Plaintiff Reyes”), and Ana Maria Guarnizo (“Plaintiff Guarnizo” and collectively with Plaintiff Barahona and Plaintiff Reyes, “Plaintiffs”), individually and on behalf of the Settlement Class, as defined below, on the one hand; and defendants The Belvedere Hotel Partnership, Peninsula Beverly Hills Hotel Management, Inc., Peninsula Beverly Hills, Inc., and Peninsula Beverly Hotel Management

(hereinafter collectively referred to as “Defendants”), 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”). Plaintiffs and Defendants 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 Defendants during the PAGA Period as non-exempt, hourly-paid employees.

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 29, 2019, through August 7, 2021.

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

F. “Defendants” shall refer to The Belvedere Hotel Partnership, Peninsula Beverly Hills Hotel Management, Inc., Peninsula Beverly Hills, Inc., and Peninsula Beverly Hills Holdings, LLC.

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.

1 **I. “General Release”** means the general release of claims by Plaintiffs, which is in
2 addition to their limited release of claims as Participating Class Members and Aggrieved
3 Employees.

4 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Five
5 Hundred, Fifty Thousand Dollars and Zero Cents (\$550,000.00),¹ which shall be paid by
6 Defendants within sixty-five (65) calendar days after the Final Approval Date, and from which
7 all payments for the Individual Settlement Payments to Participating Class Members, Individual
8 PAGA Payments to Aggrieved Employees, the LWDA Payment, the Court-approved amounts
9 for attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel,
10 Settlement Administration Costs, and a Service Award to Plaintiffs, interest and certain taxes
11 shall be paid. It expressly excludes Employer Taxes, which shall be paid by Defendants separate
12 and apart from the Gross Settlement Amount.

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

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

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

24 **N. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
25 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
26 from the Gross Settlement Amount. The Parties have agreed that Twenty-Five Thousand Dollars
27 and Zero Cents (\$25,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of
28

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

1 which Eighteen Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$18,750.00) will
2 be paid to the LWDA (*i.e.*, the LWDA Payment) and Six Thousand, Two Hundred and Fifty
3 Dollars and Zero Cents (\$6,250.00) will remain a part of the Net Settlement Amount for payment
4 to aggrieved employees on a *pro rata* basis (*i.e.*, the PAGA Payment).

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

10 **P. “PAGA Payment”** is the \$6,250 payable to Aggrieved Employees in connection
11 with settlement of the PAGA cause of action, which would be in addition to their Individual
12 Settlement Payment should the Aggrieved Employee decide not to opt out of the Settlement.

13 **Q. “PAGA Period”** means the period from April 29, 2019, through August 7, 2021.

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

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

21 **T. “Parties”** shall refer to Plaintiffs and Defendants collectively.

22 **U. “Plaintiffs”** shall refer to Plaintiffs Kenia Barahona, Aneysi Reyes, and Ana
23 Maria Guarnizo.

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

26 **W. “Released Parties”** shall mean Defendants and each of their past, present, and
27 future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint
28 ventures and assigns, and each of these entities’ past or present directors, officers, employees,

1 partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys,
2 and personal or legal representatives.

3 **X. “Response Deadline”** means the deadline for Settlement Class Members to mail
4 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
5 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
6 and Spanish by the Settlement Administrator, or, if the Class Notice is re-mailed, fifteen (15)
7 calendar days after re-mailing, whichever is later. The date of the postmark shall be the exclusive
8 means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was
9 submitted by the Response Deadline.

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

12 **Z. “Service Award”** means monetary amount to be paid to Plaintiffs, in the amount
13 up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500) to Plaintiff Barahona; up
14 to Five Thousand Dollars and Zero Cents (\$5,000) to Plaintiff Reyes; and up to Five Thousand
15 Dollars and Zero Cents (\$5,000) to Plaintiff Guarnizo, which, subject to Court approval, will be
16 paid out of the Gross Settlement Amount.

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

1 \$7,950. If the actual amount of the Settlement Administration Costs is less than \$7,950, the
2 difference between \$7,950 and the actual Settlement Administration Costs shall be a part of the
3 Net Settlement Amount. If the Settlement Administration Costs exceed \$7,950 then such excess
4 will be paid solely from the Gross Settlement Amount and Defendants will not be responsible
5 for paying any additional funds in order to pay these additional costs.

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

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

15 **DD. “Workweeks”** means the number of weeks that a Settlement Class Member was
16 employed by Defendants in a non-exempt, hourly position during the Class Period. If a
17 Settlement Class Member disputes his/her Individual Settlement Share and/or Individual PAGA
18 Payment, it shall be termed a “Workweek Dispute.”

19 **2. BACKGROUND**

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

23 **B.** On April 30, 2020, Plaintiffs filed a putative wage-and-hour class action
24 complaint against Defendants. They alleged that during the Class Period, with respect to
25 themselves and those similarly situated, Defendants, *inter alia*, (1) failed to pay overtime wages;
26 (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu
27 thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay wages
28 due at termination or resignation; (6) failed to provide accurate wage statements; and (7) unfairly

1 competed under the Business and Professions Code in the Superior Court of California, County
2 of Los Angeles, Case number 20STCV17148 (the “Class Action”)

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

9 **D.** Shortly after the filing of the Action, the Parties agreed to exchange informal
10 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
11 among other things: (1) hire and termination dates for Class Members who worked directly for
12 Peninsula during the Class Period; (2) Defendants’ Employee Handbook; and (3) Plaintiffs’ wage
13 statements.

14 **E.** On January 28, 2021, the Parties participated in a mediation before Lynn Frank,
15 Esq. a well-regarded mediator experienced in mediating complex civil disputes. The Parties were
16 unable to reach a resolution.

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

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

27 **H.** Class Counsel has conducted significant investigation of the law and facts relating
28 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is

1 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
2 the sharply contested issues involved, the expense and time necessary to litigate the Action
3 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
4 adverse outcome, the uncertainties of complex litigation, the information learned through
5 informal discovery regarding Plaintiffs' allegations, Defendants' financial condition, and the
6 substantial benefits to be received by the Settlement Class Members.

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

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

17 **3. JURISDICTION**

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

23 **4. STIPULATION OF CLASS CERTIFICATION**

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

26 ///

27 ///

28 ///

1 **5. MOTION FOR PRELIMINARY APPROVAL AND EVIDENCE OF FINANCIAL**
2 **STRAIN**

3 The Parties agree that Defendants have provided Plaintiffs with financial records that
4 reflect Defendants' contention that their financial condition cannot withstand a larger Gross
5 Settlement Amount to resolve this Action, which Plaintiffs agree to represent to the Court for the
6 purpose of achieving approval. To that end, Plaintiffs will move for an order granting
7 preliminary approval of the Settlement, approving and directing the mailing of the proposed
8 Notice of Class Action Settlement ("Class Notice") attached hereto as Exhibit "A", conditionally
9 certifying the Settlement Class for settlement purposes only, and approving the deadlines
10 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
11 Objections, the papers in support of Final Approval of the Settlement, and any responses to
12 Objections or opposition papers to the Motion for Final Approval.

13 **6. STATEMENT OF NO ADMISSION**

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

23 **7. RELEASE OF CLAIMS**

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

25 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
26 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
27 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiffs and
28 all Participating Class Members release the Released Parties of all claims against the Released

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

B. General Release.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to the Released Claims, Plaintiffs make the additional following General Release: Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Agreement in connection with his employment or the termination thereof. With respect to the General Release, Plaintiffs stipulate and agree that,

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

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

11 **8. SETTLEMENT ADMINISTRATOR**

12 Plaintiffs and Defendants, through their respective counsel, have selected Phoenix
13 Settlement Administrators to administer the Settlement, which includes but is not limited to
14 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
15 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
16 expenses of the Settlement Administrator, currently estimated to be \$7,950 will be paid from the
17 Gross Settlement Amount. If the actual Settlement Administrator fees are less than \$7,950 the
18 difference will remain a part of the Net Settlement Amount. If the Settlement Administration
19 Costs exceed \$7,950 then such excess will be paid solely from the Gross Settlement Amount and
20 Defendants will not be responsible for paying any additional funds in order to pay these
21 additional costs.

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

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

24 (1) Within seven (7) calendar days after the Preliminary Approval Date,
25 Defendants' Counsel shall provide the Settlement Administrator with information with respect
26 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
27 known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social
28 Security Number in Defendants' possession, custody, or control; and (3) the hire dates and
termination dates (if applicable) for each Settlement Class Member ("Class List"). The

1 Settlement Administrator shall perform an address search using the United States Postal Service
2 National Change of Address (“NCOA”) database and update the addresses contained on the Class
3 List with the newly found addresses, if any. Within seven (7) calendar days of receiving the
4 Class List from Defendant, the Settlement Administrator shall mail the Class Notice in English
5 and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most
6 current mailing address information available. The Settlement Administrator shall maintain a
7 list with names and all addresses to which notice was given, and digital copies of all the
8 Settlement Administrator’s records evidencing the giving of notice to any Settlement Class
9 Member, for at least four (4) years from the Final Approval Date. Such information shall be
10 available to Class Counsel and Defendants’ Counsel upon request.

11 (2) The Class Notice will set forth:

- 12 (a) the Settlement Class Member’s estimated payment and the basis
13 for it;
- 14 (b) the information required by California Rule of Court, rule 3.766,
15 subdivision (d);
- 16 (c) the material terms of the Settlement;
- 17 (d) the proposed Settlement Administration Costs;
- 18 (e) the definition of the Settlement Class;
- 19 (f) a statement that the Court has preliminarily approved the
20 Settlement;
- 21 (g) how the Settlement Class Member can obtain additional
22 information, including contact information for Class Counsel;
- 23 (h) information regarding opt-out and objection procedures;
- 24 (i) the date and location of the Final Approval Hearing; and
- 25 (j) that the Settlement Class Member must notify the Settlement
26 Administrator no later than the Response Deadline if the
27 Settlement Class Member disputes the accuracy of the number of
28 Workweeks as set forth on his or her Class Notice (“Workweek

Dispute”). If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

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

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

B. Objections.

Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating Class Members) may object to the Settlement. In order for any Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a written objection to the Settlement Administrator at the address or phone number provided on the Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants’ Counsel, and attach the same to the declaration it provides to Class Counsel, which Class Counsel shall file with Plaintiffs’ Motion

1 for Final Approval of the Settlement. The Objection should set forth in writing: (1) the objector's
2 name and address, and (2) the reason(s) for the Objection, along with whatever legal authority,
3 if any, the objector asserts in support of the Objection. If a Settlement Class Member objects to
4 the Settlement, the Settlement Class Member will remain a member of the Settlement Class and
5 if the Court approves this Agreement, the Settlement Class Member will be bound by the terms
6 of the Settlement in the same way and to the same extent as a Settlement Class Member who
7 does not object. The date of mailing of the Class Notice to the objecting Settlement Class
8 Member shall be conclusively determined according to the records of the Settlement
9 Administrator. Settlement Class Members need not object in writing to be heard at the Final
10 Approval Hearing; they may object or comment in person at the hearing at their own expense.
11 Class Counsel and Defendants' Counsel may respond to any objection lodged with the Court up
12 to five (5) court days before the Final Approval Hearing.

13 **C. Requesting Exclusion.**

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

1 Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit
2 both a Request for Exclusion and an objection. If a Settlement Class Member submits an
3 objection and a Request for Exclusion, the Request for Exclusion will control and the Objection
4 will be void. Aggrieved Employees who submit a valid Request for Exclusion will still receive
5 an Individual PAGA Payment and will be deemed to have released the PAGA Released Claims.

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

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

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

17 Class Members who are re-mailed a Class Notice shall have the later of: forty-five (45)
18 calendar days from the original mailing of the Class Notice, or fifteen (15) calendar days from
19 the remailing thereof, to submit a Request for Exclusion, objection or to dispute estimated
20 payments.

21 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
22 **MEMBERS**

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

the PAGA Period. Specific calculations of the Individual Settlement Shares and PAGA Payments to PAGA Aggrieved Employees will be made as follows:

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

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

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

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

E. To determine each Aggrieved Employee’s Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$6,250.00 (*i.e.*, the PAGA Payment).

F. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a

1 Participating Class Member is also an Aggrieved Employee, one check may be issued that
2 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

3 **11. DISTRIBUTION OF PAYMENTS**

4 **A. Distribution of Individual Settlement Payments and Individual PAGA**
5 **Payments.**

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

21 **B. Funding of Settlement.**

22 Defendants shall within sixty-five (65) calendar days of the Final Approval date pay the
23 Gross Settlement Amount of Five Hundred, Fifty Thousand Dollars and Zero Cents
24 (\$550,000.00), unless the same is escalated pursuant to Paragraph 16 below (and in such event,
25 the escalated amount) to the Settlement Administrator in addition to Employer’s Taxes. All
26 amounts must be paid to the Settlement Administrator pursuant to Internal Revenue Code section
27 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC
28 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 Plaintiffs 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 to Aggrieved Employees, 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 Defendants, 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 Plaintiffs, attorneys' fees and litigation costs and expenses to Class Counsel, administration costs to the Settlement Administrator, and the LWDA Payment.

12. ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel shall apply for, and Defendants 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 Defendants shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony

1 in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards
2 of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and
3 future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the
4 settlement in the Action. The "future" aspect of the amounts stated herein includes, without
5 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
6 There will be no additional charge of any kind to either the Settlement Class Members or request
7 for additional consideration from Defendants for such work, unless Defendants materially breach
8 this Agreement and Plaintiffs are required to move the Court or initiate a separate action for
9 enforcement of this Agreement. Should the Court approve attorneys' fees and/or litigation costs
10 and expenses in amounts that are less than the amounts provided for herein, then the unapproved
11 portion(s) shall be a part of the Net Settlement Amount.

12 **13. SERVICE AWARD TO PLAINTIFFS**

13 Plaintiffs shall seek, and Defendants shall not oppose, a Service Award in an amount not
14 to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff
15 Barahona, a Service Award in an amount not to exceed Five Thousand Dollars and Zero Cents
16 (\$5,000.00) to Plaintiff Reyes and a Service Award in an amount not to exceed Five Thousand
17 Dollars and Zero Cents (\$5,000.00) to Plaintiff Guarnizo for their participation in and assistance
18 with the Action. Any Service Award awarded to Plaintiffs shall be paid from the Gross
19 Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves Service
20 Awards to Plaintiffs in less than the amounts sought herein, then the unapproved portion(s) shall
21 be a part of the Net Settlement Amount.

22 **14. TAXATION AND ALLOCATION**

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

1 Share in order to yield the Individual Settlement Payment. The amount of federal income tax
2 withholding will be based upon a flat withholding rate for supplemental wage payments in
3 accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax
4 withholding will also be made pursuant to applicable state and/or local withholding codes or
5 regulations.

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

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

15 **D.** Neither Counsel for Plaintiffs nor Defendants intend anything contained in this
16 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
17 be relied upon as such within the meaning of United States Treasury Department Circular 230
18 (31 C.F.R. Part 10, as amended) or otherwise.

19 **15. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

20 The Parties agree to allocate Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)
21 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
22 percent (75%) of the amount allocated toward PAGA (\$18,750.00) will be paid to the LWDA
23 (*i.e.*, the LWDA Payment), and twenty-five percent (25%) will remain a part of the Net
24 Settlement Amount (\$6,250.00) (the “PAGA Payment”) to be distributed to Aggrieved
25 Employees on a *pro rata* basis, based upon their respective Workweeks in the PAGA Period (*i.e.*,
26 the Individual PAGA Payments).

27 ///

28 ///

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 Action prior to entry of this Settlement.
6 If this Settlement Agreement is voided, not approved by the Court or approval is reversed on
7 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the
8 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 no more than 23,081 Workweeks worked between
14 April 29, 2019, through August 7, 2021. In the event the number of Workweeks worked during
15 the Class Period increases by more than 10%, or 2,308 Workweeks worked, then Defendants
16 will, at their option, decide whether: (1) the Class Period will end on the date that the Class
17 Period reaches 25,389 Workweeks; or (2) pay the Workweek value for every Workweek in
18 excess of 25,389 Workweeks. The Workweek value shall be calculated by dividing the GFV
19 by 25,389. The Parties agree that the Workweek value amounts to \$23.83 per Workweek
20 (\$550,000 / 23,081 Workweeks). Thus, for example, should there be 26,000 Workweeks in the
21 Class Period, then the GFV shall be increased by \$14,560.13. (26,000 Workweeks – 25,389
22 Workweeks x \$23.83/workweek.)

23 **18. NOTICE OF JUDGMENT**

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

27 ///

28 ///

1 **19. MISCELLANEOUS PROVISIONS**

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

3 This Agreement constitutes the entire agreement between Plaintiffs and Defendants with
4 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
5 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
6 oral or written representations or terms shall modify, vary or contradict its terms. In entering
7 into this Agreement, the Parties agree that this Agreement is to be construed according to its
8 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
9 interpreted and enforced under the laws of the State of California, both in its procedural and
10 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
11 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
12 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiffs and
13 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
14 in connection therewith. Plaintiffs, on Plaintiffs' own behalf and on behalf of the Settlement
15 Class, and Defendants participated in the negotiation and drafting of this Agreement and had
16 available to them the advice and assistance of independent counsel. As such, neither Plaintiffs
17 nor 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 Plaintiffs, Defendants, and their respective attorneys shall proceed diligently to prepare
22 and execute all documents, to seek the necessary approvals from the Court, and to do all things
23 reasonably necessary to consummate the Settlement as expeditiously as possible.

24 **C. Counterparts.**

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

28 ///

1 **D. Authority.**

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

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

5 Plaintiffs, Participating Class Members, Class Counsel, and Defendants are direct
6 beneficiaries of this Agreement, but there are no third-party beneficiaries.

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

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

10 **G. Severability.**

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

16 **H. Confidentiality.**

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

20 **IT IS SO AGREED:**

21
22
23 Dated: _____, 2021

KENIA BARAHONA
Plaintiff and Class Representative

24
25
26
27 Dated: _____, 2021

ANA MARIA GUARNIZO
Plaintiff and Class Representative

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

Dated: _____, 2021

ANEYSI REYES
Plaintiff and Class Representative

Dated: _____, 2021

Name: _____
Its: _____ of THE
BELVEDERE HOTEL PARTNERSHIP;
PENINSULA BEVERLY HILLS HOTEL
MANAGEMENT, INC.; PENINSULA
BEVERLY HILLS, INC.; PENINSULA
BEVERLY HOTEL HOLDINGS, LLC.

AGREED AS TO FORM:

Dated: _____, 2021

DAVID D. BIBIYAN
Bibiyon Law Group, P.C.
**Counsel for Plaintiffs Kenia Barahona, Ana
Maria Guarnizo and Aneysi Reyes**

Dated: _____, 2021

KEITH R. THORELL. ESQ
KORSHAK, KARCOFF, KONG & SUGANO,
LLP
**Counsel for Defendants, The Belvedere Hotel
Partnership; Peninsula Beverly Hills Hotel
Management, Inc.; Peninsula Beverly Hills,
Inc.; Peninsula Beverly Hills Holdings, LLC**

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