

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs Jennifer Cardwell (“Cardwell”) and Suzanne Linde (“Linde”) (collectively “Plaintiffs”), on behalf of themselves and on behalf of the State of California and all allegedly aggrieved employees (referred to herein as the “PAGA Cohort Members”), on the one hand, and Defendant AvantStay, Inc. (“Defendant”), on the other hand (collectively the “Parties”), subject to the approval of the Court, that the settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions.

I. RECITALS

WHEREAS, on or around May 19, 2020, Cardwell notified the Labor Workforce Development Agency (“LWDA”) of her intent to file an action under California’s Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”) (altogether the “Cardwell LWDA Letter”). Cardwell allowed the LWDA an opportunity to investigate her claims as required by the Labor Code, and the LWDA opted not to do so;

WHEREAS, on or around July 23, 2020, Linde notified the LWDA of her intent to file an action under PAGA (altogether the “Linde LWDA Letter”). Linde allowed the LWDA an opportunity to investigate her claims as required by the Labor Code, and the LWDA opted not to do so;

WHEREAS, on May 5, 2020, Cardwell filed her initial Complaint in Los Angeles County Superior Court, Case No. 20STCV17244, against Defendant alleging claims for (1) failure to pay overtime wages, (2) failure to maintain accurate itemized wage statements, (3) failure to pay wages to employee upon separation, (4) failure to reimburse business expenses, (5) retaliation for exercise of rights afforded to the employee, and (6) wrongful termination in violation of public policy;

WHEREAS, on October 6, 2020, Cardwell filed a First Amended Complaint alleging a single cause of action for civil penalties under PAGA on behalf of the State of California, herself, and other allegedly aggrieved employees (hereinafter the “Cardwell First Amended Complaint”);

WHEREAS, on July 23, 2020, Linde filed a Class Action Complaint in Los Angeles County Superior Court, Case No. 20STCV27979, against Defendant alleging claims for (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to permit paid rest breaks, (5) failure to pay wages upon separation of employment and within the required time, (6) failure to provide accurate itemized wage statements, (7) failure to reimburse necessary business expenses, an (8) violation of Cal. Business & Professions Code §§ 17200 *et seq.*;

WHEREAS, on November 2, 2020, Linde filed a First Amended Class Action Complaint adding a claim for PAGA violations;

WHEREAS, on November 20, 2020, Linde filed a Request for Dismissal of her individual and class action claims without prejudice pursuant to Cal. Code of Civil Procedure § 581, leaving only the PAGA claim pending;

WHEREAS, the Court approved Linde's Request for Dismissal on December 4, 2020, designating the action as a "PAGA only claim," and re-assigned the case to the non-complex civil division of Los Angeles County Superior Court;

WHEREAS, the First Amended Class Action Complaint, as amended by the Court's December 4, 2020 Order, is hereinafter referred to as the "Linde First Amended Complaint, as Modified");

WHEREAS, the parties agreed to participate in a private mediation with Eve Wagner, Esq, on March 17, 2021, as to the claims asserted in both the Cardwell First Amended Complaint and the Linde First Amended Complaint, as Modified;

WHEREAS, during the course of the litigation, and in preparation for private mediation, the Parties engaged in significant formal and informal discovery, including the exchange of information and documents;

WHEREAS, the Parties resolved the matter at said mediation, and memorialized their agreement in a Memorandum of Understanding ("MOU") executed on that same date;

WHEREAS, as set forth and agreed to in the MOU, Plaintiffs agreed to consolidate the Cardwell First Amended Complaint with the Linde First Amended Complaint, as Modified, and to proceed with both in the earlier-filed case, Los Angeles County Superior Court, Case No. 20STCV17244 (collectively the "Consolidated Action");

WHEREAS, the Parties desire to settle, compromise, and avoid litigation relating to the claims described in the Consolidated Action, and have agreed to settle the Consolidated Action upon the terms and conditions and for the consideration set forth in this Settlement Agreement (as defined below);

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties hereto as follows:

II. SETTLEMENT TERMS

A. Definitions

1. "Aggrieved Employee Settlement Fund" means twenty-five percent (25%) of the Net Settlement Amount. Individual Settlement Payments to PAGA Cohort Members will be made from the Aggrieved Employee Settlement Fund.

2. "Agreement" or "Settlement Agreement" shall mean this Private Attorneys General Act Settlement Agreement and Release.

3. "Attorneys' Fees" means such attorneys' fees as the Court may award to Plaintiffs' Counsel for the services they have rendered and will render to the PAGA Cohort Members in the Action, and which shall not exceed one-third (1/3) of the Gross Settlement Amount, or Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33).

4. “Attorneys’ Costs” means such litigation costs as the Court may award to Plaintiffs’ Counsel for the costs they have incurred and will incur in the investigation, litigation, and resolution of the Action, and in administration of the Settlement, and which are not expected to exceed four thousand four hundred forty-four and fifty-seven cents (\$4,444.57).

5. “Consolidated Action” means, as described above, the consolidated Cardwell First Amended Complaint and Linde First Amended Complaint, as Modified, Los Angeles County Superior Court, Case No. 20STCV17244.

6. “Court” shall mean the Los Angeles County Superior Court, where the Consolidated Action is venued, and specifically the Hon. Richard J. Burdge, or such other judge as (a) may be assigned to the Consolidated Action or (b) may sit in his stead.

7. “Defense Counsel” or “Defendant’s Counsel” means Alaya B. Meyers and Tracy R. Williams of Littler Mendelson, P.C.

8. “Effective Date” means the first date upon which all of the following have occurred: (i) the Court has granted approval of the Settlement Agreement, (ii) the Court has entered Final Judgment by dismissing the entire action with prejudice, and (iii) the Court’s order granting approval of the Settlement Agreement and entry of Final Judgment has become final and is no longer appealable. For purposes of this Settlement Agreement, “becomes final and is no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Settlement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Settlement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Settlement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Settlement is affirmed. In the event that: (i) the Court does not approve the Settlement Agreement as provided herein; or (ii) the Effective Date does not occur for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions. The Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent this Settlement Agreement from becoming final and binding.

9. “Funding Date” means the date that is fifteen (15) calendar days after the Effective Date. If the Funding Date falls on a weekend or holiday, it shall be extended to the following business day.

10. “Gross Settlement Amount” means the amount of Twenty-Five Thousand Dollars and No Cents (\$25,000.00) that Defendant will pay if the Court approves this Settlement and the Effective Date occurs. The Gross Settlement Amount will fund: (a) the Aggrieved Employee Settlement Fund; (b) the LWDA Payment; (c) the award of Attorney’s Fees to Plaintiffs’ Counsel; (d) the award of Attorney’s Costs to Plaintiffs’ Counsel; and (e) the Settlement Administration

Costs. Under no circumstances will Defendant be required to pay more than the Gross Settlement Amount. In no event will any money revert to Defendant.

11. “Individual Settlement Payment” means the portion of the Aggrieved Employee Settlement Fund allocated to each PAGA Cohort Member, as calculated pursuant to Paragraph C(13) below. One hundred percent (100%) of the Individual Settlement Payments made to PAGA Cohort Members shall be deemed miscellaneous income for which a Form 1099 will be issued.

12. “LWDA Payment” means seventy-five percent (75%) of the Net Settlement Amount. The LWDA Payment will be issued to the LWDA.

13. “Net Settlement Amount” means the Gross Settlement Amount minus the Attorneys’ Fees, Attorneys’ Costs, Representative Enhancement Award, and Settlement Administration Costs. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and twenty-five percent (25%) will be distributed to PAGA Cohort Members.

14. “Notice” means the form of notice that will be sent to each PAGA Cohort Member accompanying their Individual Settlement Payments, which shall be substantially in the form attached hereto as **Exhibit A**.

15. “PAGA Cohort Members” means Plaintiffs and all current and former individuals whom Defendant contracted with as independent contractors as Housekeepers, Hospitality Associates, and Hospitality Managers in the State of California during the PAGA Period.

16. “PAGA Cohort Member List” means the list of full names, most recent mailing addresses, most recent telephone numbers (if available), EID or other identifying tax information, and dates of employment, as available and calculable, for all PAGA Cohort Members, which Defendant will diligently and in good faith compile from its records.

17. “PAGA Period” means the period from May 19, 2019 through the date of approval of this Settlement by the Court.

18. “Plaintiffs’ Counsel” means Ranojoy Guha of The Guha Law Firm.

19. “Release” means Plaintiffs’ agreement, on behalf of themselves and the PAGA Cohorts, in consideration of Defendant’s promises and agreements as set forth herein, to fully release and discharge the Released Parties from any and all Released Claims.

20. “Released Claims” means all PAGA claims, including penalties, costs and attorneys’ fees related thereto, as alleged in the Action, or that could have been brought under the facts and allegations made in the Action, that accrued through the date of the Court’s approval of this Settlement. This includes, but is not limited to, PAGA claims for: (a) willful misclassification of independent contractors (Cal. Labor Code § 226.8; IWC Wage Orders); (b) failure to pay minimum wages (Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1); (c) failure to pay overtime or double-time wages (Cal. Labor Code §§ 510, 1194, 1198, IWC Wage Orders); (d)

failure to provide meal periods (Cal. Labor Code §§ 226.7, 512; IWC Wage Orders); (e) failure to permit rest breaks (Cal. Labor Code § 226.7); (f) failure to timely pay wages during employment (Cal. Labor Code § 204); (g) failure to timely pay wages upon separation (Cal. Labor Code §§ 201-203, 210); (h) retaliation based on exercise of employee rights under the Labor Code (Cal. Labor Code § 98.6(a)); (i) failure to reimburse necessary business expenses (Cal. Labor Code §§ 2800, 2802); (j) failure to provide complete and accurate wage statements (Cal. Labor Code § 226); (k) failure to keep accurate business records (Cal. Labor Code § 1174(d)); (l) failure to provide periodic rest days (Cal. Labor Code § 551, IWC Wage Orders); (m) all claims that Defendant is liable for the attorney's fees and costs incurred in the prosecution of this Action on behalf of the PAGA Cohort Members; (n) all claims that Defendant is liable for any other remedies, penalties, or interest based on the facts alleged in the Action; and (o) all claims that Plaintiffs and/or the PAGA Cohort Members may have against the Released Parties relating to the payment, taxation, and allocation of attorney's fees and costs to Plaintiffs' Counsel pursuant to this Settlement Agreement. The period of the release shall extend to the limits of the PAGA Period. The *res judicata* effect of the judgment will be the same as that of the Release.

21. "Released Parties" means Defendant and its past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, benefits plans sponsored or administered by the Released Parties, divisions, units, and branches, and any other persons or entities acting on behalf of or in concert with any of the foregoing.

22. "Semi-Monthly Value" means the quotient of the Aggrieved Employee Settlement Fund divided by the Total Semi-Monthly Pay Periods.

23. "Settlement Administrator" means a third-party settlement administrator to be agreed upon by the Parties and appointed by the Court for the purposes of administering this Settlement. The Parties each represent that they will select a Settlement Administrator that they do not have any financial interest in or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. The Parties will obtain a "not to exceed" bid from the Settlement Administrator.

24. "Settlement Administration Costs" means the amount from the Gross Settlement Amount which shall be allocated, subject to the Court's approval, to the Settlement Administrator for services rendered in administering the Settlement.

25. "Settlement Approval" means the settlement approval order and judgment that will be entered by the Court.

26. "Settlement Fund Account" means the bank account established by the Settlement Administrator pursuant to the terms of this Settlement Agreement, from which all monies payable under the terms of this Settlement shall be paid, as set forth herein.

27. “Total Semi-Monthly Pay Periods” means, because it is not practical to calculate actual pay periods worked, the total number of semi-monthly pay periods that all PAGA Cohort Members were under contract with Defendant during the PAGA Period.

28. “Void Date” means the 121st day after issuance of Individual Settlement Payment checks to PAGA Cohort Members, upon which the Individual Settlement Payment checks will no longer be valid and negotiable.

B. Consideration

1. No Admission of Liability. Defendant has contended and continues to contend that the allegations in the Action have no merit and do not give rise to liability. Defendant specifically denies all of the allegations in the Cardwell LWDA Letter, the Linde LWDA Letter, the Cardwell First Amended Complaint, and the Linde First Amended Complaint, as Modified. This Settlement Agreement is a compromise of such disputed claims. Nothing contained in this Settlement Agreement, no documents referred to herein, and no action taken to carry out the terms of this Settlement Agreement may be construed or used as an admission by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

2. Monetary Settlement Components. Provided that the Court approves the Settlement and the Effective Date occurs, Defendant will pay the Gross Settlement Amount. Defendant will deposit the Gross Settlement Amount into the Settlement Fund Account, which shall be administered by the Settlement Administrator. All amounts to be paid pursuant to this Settlement Agreement shall be paid out of the Settlement Fund Account.

- a. Attorney’s Fees. In full satisfaction of all claims Plaintiffs or Plaintiffs’ Counsel may have for attorney’s fees arising out of the Action, the Parties agree that Plaintiffs’ Counsel will ask the Court for an amount not to exceed one-third (1/3) of the Gross Settlement Amount, or Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33). Defendant will not oppose a request made by Plaintiffs for an award of Attorney’s Fees within this amount. The Attorney’s Fees to be awarded to Plaintiffs are subject to the approval of the Court and will be paid only from the Gross Settlement Amount. Any portion of the Attorney’s Fees not awarded to Plaintiffs’ Counsel will be added to the Net Settlement Amount. Plaintiffs understand and agree that this Settlement Agreement and Release shall remain in full force and effect even if the full amount of Attorney’s Fees identified herein is not awarded by the Court. However, Plaintiffs’ Counsel retains their right to appeal any decision by the Court regarding the Attorney’s Fees.
- b. Attorney’s Costs. In full satisfaction of all claims Plaintiffs or Plaintiffs’ Counsel may have for litigation costs and expenses arising out of the Action, the Parties agree that Plaintiffs’ Counsel will ask the Court for an amount estimated to be four thousand four hundred forty-four and fifty-seven cents (\$4,444.57) from the Gross Settlement Amount as Attorney’s Costs.

Defendant will not oppose a request made by Plaintiffs for an award of Attorney's Costs within this amount. The Attorney's Costs to be awarded to Plaintiffs are subject to the approval of the Court and will be paid only from the Gross Settlement Amount. Any portion of the Attorney's Costs not awarded to Plaintiffs' Counsel will be added to the Net Settlement Amount. Plaintiffs understand and agrees that this Settlement Agreement and Release shall remain in full force and effect even if the full amount of Attorney's Costs identified herein is not awarded by the Court. However, Plaintiffs' Counsel retains their right to appeal any decision by the Court regarding the Attorney's Costs.

- c. Settlement Administration Costs. A maximum of two thousand dollars and zero cents (\$2,000.00) from the Gross Settlement Amount will be allocated and paid to the Settlement Administrator. The Settlement Administration Costs to be paid to the Settlement Administrator are subject to the Court's approval and will be paid only from the Gross Settlement Amount. Any portion of the Settlement Administration Costs identified herein not ordered paid to the Settlement Administrator will be added to the Net Settlement Amount.
- d. Net Settlement Amount. Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the PAGA Complaint in the Action with respect to PAGA Cohort Members. The remaining twenty-five percent (25%) of the Net Settlement Amount will be paid to all PAGA Cohort Members pursuant to the calculation method set forth in Section C(13), below.

3. Non-Monetary Settlement Components. As part of this PAGA Settlement, Defendant has undergone, and will continue to undergo, a review of its policies and practices as to the claims alleged in the Action, including but not limited to an analysis of its use of, and classification of, independent contractors, and has already undertaken and/or will undertake any appropriate changes or revisions of said policies and practices.

4. PAGA Cohort Members' Release. Upon the Effective Date, Plaintiffs, on behalf of themselves, the State of California, and all PAGA Cohort Members, release the Released Parties from the Released Claims during the PAGA Period. PAGA Cohort Members may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, PAGA Cohort Members shall be deemed to have, and by operation of the Settlement Approval shall have, fully, finally, and forever settled and released any and all of the Released Claims during the PAGA Period, without regard to the subsequent discovery or existence of such different or additional facts. PAGA Cohort Members agree not to sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Released Claims during the PAGA Period. It is the intent of the Parties that the

Settlement Approval Order entered by the Court shall have full *res judicata* effect and be final and binding upon PAGA Cohort Members regarding the Released Claims during the PAGA Period.

C. Settlement Administration Procedures

1. Settlement Approval Motion. Following full execution of this Settlement Agreement, Plaintiffs will promptly request and/or reserve a hearing before the Court to seek approval of the Settlement on a mutually available date. In conjunction with such hearing, Plaintiffs' Counsel will present this Settlement Agreement to the Court with a written motion for an order (a) approving and incorporating by reference the terms and conditions of the Settlement Agreement, (b) retaining jurisdiction over the parties under Code of Civil Procedure Section 664.4 to enforce the Settlement Agreement, and (c) otherwise dismissing the entire Action with prejudice. Plaintiffs' Counsel will be primarily responsible for drafting all documents necessary to obtain the above order, and shall provide drafts of such documents for review by Defendant's counsel prior to the filing of same. Defendant will not oppose Plaintiffs' motion for Settlement Approval unless the motion is inconsistent with the terms set forth in this Settlement Agreement.

2. No Right of PAGA Cohort Member to Object or Opt-Out. The Parties agree there is no statutory right for any PAGA Cohort Member to object, opt out or otherwise exclude himself or herself from the Settlement. Nor is there any right for any PAGA Cohort Member to dispute the value of the Individual Settlement Payment provided to them under this Settlement. Except as otherwise stated, Plaintiffs will vigorously defend against any attempt by any PAGA Cohort Member or by any entity or agency to intervene in this matter or object to/opt-out of this settlement. The Parties further agree there is no right or opportunity for any PAGA Cohort Member to appeal the approval of the Settlement by the Court. The Parties will jointly defend against any appeal taken by any PAGA Cohort Member of the Court's approval of the Settlement.

3. LWDA Notice. Pursuant to California Labor Code § 2699(l)(2), Plaintiffs will provide a copy of this Settlement to the LWDA concurrently with the filing of the motion for Settlement Approval. Plaintiffs' Counsel will also file a declaration in support of their motion for Settlement Approval confirming that Plaintiffs' Counsel has submitted the Settlement to the LWDA in compliance with Labor Code § 2699(l)(2). Pursuant to California Labor Code § 2699(l)(3), a copy of the Court's judgment and any other order issued in connection with this Settlement Agreement shall be submitted by Plaintiffs to the LWDA within ten (10) calendar days after entry of the judgment or order.

4. Judgment and Continued Jurisdiction. The Parties expressly request that, after entry of final judgment, the Court retain continuing and exclusive jurisdiction under Code of Civil Procedure Section 664.6 for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement Agreement; (b) matters relating to the administration of the Settlement; and (c) such post-Judgment matters as may be appropriate under Court rules or as set forth in this Settlement Agreement.

5. Settlement Administrator. The Parties will retain a mutually agreed-upon Settlement Administrator, subject to approval by the Court, to administer this Settlement. The Settlement Administrator will be responsible for: establishing the Settlement Fund Account;

calculating Individual Settlement Payments; preparing, printing, and mailing the Individual Settlement Checks and accompanying Notice to PAGA Cohort Members; disbursing payment of Attorney's Fees and Attorney's Costs to Plaintiffs' Counsel; disbursing payment to the LWDA consisting of seventy-five percent (75%) of the Net Settlement Amount; printing and providing PAGA Cohort Members, Plaintiffs, and Plaintiffs' Counsel with IRS Forms 1099 as required under this Settlement Agreement and applicable law; providing a due diligence declaration for submission to the Court upon completion of the terms of the Settlement; and for such other tasks as the Parties mutually agree or the Court orders. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities, and shall not mail any payments to Plaintiffs, the LWDA, Plaintiffs' counsel or any PAGA Cohort Member unless and until the Settlement Administrator receives approval by the Parties to do so. Any legally mandated tax reports, tax filings, or other tax documents required by the administration of this Settlement shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation shall be part of the Settlement Administration Costs.

6. PAGA Cohort Member List. On or before the Effective Date, Defendant will provide the Settlement Administrator with the PAGA Cohort Member List, which shall be used solely for the administration of this Settlement and for no other purpose, and which shall not be shared with any persons or entity not employed by the Settlement Administrator and working on the administration of this Settlement. Because PAGA Cohort Members' sensitive personal information is included in the PAGA Cohort Member List, the Settlement Administrator shall maintain the PAGA Cohort Member List securely and in confidence, maintaining the strictest standards of data privacy. Access to the PAGA Cohort Member List shall be limited to employees of the Settlement Administrator with a need to use the PAGA Cohort Member List for administration of this Settlement. The Settlement Administrator shall permanently delete and destroy all electronic and hard copies of the PAGA Cohort Member List in its possession once settlement administration is concluded.

7. Funding of the Settlement. On or before the Funding Date, Defendant shall fund the Settlement by depositing the Gross Settlement Amount into the Settlement Fund Account to be established by the Settlement Administrator.

8. Payment of Attorney's Fees and Attorney's Costs. Within ten (10) calendar days following the Funding Date, the Settlement Administrator shall pay from the Settlement Fund Account the Court-approved Attorney's Fees and Attorney's Costs to Plaintiffs' Counsel. Plaintiffs' Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-9 before payments for Attorney's Fees and Attorney's Costs are issued. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs' Counsel for the payments made pursuant to this Paragraph.

Defendant's payment of the Attorney's Fees and Attorney's Costs shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm, including but not limited to Plaintiffs' Counsel, or attorney's fees, expenses, and/or costs in the Action incurred by any other attorney or law firm for attorney's fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiffs and/or PAGA Cohort Members. The Parties further agree that Plaintiffs' Counsel's Attorney's Fees and Attorney's Costs shall be for

all attorney's fees, expenses, and/or costs, present and future, incurred in the Action by all attorneys working on behalf of Plaintiffs and/or PAGA Cohort Members.

9. Representative Enhancement Award(s). Plaintiffs are not seeking representative enhancement award(s) in connection with this Settlement.

10. Settlement Administration Costs. Within ten (10) calendar days following the Funding Date, the Settlement Administrator shall pay from the Settlement Fund Account the Court-approved Settlement Administration Costs.

11. Payment to LWDA. Within ten (10) calendar days following the Funding Date, the Settlement Administrator shall issue from the Settlement Fund Account a check payable to the LWDA for seventy-five percent (75%) of the Net Settlement Amount.

12. Individual Settlement Payments. Within ten (10) calendar days following the Funding Date, the Settlement Administrator shall mail the Individual Settlement Payments to the PAGA Cohort Members' last known mailing address. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the Void Date will be sent promptly via regular First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the PAGA Cohort Member involved, and will then perform a single re-mailing. Any check re-mailings will not extend the 180-day period to cash a check. Any checks issued to PAGA Cohort Members shall remain valid and negotiable for one hundred and twenty (120) calendar days from the date of their issuance and then shall become void on the 121st day after issuance, *i.e.*, the Void Date. Within fourteen (14) calendar days after the Void Date, any unclaimed funds in the Settlement Fund Account as a result of the failure to cash Individual Settlement Payment checks prior to the Void Date shall be paid by the Settlement Administrator to the LWDA.

13. Calculation of Individual Settlement Payments. All PAGA Cohort Members will receive an Individual Settlement Payment. Because it is not practical to calculate actual pay periods worked, the amount of each PAGA Cohort Member's Individual Settlement Payment will be calculated based on the total number of Semi-Monthly pay periods each PAGA Cohort Member was an independent contractor under contract with Defendant during the PAGA Period. The Semi-Monthly Value will be calculated once the Net Settlement Amount and Aggrieved Employee Settlement Fund are determined based on the amounts approved by the Court for the Attorney's Fees, Attorney's Costs, and Settlement Administration Costs. The Semi-Monthly Value will be the quotient of dividing the Aggrieved Employee Settlement Fund by the Total Semi-Monthly Pay Periods. The Semi-Monthly Value will be rounded to the nearest cent. If there are any settlement funds remaining in the Settlement Fund Account due to rounding the Semi-Monthly Value to the nearest cent, those funds will be paid to the LWDA in addition to the LWDA Payment. The Individual Settlement Payment to each PAGA Cohort Member will be determined by multiplying the Semi-Monthly Value and the total number of semi-monthly pay periods for all PAGA Cohort Members during the PAGA Period.

14. Tax Treatment of Individual Settlement Payments. One hundred percent (100%) of each Individual Settlement Payment shall be allocated to miscellaneous income for which an IRS Form 1099 will issue, if required by law.

15. Administration of Taxes. The Settlement Administrator will be responsible for issuing to Plaintiffs, PAGA Cohort Members, and Plaintiffs' Counsel, IRS Form 1099s or other tax forms as may be required by law for all amounts paid pursuant to this Settlement, and for forwarding all penalties to the appropriate government authorities.

16. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. Plaintiffs' Counsel shall file this declaration with the Court within seven (7) calendar days of receipt.

D. Miscellaneous Provisions

1. No Effect on Employee Benefits. Amounts paid to Plaintiffs and other PAGA Cohort Members pursuant to this Settlement Agreement do not count as earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by Defendant.

2. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Parties are not relying on any statement, representation, or calculation by any of the Parties or by the Settlement Administrator in this regard.

3. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF

WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT. Defendant, Defendant's Counsel, Plaintiffs and Plaintiffs' Counsel make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and PAGA Cohort Members are not relying on any statement, representation, or calculation by Defendant, Defendant's Counsel, or by the Settlement Administrator in this regard. Plaintiffs and PAGA Cohort Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

4. Plaintiffs understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein and will hold Defendant, Defendant's Counsel, the Released Parties, and the Settlement Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages.

5. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

6. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

7. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its Exhibits.

8. Amendment or Modification. This Agreement may be amended or modified only by a formal written instrument signed by counsel for all Parties or their successors-in-interest.

9. Authorization to Enter Into Settlement Agreement. The Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person or persons signing this Settlement Agreement on behalf of Defendant represents and warrants that he/she/they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Settlement Agreement and that they have not assigned any claim covered by this Settlement to a third party.

10. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure

in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

11. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

12. California Law Governs. All terms of this and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

13. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

14. Acknowledgement that the Settlement is Fair, Adequate and Reasonable. The Parties believe this Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations facilitated by an experienced wage and hour class action mediator, and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness, adequacy and reasonableness of this Settlement.

15. Waiver of Certain Appeals. In the event the Court grants Approval of this Settlement, the Parties agree to waive appeals concerning this Settlement except as to the right to appeal Attorneys' Fees in the event it is not approved as described above.

16. Captions. The captions and paragraph numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

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

18. Supersedes MOU. This Agreement, upon execution, shall fully supersede and replace the MOU.

19. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiffs and Plaintiffs' Counsel warrant and represent that there are no liens on the Agreement.

20. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

21. Publicity. The Parties agree that Plaintiffs will not communicate the fact of, or the terms of, this Settlement to members of the press, including to Verdicts and Settlements. The Parties and their attorneys also agree not to publish the fact of, or terms of, this Settlement or any related information on their website, for advertising purposes and/or in publication materials generally available to the public.

22. Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be: (a) in writing; (b) deemed given on the third business day after mailing; and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs:	To Defendant:
Ranojoy Guha The Guha Law Firm 1100 Town and Country Road, Suite 1250 Orange, CA 92868	Alaya B. Meyers Tracy R. Williams Littler Mendelson, P.C. 18565 Jamboree Road, Suite 800 Irvine, CA 92612

It is hereby agreed.

[Signatures on following page.]

PLAINTIFFS

Dated: May 4, 2021

Jennifer Cardwell
Jennifer Cardwell (May 4, 2021 15:20 PDT)

Jennifer Cardwell

Dated: May 4, 2021

Suz Linde
Suz Linde (May 4, 2021 19:55 PDT)

Suzanne Linde

DEFENDANT AVANTSTAY, INC.

Dated: 5/24/2021

DocuSigned by:
Sean Brenner, CEO
2571EB98ADB143B.
By: Sean Brenner
Its: CEO

Approved as to form:

THE GUHA LAW FIRM

Dated: May 4, 2021

Ranojoy Guha
Ranojoy Guha
Attorney for Plaintiffs Jennifer Cardwell and
Suzanne Linde

Approved as to form:

LITTLER MENDELSON, P.C.

Dated: May 24, 2021

Alaya B. Meyers
Alaya B. Meyers
Attorney for Defendant AvantStay, Inc.

4817-9581-1554.1

Cardwell v. Avantstay, Inc.
Superior Court of the State of California, County of Los Angeles
Case No. 20STCV17244

PROOF OF SERVICE

I am employed in Orange County. I am over the age of 18 and not a party to this action. My business address is 1100 Town and Country Road, Suite 1250, Orange, California 92868.

On **June 21, 2021**, I served the foregoing documents, described in this action as:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[X] by placing [] the original [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

LABOR AND WORKFORCE DEVELOPMENT AGENCY
LWDA Online Document Submission Portal

[] **BY U.S. MAIL** I deposited such envelopes in the mail at ____ (city) ____, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with The Guha Law Firm's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

[X] **BY E-MAIL or ELECTRONIC TRANSMISSION** I caused based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, the documents to be sent to the persons at the e-mail addresses. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **June 21, 2021**, at Orange, California.

Print: Ranojoy Guha

Sign: /s/