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California and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

JILL TIZEKKER, on Behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

v.

BEL-AIR BAY CLUB LTD., and DOES 1-
100 inclusive,
Defendant.

Case No. 20SMCV01006

**DECLARATION OF CAROLYN HUNT
COTTRELL IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Date: April 4, 2022

Time: 8:30 AM

Department: P

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1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California, I am admitted to the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California. I am admitted to the Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme Court.
2. I am a partner at Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK specializes in class action and Private Attorneys General Act (“PAGA”) litigation in state and federal court.
3. SWCK represents Plaintiff Jill Tizekker, on behalf of the State of California and Aggrieved Employees (“Plaintiff”) and has prosecuted the above-captioned case. I submit this declaration in support of Plaintiff’s Motion to Approve Settlement Pursuant to Private Attorneys General Act of 2004 in this Action.
4. I have been actively involved in the prosecution of Plaintiff’s claims since prior to filing the complaint. I am familiar with the file, the documents, and the history related to this Action. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.
5. The Settlement Agreement of Representative Action Under Labor Code Private Attorneys General Act (the “Settlement”) that is the subject of this motion resolves this action. A true and correct copy of the Settlement is attached hereto as **Exhibit 1**.

I. QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

6. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.
7. Nearly my entire legal career has been devoted to advocating for the rights of individuals who

6. SWCK is regarded as one of the leading private plaintiff's firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the "top 10 go-to plaintiffs' employment firms in Northern California." The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

1 have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing
2 employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour,
3 employment discrimination and civil-rights actions, and I manage many of the firm's current cases in these
4 areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the
5 National Employment Lawyers Association, the California Employment Lawyers Association, and the
6 Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers
7 Association and co-chaired its Women's Caucus. I was named one of the "Top Women Litigators for 2010"
8 by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer
9 Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my
10 Bachelor's degree from the University of California, and I am a graduate of the University of the Pacific,
11 McGeorge School of Law.

12 8. SWCK has acted or is acting as class and/or PAGA counsel in numerous cases. A partial list
13 of cases which have been certified and/or settled as class actions includes: *Lowe v. Popcornopolis, LLC* (Case
14 No. 2:19-cv-06984-PSG-RAO) (Central District of California, December 15, 2020) (final approval of a
15 hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Jones, et al. v. CertifiedSafety,*
16 *Inc.* (Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of a
17 hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio law Rule
18 23 action with joint employer allegations); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957)
19 (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to
20 pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting
21 time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C.*
22 *Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019)
23 (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with
24 joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No.
25 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay
26 for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks,
27 waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v.*
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1 *North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final
2 approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and
3 overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business
4 expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law);
5 *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and
6 collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide
7 meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California
8 record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under
9 federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898)
10 (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and
11 clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full
12 wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate
13 seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL)
14 (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest
15 periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting
16 time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under
17 California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Northern
18 District of California) (final approval of a class and collective action settlement for failure to compensate for
19 all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male*
20 *Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action
21 settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to
22 pay overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage
23 statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of
24 California) (final approval of class and collective action settlement for failure to compensate for all hours
25 worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure
26 to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to
27 provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-
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2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clock work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities

owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal

1 and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.*
2 (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for
3 misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los
4 Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS
5 pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class
6 action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP)
7 (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried
8 to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified
9 national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-
10 02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx);
11 *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action
12 in favor of deaf plaintiffs alleging disability access violations at the University of California); *Lopez v. San*
13 *Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of
14 plaintiffs in class action against school district for widespread disability access violations); *Campos v. San*
15 *Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of
16 disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of*
17 *California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging
18 gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling*
19 *Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for
20 drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247)
21 (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action
22 resulting in a class-wide \$3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031)
23 (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel's
24 inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County
25 Superior Court) (final approval of class action settlement for failure to provide meal and rest periods to
26 employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final
27 approval of class action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto*
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1 *v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v. Sears,*
2 *Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action settlement for failure
3 to pay Sears drivers for all hours worked); *Amaraut et al. v. Sprint/United Management Company,* (Case No.
4 19-cv-411-WQH-AHG) (S.D. Cal.) (final approval of class and collective action settlement, including
5 Arizona, Colorado, New York, Ohio, and Washington Classes of retail employees); among many others.

6 **II. FACTUAL AND PROCEDURAL HISTORY**

7 9. Plaintiff Jill Tizekker filed her PAGA notice with the Labor & Workforce Development
8 Agency (“LWDA”) on May 12, 2020. A true and correct copy of the letter is attached hereto as **Exhibit 2.**

9 10. After waiting the requisite 65-day period without notice from the LWDA of their intent to
10 investigate her claims, on July 30, 2020, Plaintiff filed this action seeking penalties under the PAGA for
11 Defendant’s wage and hour violations.

12 11. Pursuant to the operative complaint, Plaintiff sought civil penalties for Defendant’s alleged
13 failure to (1) compensate Plaintiff and Aggrieved Employees for all hours worked; (2) pay Plaintiff and
14 Aggrieved Employees all minimum wages owed; (3) pay Plaintiff and Aggrieved Employees all tip wages
15 owed from service charge gratuity payments; (4) reimburse Plaintiff and Aggrieved Employees for necessary
16 business expenses; (5) provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; and
17 (6) pay Plaintiff and Aggrieved Employees all wages at separation of employment .

18 12. On September 4, 2020, Defendant filed a motion to stay the action. Plaintiff filed her
19 opposition on September 21, 2020 and Defendant filed its reply on September 25, 2020. The Court denied
20 Defendant’s motion on October 2, 2020.

21 13. The Parties engaged in extensive formal discovery. On or about November 24, 2020, Plaintiff
22 served on Defendant her first set of Requests for Production of Documents and Special Interrogatories.
23 Defendant responded to the same on or about February 2, 2021. On or about December 9, 2021, Defendant
24 served on Plaintiff its first set of Requests for Production of Documents, Special Interrogatories, and Form
25 Interrogatories - General. Plaintiff served her responses to the same on February 16, 2021.

26 14. On February 24, 2021, Plaintiff sent Defendant a meet and confer letter outlining the
27 deficiencies in its discovery response. During a telephonic conference on March 5, 2021, the Parties discussed
28

1 the possibility of proceeding with mediation and informal discovery.

2 15. On March 10, 2021, Plaintiff sent Defendant a letter detailing documents and information she
3 would need to adequately prepare for mediation. Thereafter, the Parties exchanged more than five
4 correspondences and met and conferred by telephone to attempt to reach a compromise on the pre-mediation
5 informal documents and data that would be exchanged. Prior to mediation, Defendant produced documents
6 and data, including but not limited to written policies and procedures, job descriptions, organization charts,
7 Plaintiff's personnel file and time and pay records, and a 50 % sampling of the Aggrieved Employees' contact
8 information after a *Belaire-West* notice was sent to the Aggrieved Employees.

9 16. Plaintiff also informally supplemented some of the discovery requests served by Defendant,
10 after meeting and conferring with Defendant on the same. Plaintiff also sat for her deposition on May 24,
11 2021. On October 27, 2021, Plaintiff took a limited purpose deposition of Defendant's person most
12 knowledgeable and qualified to testify on several relevant subjects pertinent to be prepared for mediation.

13 17. The remote mediation took place on November 2, 2021 before Steven Rottman, an
14 experienced and respected wage and hour mediator. The mediation involved serious and intensive arms-
15 length negotiations. The mediation was successful, and the Parties reached an agreement in principle during
16 the mediation session to settle both the PAGA action and Plaintiff's individual arbitrable claims.

17 18. The Parties fully executed a Memorandum of Understanding on January 4, 2022, after
18 several drafts and revisions. The Parties thereafter worked together to jointly draft the Settlement Agreement,
19 exchanging several drafts in the process.

20 19. The Settlement was fully executed as of March 3, 2022.

21 **III. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

22 **A. Terms of the PAGA Settlement and Distribution of PAGA Penalties**

23 20. The Settlement provides that Defendant will pay a settlement amount of \$200,000.00 (the
24 "Gross Settlement Fund" or "Gross Settlement Amount"). From the Gross Settlement Fund, payments will be
25 made to the LWDA and the Aggrieved Employees, to the Named Plaintiff for her Service Award, to
26 Plaintiff's attorneys for fees and litigation costs, and to the Settlement Administrator for settlement
27 administration costs. (Settlement, Exhibit 1, Section II.A.16 and Section II.B.1.)

28 21. The Settlement sets aside \$10,000.00 for the Named Plaintiff as a Service Award, in

1 exchange for her general release of all claims against Defendant, and for her efforts in bringing and
2 prosecuting the matter. (Settlement, Section II.A.18 and Section II.E.2.)

3 22. Plaintiff's counsel will seek a standard fee award, not to exceed thirty-three and one-third (33
4 1/3%) of the Gross Settlement Fund, along with reimbursement of actual litigation costs, not to exceed
5 \$16,000.00. (Settlement, Section II.C.2.b.) The costs incurred at this time are \$14,345.02.

6 23. The Settlement Administrator is Simpluris. (Settlement, Section II.A.13.) Settlement
7 Administrator estimated total costs are currently \$4,610.

8 24. After distributions for the Service Award, attorneys' fees and costs, and Settlement
9 Administrator costs, it is estimated that approximately \$104,378.32 will be available as estimated net
10 proceeds (the "Net Settlement Fund"). Seventy-Five percent (75%) of the Net Settlement Fund will be paid to
11 the LWDA and the remaining 25% will be paid to the Aggrieved Employees (Settlement, Section II.A.17.)

12 25. Accordingly, the LWDA will receive approximately \$78,283.74 from the Settlement. The
13 employees will receive approximately \$26,094.58 from the Net Settlement Fund. These allocations will result
14 in an average payment amount of \$101.53 for each employee, based on the figures provided during the
15 mediation (\$104,378.32 [Net Settlement Fund]/257 employees). This calculation figure assumes that
16 Aggrieved Employees worked the same number of pay periods, but as detailed herein, under the terms of the
17 settlement, the settlement proceeds will be distributed on a pro rata basis according to each Aggrieved
18 Employee's number of pay periods worked during the recoverable period.

19 26. The Aggrieved Employees include all front-of-house and back-of-house hourly employees of
20 Defendant in California at any time between May 26, 2019 through the earlier of the date of approval of the
21 Settlement by the Court or 60 days after the January 4, 2021 date on which the MOU was signed by the last
22 party to sign it, and excluding the period of March 15, 2020 to June 18, 2020 when employees were
23 furloughed due to COVID-19. (Settlement, Section II.A.3.) Defendant represented that there were
24 approximately 257 Aggrieved Employees employed during the time period of May 26, 2019 through October
25 2021 – approximately one month prior to the mediation. As explained herein, Plaintiff's damages exposure
26 calculations are based on the assumption that approximately 257 employees are eligible to recover for the
27 alleged violations.

1 27. No later than ten (10) calendar days after the Effective Date¹, Defendant will deliver to the
2 Settlement Administrator via wire transfer the total sum of \$200,000.00, which amount shall be in full and
3 final satisfaction of the payments under the Settlement, consisting of: all payments of civil penalties to
4 Aggrieved Employees, the payment to the LWDA, Plaintiff's Counsel's attorneys' fees and costs as approved
5 by the Court, Plaintiff's Service Award, and the reasonable fees and costs of the Settlement Administrator.
6 (Settlement, Section II.D.1.)

7 28. No later than twenty (20) days after the Effective Date, Defendant will email the Settlement
8 Administrator an electronic spreadsheet containing, for each Aggrieved Employee, his or her name, last-
9 known address and/or telephone number, social security number, dates of employment, whether he or she
10 worked for the Upper Club Banquets Department, and number of pay periods worked during the PAGA
11 Recovery Period. Promptly after receiving it, the Settlement Administrator will run the Aggrieved
12 Employees' addresses through the U.S. Postal Service's National Change of Address database. (Settlement,
13 Section II.D.2.)

14 29. No later than thirty (30) calendar days after the Effective Date, the Settlement Administrator
15 will pay by check or wire transfer the attorneys' fees and costs, service award, settlement administration costs,
16 and Net Settlement Fund to the LWDA and Aggrieved Employees. (Settlement, Section II.D.3.) Along with
17 the settlement checks, the Settlement Administrator will mail a letter explaining how the settlement payment
18 was calculated to each Aggrieved Employee. Plaintiff's counsel will prepare a draft of the communication to
19 Aggrieved Employees for Defendant's counsel's review, and the communication shall be jointly agreed upon
20 by the Parties. (Settlement, Section II.D.3.) A true and correct copy of this correspondence is attached as
21 **Exhibit 3.**

22 30. The Settlement Administrator will allocate 25% of the Net Settlement Fund to the Aggrieved
23 Employees; payment will be calculated and apportioned based on the number of Pay Periods an Aggrieved
24 Employee worked during the PAGA Recovery Period. (Settlement, Section II.D.5.) The Settlement
25 Administrator will calculate the number of Pay Periods worked by each Aggrieved Employee ("Individual
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27 ¹ "Effective Date" means the date that the Court enters an order granting the motion for approval if no appeal is filed, or
28 if an appeal is filed, the date the appeal is dismissed or denied and is no longer subject to appellate review.

1 Pay Periods”) during the PAGA Recovery Period, the amount to be paid per pay period, and the individual
2 payments to eligible Aggrieved Employees. (*Id.*) Pay Periods” means, for each Aggrieved Employee, the
3 number of full or partial pay periods in which he or she was employed by Defendant during the PAGA
4 Recovery Period, according to Defendant’s time punch and payroll records. (Settlement, Section, II.A.9.)

5 31. The payment to each Aggrieved Employee will be determined as follows: The Settlement
6 Administrator will calculate the total number of Pay Periods for the entire group of Aggrieved Employees (as
7 weighted, as described below). (Settlement, Section II.D.5.c.) The Settlement Administrator will divide the
8 25% of the Net Settlement Amount by the total number of pay periods (as weighted), resulting in the Pay
9 Period Value. (*Id.*) The Settlement Administrator will multiply the Pay Period Value by the number of pay
10 periods worked by each Aggrieved Employee (as weighted), to determine the payment to each Aggrieved
11 Employee. (*Id.*) To account for the additional penalties relating to the underlying Labor Code § 351
12 allegations, the Individual Pay Periods for Aggrieved Employees who worked for the Upper Club Banquets
13 Department shall be multiplied by 2.0. (*Id.*) For example, if an Aggrieved Employee worked in the Upper
14 Club during the PAGA Recovery Period and worked ten (10) pay periods, the Settlement Administrator will
15 multiply 10 pay periods by a multiplier of 2.0 for the purposes of calculating the Pay Period Value and
16 calculating his or her individual payment as to those Pay Periods worked for the Upper Club Banquets
17 Department. (*Id.*)

18 32. Defendant’s pay period data will be presumed correct unless a particular Aggrieved
19 Employee proves otherwise to the Settlement Administrator by credible evidence. (Settlement, Section
20 II.D.5.b) All pay period disputes will be resolved and decided by the Settlement Administrator, and the
21 Settlement Administrator’s decision on all workweek disputes will be subject to Counsel’s and the Court’s
22 review.

23 33. The payment to the Aggrieved Employees, including the Service Award, will be treated as
24 civil penalties for purposes of IRS reporting. (Settlement, Section II.D.8.) No withholding shall be made in
25 relation to the payments to the Aggrieved Employees. (*Id.*) Such payments shall be reported on the IRS Form
26 1099 Miscellaneous to each Aggrieved Employee, which shall be issued to each Aggrieved Employee by the
27 Settlement Administrator at the same time the settlement checks are issued by the Settlement Administrator.

1 (Id.)

2 34. If any settlement check is returned as undeliverable, the Settlement Administrator will use
3 reasonable skip-trace methods to locate a new address.

4 35. Settlement checks will remain valid for 180 days from the date of mailing. (Settlement,
5 Section D.II.7). If there are funds attributable to uncashed settlement checks after the 180-day period, the
6 Settlement Administrator shall redistribute them to all Aggrieved Employees who cashed their checks. (Id.) If
7 funds still remain following the second distribution, the funds will be remitted to the *cy pres* recipient that is
8 approved by the Court. (Id.) The parties propose Legal Aid at Work as the *cy pres* recipient. (Id.)

9 **B. The Releases for the Aggrieved Employees and the Plaintiff, and Plaintiff's**
10 **Service Award**

11 36. Under the Settlement, Aggrieved Employees release certain PAGA claims. (Settlement,
12 Section II.E.1.) These "PAGA Released Claims" include: all claims, rights, demands, liabilities, and causes of
13 action for civil penalties asserted under PAGA, or that could have been asserted, in the Complaint, which
14 includes the claims made for Defendant's alleged (1) failure to compensate Plaintiff and Aggrieved
15 Employees for all hours worked; (2) failure to pay Plaintiff and Aggrieved Employees all minimum wages
16 owed; (3) failure to pay Plaintiff and Aggrieved Employees all tip wages owed from service charge gratuity
17 payments; (4) failure to reimburse Plaintiff and Aggrieved Employees for necessary business expenses; (5)
18 failure to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; and (6) failure to
19 pay Plaintiff and Aggrieved Employees all wages at separation of employment. (Id.)

20 37. The Judgment entered by the Los Angeles Superior Court shall have *res judicata* effect as to
21 each Aggrieved Employee with respect to the PAGA Released Claims. (Settlement, Section II.E.1.)

22 38. Additionally, upon the Effective Date, Plaintiff Tizekker agrees to a broader, general release,
23 including "any and all known or unknown claims, demands, actions or causes of action whatsoever that now
24 exist or that may arise in the future, based upon acts, events or omissions occurring from the beginning of
25 time to the date of the Memorandum of Understanding signed by the parties on January 4, 2022, including but
26 not limited to any and all claims whatsoever arising out of or pertaining in any way to Plaintiff's employment
27 with Defendant and her separation from employment with Defendant." (Settlement, Section II.E.2.)

28 39. The general release of these claims is in exchange for the \$10,000.00 Service Award, along
with recognizing the named Plaintiff for her the time and risk expended in this case.

40. Plaintiff's Counsel is not aware of any other representative action in any other court that

1 asserts claims similar to those alleged in this action, nor of any other cases pending in the pre-filing LWDA
2 stage based on a search of the Department of Industrial Relations website.

3 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND WARRANTS APPROVAL**

4 41. Plaintiff has extensively analyzed the facts and claims to evaluate the Settlement's fairness
5 and reasonableness. Plaintiff's counsel has conducted significant discovery, taken a limited purpose Person
6 Most Knowledgeable deposition, and conducted outreach to the Aggrieved Employees. Plaintiff's Counsel
7 used this information, discovery, deposition testimony, and data to perform in-depth analyses of the claims,
8 Defendant's exposure, and the potential recovery.

9 **A. Nature of the Alleged Violations and Total Potential PAGA Penalties**

10 42. Plaintiff alleges three core sets of claims in this action: an unpaid hours claim, a service fee
11 claim, and a business expenses claim. Additionally, Plaintiff asserts derivative violations for failure to provide
12 accurate, itemized wage statements and waiting time penalties which flow from the unpaid hours and service
13 fee claims.

14 43. While each of these claims exposes Defendant to PAGA penalties, it is anticipated that the
15 amount that the penalties should be "stacked," with multiple violations assessed per person for individual pay
16 periods, would be vehemently disputed by Defendant.

17 44. Labor Code § 351 provides that "[n]o employer or agent shall collect, take, or receive any
18 gratuity or a part thereof that is paid, given to, or left for an employee by a patron... Every gratuity is hereby
19 declared to be the sole property of the employee or employees to whom it was paid, given, or left for." (See
20 Cal. Lab. Code § 351.) "Gratuity" is defined to "include[] any tip, gratuity, money, or part thereof that has
21 been paid or given to or left for an employee by a patron of a business over and above the actual amount due
22 the business for services rendered or for goods, food, drink, or articles sold or served to the patron." (See Cal.
23 Lab. Code § 350 subd. (e).)

24 45. Labor Code § 510(a) provides that eight hours of labor constitutes a day's work. Any work in
25 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
26 eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
27 less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in

one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

46. Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

47. Plaintiff performed an in-depth analysis of interviews conducted with Aggrieved Employees, data provided by Defendant, and the underlying state law provisions to develop Defendant's potential exposure.

48. As there are no known findings by a court or the Labor Commissioner that Defendant has violated the Labor Code, Plaintiff applies the \$100 penalty amount for all violations.

49. Based on records provided by Defendant before mediation, Plaintiff assumed there are approximately 257 Aggrieved Employees employed by Defendant in California during the relevant time period of May 26, 2019 through the date this figure was provided, one month prior to mediation, on October 1, 2021.

50. In anticipation of mediation, Defendant represented that there were 6,453 pay periods at issue from May 26, 2019 through the date of mediation.

51. Based on the analysis of the data Defendant provided and the interviews with Aggrieved Employees, Plaintiff further assumed that she could prove the following: the all hours worked and minimum wage violations each at a rate of 30%, the wage statement and service charge violations at a rate of 60% each, the expense reimbursement violations at a rate of 30%, and the waiting time penalties at a rate of 50%.

52. Based on these figures, Plaintiff calculated that Defendant's total exposure is approximately \$1,362,730. However, Plaintiff determined that further, additional discounting factors were appropriate to account for the risk that Plaintiff would not be able to proceed on a representative basis as to all employees at issue based on manageability issues, the risk that Plaintiff may not be able to prove the violate rate at the rates specified above, and the risk that the Court may reduce the penalties as arbitrary. The weighing signifies the potential for success of each claim.

53. As such, Plaintiff's counsel assessed the interviews done with Aggrieved Employees and Defendant's records. Based on the same, Plaintiff applies an 50% weighing to the service fee claim, or a 50% discounting. While Plaintiff believes this claim is strong, as it would be completely dependent on whether or

1 not the Court finds that customers reasonably believed that the service fee even needed to be distributed to the
2 employees in the first place. Similarly, given the strength of the claims, Plaintiff applies a 60% weighing
3 (40% discounting) to the minimum wage and all hours worked claims, as well as the expense reimbursement
4 claim, and a 20% weighing (or 80% discounting) to the derivative claims because those are completely
5 dependent on the success of the others.

6 54. This discounting results in a net exposure of \$621,008, with each of the claims being
7 estimated as follows: minimum wage and all hours worked: \$116,154 each; service fee: \$193,590; wage
8 statements: \$77,463; business expenses: \$116,154; and waiting time: \$1,520. This results in a weighing of
9 approximately 2.3 for the Upper Club Banquet Department employees, which Plaintiff rounded down to 2.0.
10 The agreement to weigh the pay periods for these employees at a rate of 2.0 is included in the Settlement,
11 wherein a description is provided regarding the calculation of settlement checks per Aggrieved Employee.

12 55. The case ultimately settled for \$200,000.00, which is approximately 32.2% of \$621,008, the
13 anticipated exposure on all claims, accounting for risk, that Plaintiff's Counsel estimated it could recover.

14 56. This amount assumes that Plaintiff prevails on liability and proves up the violations at the
15 levels described above for every single Aggrieved Employee and every pay period.

16 57. In light of these risks discussed below, and analysis of similar PAGA settlements,
17 \$200,000.00 constitutes a material percentage of the total damage exposure and is a reasonable overall
18 settlement sum.

19 **B. Litigation Risks**

20 58. Plaintiff was confronted with uncertainty in proceeding to trial on the PAGA claims.
21 Plaintiff's counsel has reviewed hundreds of pages of documents, took a deposition of Defendant's person
22 most knowledgeable, and conducted substantial outreach with the employees at issue concerning their
23 experiences working for Defendant. Plaintiff's investigation shows that these employees performed different
24 roles and hold different positions, in different areas of the club. Variability as to individual employees'
25 experience is not uncommon in employment litigation, and such variability may present a risk to Plaintiff's
26 case here if it were to proceed to trial in the event the Defendant raises manageability concerns.

27 59. Defendant also has legal defenses available to it. Defendant argues that its policies and
28 procedures are facially compliant with California labor law. (*Id.*) Though Plaintiff contests Defendant's

1 practices as non-compliant, Plaintiff recognizes that the Court could credit Defendant for maintaining facially
2 compliant policies for its employees.

3 60. Further, Defendant argues that all service charges did not need to be remitted to the
4 Aggrieved Employee. This issue, and the degree to which the language conveyed to the customers is
5 sufficient to allow a customer to understand how the service fees are being remitted, or not, would be hotly
6 contested at trial. However, the Court might still find that the language is sufficient to allow the customer to
7 understand that the charge is not meant to be a gratuity to the service workers. Defendant may also argue that
8 the time Aggrieved Employees allege to have spent walking from the parking area to the club is not
9 compensable as off-the-clock work.

10 61. Additionally, Plaintiff's claims regarding waiting time penalties and wage statements are
11 derivative, and rise and fall with Plaintiff's other wage payment claims.

12 62. Plaintiff also recognizes that some courts have interpreted Labor Code section 2699(f)(2) to
13 impose the enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has been
14 notified that its conduct violates the Labor Code. While Plaintiff regards this interpretation as flawed, she
15 nonetheless recognizes that this interpretation has gained traction with some courts.

16 63. While Plaintiff believes that she would have prevailed on these issues and others, Plaintiff
17 recognizes the risk that a fact finder may have found for Defendant on one or more of these issues and/or
18 found penalties to be significantly less than what Plaintiff claims.

19 **V. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR**
20 **AND REASONABLE**

21 64. For Plaintiff counsel's efforts and the substantial risk that they undertook in obtaining a large
22 common fund settlement to benefit the LWDA and the Aggrieved Employees, the Parties allocated thirty-
23 three and one-third percent (33 1/3%) of the Gross Settlement Fund to Plaintiff's counsel for reasonable
24 attorneys' fees, plus actual litigation costs in an amount not to exceed \$16,000.00, which at this time are
25 \$14,345.02.

26 65. Plaintiff's counsel's efforts resulted in a common fund settlement amount of \$200,000.00.
27 This is a fair and reasonable settlement and an especially favorable result in light of the size of the aggrieved
28

1 employee group and the challenges Plaintiff may have faced at trial. This result was achieved by the work and
2 success of Plaintiff's counsel, who negotiated the Settlement after extensive preparation.

3 66. Plaintiff faced risks going forward with this litigation, as described above. Further, this case
4 involves employees who held different positions, in different areas of the club. The fact that these events
5 spanned over the last few years, and several of these employees have changed jobs, presents issues that could
6 be detrimental to Plaintiff's case.

7 67. Plaintiff's counsel are experienced representative action litigators. This experience and
8 expertise, combined with the high quality of work performed in this case by Plaintiff's counsel, resulted in the
9 Settlement achieved.

10 68. Plaintiff's counsel have been representing Plaintiff and the State in this matter on strictly
11 contingency basis, and had to forego opportunities to litigate other cases. Plaintiff's counsel incurred the risk
12 of non-recovery after a substantial investment of time, money, and resources, and have done so since the
13 inception of the case without any payment or compensation.

14 69. The lodestar for Plaintiff's counsel in this Action is over \$272,300. A true and correct
15 summary of the SWCK lodestar is attached hereto as **Exhibit 4**.

16 70. The attorneys' fees requested (\$66,666.66) represent approximately 24.5% of the lodestar
17 incurred by Plaintiff's counsel. Plaintiff's counsel has agreed to accept this compromise and reduction in an
18 effort to resolve the case and obtain a fair settlement for Plaintiff and the Aggrieved Employees.

19 71. I have reviewed a summary of SWCK's billing records, which are maintained during the
20 regular course of business and billed contemporaneously. While adjusting our rates to track market increases,
21 SWCK's rates have steadily remained reasonable and competitive, and have been consistently approved by
22 many federal and state courts over the past several years. SWCK hourly rates were recently found to be
23 reasonable for purposes of a lodestar crosscheck by Judge Laurel Beeler in *Villafan v. BROADSPECTRUM*
24 *Downstream Services, Inc., et al.*, Case No. 3:18-cv-06741-LB, ECF 150 (N.D. Cal. Apr. 8, 2021) (awarding
25 one-third fee award, plus costs, and holding that SWCK's "billing rates are normal and customary (and thus
26 reasonable) for lawyers of comparable experience doing similar work"). SWCK hourly rates were also
27 recently found to be reasonable by in *Amaraut v. Sprint/United Mgmt.*, wherein the Court found that "the fee
28

award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates of Schneider Wallace Cottrell Konecky LLP ... are reasonable, and that the estimated hours expended are reasonable.” (*Amaraut v. Sprint/United Mgmt. Co.*, No. 19-cv-411-WQH-AHG, 2021 U.S. Dist. LEXIS 147176, *29 (S.D. Cal. Aug. 5, 2021)). The prior litigation rates for SWCK were also found to be reasonable for purposes of a lodestar crosscheck by Judge Vince Chhabria in *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 304, 305 (N.D. Cal. Oct. 23, 2019) (approving a one-third fee award, and in late 2019, finding that “the fee award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates of Schneider Wallace Cottrell Konecky Wotkins LLP ... are reasonable, and that the estimated hours expended are reasonable.”). The Orange County Superior Court also approved one-third of the settlement amount as reasonable in light of the contingent nature of the fee, the hours worked by counsel, and the results achieved by counsel and found that requested award has been supported by counsel’s lodestar and billing statement. (*El Pollo Loco Wage and Hour Cases*, Case No. JCCP 4957, Orange County Superior Court, order dated January 31, 2020.) The Sacramento Superior Court granted final approval of a class action settlement and SWCK’s fee request pursuant to a lodestar crosscheck that incorporated my team’s then-customary rates. *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries*, Case No. 34-2017-00223592, Sacramento Superior Court, order dated September 5, 2019. In *Shaw, et al. v. AMN Services, LLC, et al.*, No. 3:16-cv-02816, ECF 167 (N.D. Cal. May 31, 2019), the Court conducted a lodestar cross check and held that “the hourly rates charged by [SWCK] are within the prevailing range of hourly rates charged by attorneys providing similar services in class action, wage-and-hour cases in California.” The Court further held that the “hourly rates of Class Counsel [SWCK] also have consistently and recently been approved as reasonable by the courts.” Other approvals of SWCK’s historical hourly rates include: *Knapp v. Art.com, Inc.*, No. 3:16-cv-00768-WHO, ECF 89 (N.D. Cal. October 24, 2018); *Villalpando v. Exel Direct Inc.*, 2016 WL 7740854, at *1 (N.D. Cal. Dec. 12, 2016); *Winans v. Emeritus Corp.*, 2016 WL 107574, at *8 (N.D. Cal. Jan. 11, 2016); *Carnes v. Atria Senior Living Inc.*, Case No. 14-cv-02727-VC, ECF 115, at 4-5 (N.D. Cal. July 12, 2016); *Meza v. S.S. Skikos, Inc.*, Case No. 3:15-cv-01889-TEH, ECF 58, at 4 (N.D. Cal. May 25, 2016).

72. In this case, there was no guarantee of compensation or reimbursement. Rather, SWCK undertook all the risks of this litigation on a completely contingent fee basis. The inherent risk of proving

1 liability and penalties across the aggrieved employees and Defendant's representation by skillful counsel
2 confront SWCK with the prospect of recovering nothing or close to nothing for their commitment to and
3 investment in the case.

4 73. Nevertheless, Plaintiff and SWCK committed themselves to developing and pressing
5 Plaintiff's legal claims to enforce the State of California's and the employees' interests and maximize the
6 recovery. The challenges that SWCK had to confront and the risks they had to fully absorb on behalf of the
7 State and the employees here are precisely the reasons for multipliers in contingency fee cases.² As Aggrieved
8 Employees and the State will receive significant payments if the Settlement is approved, SWCK seek a
9 reasonable fee award for their efforts and the risk they have assumed.

10 74. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly
11 higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought
12 cases where, like in the case at bar, the result is uncertain. In the legal marketplace, a lawyer who assumes a
13 significant financial risk on behalf of a client rightfully expects that his or her compensation will be
14 significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that
15 the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee
16 cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply
17 makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that
18 meritorious cases will be brought to enforce important public interest policies and that clients who have
19 meritorious claims will be better able to obtain qualified counsel.

20 75. Plaintiff's counsel also requests reimbursement of their actual out-of-pocket expenses
21 incurred to prosecute the Action, which are approximately \$14,345.02 as of the filing of this Motion. A true
22 and correct summary of SWCK's out-of-pocket expenses is attached hereto as **Exhibit 5**.

23 76. Plaintiff's counsel incurred costs including, *inter alia*, filing and service fees, costs for remote
24 appearances, document retrieval, deposition costs, and mediation fees. These expenses were incidental and
25 necessary to the effective representation of the Aggrieved Employees.

26 ² (Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) ("A contingent fee must be higher than a fee for the
27 same legal services paid as they are performed... because the risk of default (the loss of the case, which cancels the debt
28 of the client to the lawyer) is much higher than that of conventional loans".))

1 77. On March 3, 2022, my office served the fully-executed Settlement on the Labor Workforce
2 and Development Agency (“LWDA”) through its online document submission system for PAGA claims.
3 Usage of this online system is the required means to transmit documents to the LWDA. A true and correct
4 copy of the Settlement served upon the LWDA today is attached hereto as **Exhibit 1**. A true and correct copy
5 of the proof of submission via this system is attached hereto as **Exhibit 6**.

6 78. The Court will retain jurisdiction to enforce the settlement. (Settlement, Section II.H.10.)

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
8 and correct. Executed this 10th day of March, 2022 at Auburn, California.

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Carolyn Hunt Cottrell

EXHIBIT 1

Carolyn Hunt Cottrell (SBN 166977)
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

JILL TIZEKKER, on Behalf of the State of California and Aggrieved Employees,

Plaintiffs,

v.

BEL-AIR BAY CLUB LTD., and DOES 1-100
inclusive,

Defendant.

Case No. 20SMCV01006

Assigned to the Hon. Elaine W. Mandel

**SETTLEMENT AGREEMENT OF
REPRESENTATIVE ACTION UNDER
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT**

1 SETTLEMENT AGREEMENT

2 This Settlement Agreement of Representative Action under California Labor Code
3 Private Attorneys General Act is entered into between Plaintiff Jill Tizekker (“Plaintiff”), on
4 behalf of herself, the State of California, Aggrieved Employees (as defined below), and
5 Defendant Bel-Air Bay Club Ltd. (“Defendant”). Plaintiff and Defendant are collectively
6 referred to as “the parties.”

7 I. Factual Background

8 A. On May 12, 2020, Plaintiff sent a certified letter to the Labor Workforce
9 Development Agency (“LWDA”), notifying the LWDA that she intended to pursue a claim
10 against Defendant under the Labor Code Private Attorneys General Act (“PAGA”) based on
11 its alleged wage and hour violations (“PAGA Letter”). The LWDA did not respond to the
12 PAGA Letter or otherwise indicate that it intended to investigate Plaintiff’s allegations.

13 B. After waiting the required 65 days without a response from the LWDA, on
14 July 30, 2020, Plaintiff filed a PAGA complaint against Defendant seeking penalties pursuant
15 to Labor Code sections 2699(a) and 2699(f) (the “Complaint”). In the Complaint, Plaintiff
16 alleges that Defendant is liable for civil penalties for (1) failing to compensate Plaintiff and
17 Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and Aggrieved
18 Employees all minimum wages owed; (3) failing to pay Plaintiff and Aggrieved Employees
19 all tip wages owed from service charge gratuity payments; (4) failing to reimburse Plaintiff
20 and Aggrieved Employees for necessary business expenses; and (5) failing to provide
21 Plaintiff and Aggrieved Employees accurate, itemized wage statements. On September 4,
22 2020, Defendant filed its Answer to Plaintiff’s Complaint, in which it asserted a general
23 denial to each and every allegation of the Complaint.

24 C. The parties agreed to participate in a private mediation for both the PAGA
25 claims and Plaintiff’s individual arbitrable California labor code and tort claims pursuant to a
26 separately served arbitration demand. For purposes of pre-mediation discovery, Defendant
27 produced over three hundred pages of documents, including written policies, practices, and
28 standards; job descriptions; onboarding and training documents; and Plaintiff’s personnel

1 file, including her time and pay records. The parties also engaged in a *Belaire-West* notice
2 process as to a sampling of the Aggrieved Employees to allow Plaintiff to investigate
3 Aggrieved Employees' work experiences with Defendant as they related to the PAGA claims
4 alleged in the Action. Additionally, Defendant took Plaintiff's deposition on May 24, 2021
5 and Plaintiff took a limited purpose deposition of Defendant's person most knowledgeable on
6 several topics on October 27, 2021.

7 F. On November 2, 2021, the parties participated in a private mediation before
8 Steven Rottman. The mediation was successful, and the parties reached an agreement in
9 principle during the mediation session. The parties fully executed a Memorandum of
10 Understanding on January 4, 2022, after several drafts and revisions. The negotiations
11 leading to settlement and to the terms of this agreement were at all times non-collusive and
12 conducted at arm's length.

13 G. Plaintiff and her counsel have conducted a thorough investigation into the
14 facts of the action for the benefit of Plaintiff and Aggrieved Employees. Based on that
15 investigation, Plaintiff and Plaintiff's Counsel are of the opinion that the settlement is fair,
16 reasonable, adequate, and in the best interests of the Aggrieved Employees and the State of
17 California.

18 H. Defendant denies it violated the law in any manner alleged in the Action (as
19 defined below). Nothing contained herein, nor the consummation of the settlement, is to be
20 construed or deemed an admission of liability or wrongdoing on the part of Defendant or any
21 of the Released Parties (as defined below).

22 II. Terms of Agreement

23 A. Definitions.

24 1. "Action" refers to the lawsuit filed in the Superior Court of California
25 for the County of Los Angeles entitled *Tizekker v. Bel-Air Bay Club Ltd.*, Case No.
26 20SMCV01006.

27 2. "Agreement" means this Settlement Agreement of Representative
28 Action under California Labor Code Private Attorneys General Act.

1 3. “Aggrieved Employees” are all front-of-house and back-of-house
2 hourly employees of Defendant in California at any time between May 26, 2019 through the
3 earlier of the date of approval of the Settlement by the Court or 60 days after the date on
4 which the MOU was signed by the last party to sign it, January 4, 2021, and excluding the
5 period of March 15, 2020 to June 18, 2020 when employees were furloughed due to COVID-
6 19.

7 4. “Court” is the Superior Court of California for the County of Los
8 Angeles.

9 5. “Effective Date” means the date that the Court enters an order granting
10 the motion for approval if no appeal is filed, or if an appeal is filed, the date the appeal is
11 dismissed or denied and is no longer subject to appellate review.

12 6. “Judgment” is the order and judgment approving the Settlement in the
13 Action. An order approving the Settlement shall function as a judgment for purposes of Code
14 of Civil Procedure Sections 577-579.

15 7. “LWDA” means the California Labor Workforce Development
16 Agency.

17 8. “PAGA Recovery Period” is the period time between May 26, 2019
18 through the earlier of the date of approval of the Settlement by the Court or 60 days after the
19 date on which the MOU was signed by the last party to sign it, January 4, 2021, and
20 excluding the period of March 15, 2020 to June 18, 2020.

21 9. “Pay Periods” means, for each Aggrieved Employee, the number of
22 full or partial pay periods in which he or she was employed by Defendant during the PAGA
23 Recovery Period, according to Defendant’s time punch and payroll records.

24 10. “Plaintiff” is plaintiff Jill Tizekker.

25 11. “Plaintiff’s Counsel” is Schneider Wallace Cottrell Konecky LLP.

26 12. “Settlement” is the settlement set forth in this Agreement.

27 13. “Settlement Administrator” is Simpluris.

28 14. “Total Pay Periods” means the aggregate number of Pay Periods all

1 Aggrieved Employees worked during the PAGA Recovery Period.

2 15. "Defendant" is defendant Bel-Air Bay Club Ltd.

3 16. "Gross Settlement Fund" and/or "Gross Settlement Amount" mean the
4 total value of the PAGA Settlement, Two Hundred Thousand Dollars (\$200,000.00). This is
5 the maximum amount Defendant can be required to pay under the PAGA Settlement
6 Agreement, which includes: (1) the attorney fee award for attorneys' fees and costs, as
7 approved by the Court; (2) administration costs paid to the Settlement Administrator, as
8 approved by the Court; (3) the PAGA Payment to the LWDA and to eligible Aggrieved
9 Employees and (4) Plaintiff's Service Award, as approved by the Court. No portion of the
10 Gross Settlement Amount will revert to Defendant for any reason.

11 17. "Net Settlement Fund" and/or "Net Settlement Amount" mean the
12 Gross Settlement Amount less the Court-approved attorneys' fees and costs, Plaintiff's
13 Service Award, and settlement administration costs – the remaining amount wherein 75%
14 shall be paid to LWDA and 25% shall be distributed to Aggrieved Employees.

15 18. "Service Award" means the payment to Named Plaintiff Jill Tizekker
16 for her efforts in bringing and prosecuting this matter, and for her general release of claims.
17 The Service Award will not exceed Ten Thousand Dollars (\$10,000.00).

18 19. "Released Parties" means Defendant and its respective or former,
19 present, and future members, owners, parents and subsidiaries, and all of their current,
20 former, officers, directors members, managers, employees, consultants, partners,
21 shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers,
22 or legal representatives.

23 B. Monetary Consideration.

24 1. Plaintiff and Defendant agree that the Action shall be, and hereby is,
25 ended, settled, resolved, and concluded by agreement of Defendant to pay the Gross
26 Settlement Amount of Two Hundred Thousand Dollars (\$200,000.00) pursuant to the terms
27 and conditions of this Agreement and for the consideration set forth herein, including but not
28 limited to, a release of claims by Plaintiff and the Aggrieved Employees as set forth herein.

1 C. Approval Procedure.

2 1. Plaintiff will seek approval of the Settlement in the Superior Court of
3 California for the County of Los Angeles pursuant to Labor Code section 2699(1)(2), and will
4 provide a draft to Defendant's counsel for their review at least five (5) business days before
5 the filing deadline. The Parties will work in good faith to consider and implement any
6 proposed revisions to Plaintiff's motion for settlement approval. If Plaintiff does not timely
7 seek approval of the settlement, Defendant may seek such approval, provided that Defendant
8 provides a copy of the settlement approval papers to Plaintiff for review and comment before
9 filing.

10 2. Concurrent with the filing of the motion for settlement approval:

11 a. Plaintiff's Counsel will serve a copy of this Agreement and
12 Plaintiff's motion for settlement approval to the LWDA at the same time as they are
13 submitted to the Court, pursuant to Labor Code section 2699(1)(2).

14 b. Plaintiff's Counsel may move for an award of Attorneys' Fees
15 and Costs upon filing the motion for settlement approval, payable from the Gross Settlement
16 Amount. Plaintiff's Counsel's fees will be in the discretion of the Court but will not exceed
17 thirty-three and one-third percent (33 1/3%), or \$66,666.66 of the Gross Settlement Amount,
18 plus no more than \$16,000 in costs (with the latter amount being what Plaintiff's Counsel
19 represents is the reasonable out-of-pocket costs incurred by Plaintiff's Counsel in prosecuting
20 the Action). The parties agree that the Court's approval of Attorneys' Fees and Costs is not a
21 material condition of the Settlement and should be considered by the Court separate and apart
22 from the fairness, reasonableness, and adequacy of the Settlement. If the Court does not
23 approve the amount of attorneys' fees requested by Plaintiff, the difference between the
24 amount requested by Plaintiff and the amount approved by the Court will revert to the Net
25 Settlement Fund.

26 3. Within ten (10) calendar days after the date that the Court enters an
27 order granting the motion for approval, Plaintiff's Counsel will serve a copy of the Judgment
28 on the LWDA pursuant to Labor Code section 2699(1)(3).

1 4. Should the Court not approve the Settlement, the parties shall meet and
2 confer to negotiate and make reasonable efforts to address any issues raised by the Court in
3 order to obtain the Court's approval, except that Defendant will not be required under any
4 circumstances to increase the Gross Settlement Amount. If the parties cannot obtain approval
5 from the Court, then the parties shall be restored to their litigation positions as of November
6 2, 2021, and this Agreement shall be deemed null and void, shall be of no force or effect
7 whatsoever, and shall not be referred to or used in this or any other action.

8 D. Distribution.

9 1. Funding date. No later than ten (10) calendar days after the Effective
10 Date, Defendant will deliver to the Settlement Administrator via wire transfer the total sum
11 of Two Hundred Thousand Dollars (\$200,000.00), which amount shall be in full and final
12 satisfaction of the following: all payments to Aggrieved Employees, the payment to the
13 LWDA, Plaintiff's Counsel's attorneys' fees and costs as approved by the Court ("Attorneys'
14 Fees and Costs"), Plaintiff's Service Award, and the reasonable fees and costs of the
15 Settlement Administrator ("Settlement Administrator Costs"). Upon receipt of the Gross
16 Settlement Fund, the Settlement Administrator shall immediately place those funds into an
17 interest-bearing account pending distribution pursuant to this Agreement. Any interest earned
18 shall be added to the Gross Settlement Fund.

19 2. Transmission of Employment Data. No later than twenty (20) calendar days
20 after the Effective Date, Defendant will email the Settlement Administrator an electronic
21 spreadsheet containing, for each Aggrieved Employee, his or her name, last-known address
22 and/or telephone number, social security number, dates of employment, whether he or she
23 worked for the Upper Club Banquets Department, and number of pay periods worked during
24 the PAGA Recovery Period. Promptly after receiving it, the Settlement Administrator will
25 run the Aggrieved Employees' addresses through the U.S. Postal Service's National Change
26 of Address database. This Employment Data will be treated as confidential, disclosed only to
27 the Settlement Administrator, and used for Settlement purposes only.

28 3. Distribution of funds. No later than thirty (30) calendar days after the

1 Effective Date, the Settlement Administrator will pay by check or wire transfer: (1) the
2 Attorneys' Fees and Costs to Plaintiff's Counsel; (2) Plaintiff's Service Award to Plaintiff;
3 (3) the Settlement Administrator Costs to the Settlement Administrator; (4) 75% of the Net
4 Settlement Fund to the LWDA; and (5) 25% of the Net Settlement Fund to the Aggrieved
5 Employees, as set forth below. The Settlement Administrator will mail each settlement
6 check, along with a letter explaining how the settlement payment was calculated, to each
7 Aggrieved Employee. Plaintiff's counsel will prepare a draft of the communication to
8 Aggrieved Employees for Defendant's counsel's review, and the communication shall be
9 jointly agreed upon by the Parties. If any settlement check is returned as undeliverable, the
10 Settlement Administrator will use reasonable skip-trace methods to locate a new address

11 4. No opt-outs or objections by Aggrieved Employees. Because this is a
12 PAGA settlement and not a class action, the parties agree that Aggrieved Employees do not
13 have the right to exclude themselves from the Settlement. Upon the Effective Date,
14 Aggrieved Employees will be bound by the terms of the Settlement, including the release
15 contained herein. There shall be no claims process for Aggrieved Employees to receive
16 payment. The parties further agree that, absent an order by the Court granting leave to
17 intervene, Aggrieved Employees do not have standing to object to the Settlement or appeal
18 any Judgment.

19 5. Allocation of Funds to Aggrieved Employees; Calculation of
20 Individual Settlement Payments. The Settlement Administrator will allocate 25% of the Net
21 Settlement Fund to the Aggrieved Employees. Payments will be calculated and apportioned
22 based on the number of Pay Periods an Aggrieved Employee worked during the PAGA
23 Recovery Period. Specific calculations of individual payments will be made as follows:

24 a. The Settlement Administrator will calculate the number of Pay Periods
25 worked by each Aggrieved Employee ("Individual Pay Periods") during the
26 PAGA Recovery Period, the amount to be paid per pay period, and the
27 individual payments to eligible Aggrieved Employees.

28 b. Defendant's pay period data will be presumed correct unless a particular

1 Aggrieved Employee proves otherwise to the Settlement Administrator by
2 credible evidence. All pay period disputes will be resolved and decided by the
3 Settlement Administrator, and the Settlement Administrator's decision on all
4 pay period disputes will be subject to Counsel's and the Court's review.

- 5 c. The payment to each Aggrieved Employee will be determined as follows: The
6 Settlement Administrator will calculate the total number of Pay Periods for the
7 entire group of Aggrieved Employees (as weighted, pursuant to this paragraph).
8 The Settlement Administrator will divide the 25% of the Net Settlement
9 Amount by the total number of pay periods (as weighted), resulting in the Pay
10 Period Value. The Settlement Administrator will multiply the Pay Period Value
11 by the number of pay periods worked by each Aggrieved Employee (as
12 weighted), to determine the payment to each Aggrieved Employee. To account
13 for the additional penalties relating to the underlying Labor Code § 351
14 allegations, the Individual Pay Periods for Aggrieved Employees who worked
15 for the Upper Club Banquets Department shall be multiplied by 2.0. (For
16 example, if an Aggrieved Employee worked in the Upper Club during the
17 PAGA Recovery Period and worked ten (10) pay periods, the Settlement
18 Administrator will multiply 10 pay periods by a multiplier of 2.0 for the
19 purposes of calculating the Pay Period Value and calculating his or her
20 individual payment as to those Pay Periods worked for the Upper Club
21 Banquets Department.)

22 7. Disputes over Employment Data. If any dispute arises concerning an
23 Aggrieved Employee's Individual Pay Periods and/or eligibility for a settlement payment,
24 Defendant agrees to cooperate with Plaintiff's Counsel and the Settlement Administrator to
25 investigate any such dispute. Aggrieved Employees who successfully dispute their Individual
26 Pay Periods or self-identify as Aggrieved Employees eligible for a settlement payment, will
27 be paid based on the Pay Period Value, to the extent possible, from uncashed check funds
28 after the expiration of settlement checks. Settlement checks will remain valid for 180 days

1 after mailing. If there are funds attributable to uncashed settlement checks after the 180-day
2 period, the Settlement Administrator shall redistribute them to all Aggrieved Employees who
3 cashed their checks. If funds still remain following the second distribution, the funds will be
4 remitted to the *cy pres* recipient that is approved by the Court. The parties propose Legal Aid
5 at Work as the *cy pres* recipient.

6 8. Tax Reporting. The entirety of the payments to the LWDA and the
7 Aggrieved Employees, including Plaintiff's Service Award, will be treated as civil penalties
8 for purposes of IRS reporting. No withholding shall be made in relation to the payments to
9 the Aggrieved Employees. Such payments shall be reported on the IRS Form 1099
10 Miscellaneous to each Aggrieved Employee, which shall be issued to each Aggrieved
11 Employee by the Settlement Administrator at the same time the settlement checks are issued
12 by the Settlement Administrator. All parties represent they have not received, and will not
13 rely on, advice or representations from other parties or their agents regarding the tax
14 treatment of payments under this Settlement.

15 E. Release

16 1. Aggrieved Employee Release: In exchange for the monetary
17 consideration recited in this Settlement, upon the Effective Date and performance of the
18 payment obligations in this Agreement, Plaintiff and Aggrieved Employees will fully and
19 finally release and discharge Defendant and its respective or former, present, and future
20 members, owners, parents and subsidiaries, and all of their current, former, officers, directors
21 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,
22 predecessors, successors, assigns, accountants, insurers, or legal representatives ("Released
23 Parties") from all claims, rights, demands, liabilities, and causes of action for civil penalties
24 asserted under PAGA, or that could have been asserted, in the Complaint, which includes the
25 claims made for Defendant's alleged (1) failure to compensate Plaintiff and Aggrieved
26 Employees for all hours worked; (2) failure to pay Plaintiff and Aggrieved Employees all
27 minimum wages owed; (3) failure to pay Plaintiff and Aggrieved Employees all tip wages
28 owed from service charge gratuity payments; (4) failure to reimburse Plaintiff and Aggrieved

1 Employees for necessary business expenses; (5) failure to provide Plaintiff and Aggrieved
2 Employees accurate, itemized wage statements; and (6) failure to pay Plaintiff and Aggrieved
3 Employees all wages at separation of employment (the “PAGA Released Claims”). The
4 Judgment entered by the Los Angeles Superior Court shall have *res judicata* effect as to each
5 Aggrieved Employee with respect to the PAGA Released Claims.

6 2. Plaintiff’s Service Award and Release: Subject to Court approval and the
7 execution of a general release in favor of the Released Parties, Plaintiff may receive a Service
8 Award in an amount not to exceed Ten Thousand Dollars (\$10,000), to be paid from the
9 Gross Settlement Fund, in addition to her PAGA settlement payment as an Aggrieved
10 Employee under this Agreement. Should the Court does not approve this amount, the
11 difference between the agreed amount and the amount approved by the Court will revert to
12 the Net Settlement Amount, for distribution to the LWDA.

13 (a) The Parties intend this payment to constitute a service payment in
14 consideration for Plaintiff’s litigation efforts, and the work and time Plaintiff put into this
15 Action as an Aggrieved Employee Representative.

16 (b) The Service Award is also provided in consideration for Plaintiff’s
17 willingness to provide a full general release. Plaintiff, upon the Effective Date, for herself
18 and for her heirs, assignees, executors, administrators, agents, and successors, past and
19 present (collectively, “Plaintiff’s Affiliates”), fully and finally release and discharge
20 Defendant and the Released Parties from any and all known or unknown claims, demands,
21 actions or causes of action whatsoever that now exist or that may arise in the future, based
22 upon acts, events or omissions occurring from the beginning of time to the date of the
23 Memorandum of Understanding signed by the parties on January 4, 2022, including but not
24 limited to any and all claims whatsoever arising out of or pertaining in any way to Plaintiff’s
25 employment with Defendant and her separation from employment with Defendant. Plaintiff
26 will dismiss her individual claims with prejudice.

27 (a) Plaintiff understands and for valuable consideration hereby expressly
28 waives all of the rights and benefits of Section 1542 of the California Civil Code, which section

1 reads as follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
3 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
4 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
5 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR OR RELEASED PARTY.

8 (b) Plaintiff understands this release does not apply to any claims or
9 rights that may arise after the date that Plaintiff signed this release; the consideration for this
10 release; vested rights under Defendant's ERISA-covered benefit plans, if any, as applicable
11 on the date Plaintiff signs this agreement and, any claims for which the controlling law
12 clearly states may not be released by private agreement. Plaintiff is not waiving, releasing, or
13 giving up any claim for workers' compensation benefits, vested pension or savings plan
14 benefits, or other claims under the California Labor Code or federal law that may not be
15 waived as a matter of law. Plaintiff acknowledges, however, that she has no workers'
16 compensation claim pending at the time of signing this Agreement. Nothing in this
17 Agreement shall be construed to prohibit Plaintiff from filing a charge or cooperating with
18 any investigation by any federal, state, or local government agency (including without
19 limitation the United States Department of Labor, the Equal Employment Opportunity
20 Commission, the Securities and Exchange Commission, the Department of Justice, and/or the
21 National Labor Relations Board).

22 (c) Because the Service Award represents a payment to Plaintiff for
23 services to the Aggrieved Employees, and not wages, taxes will not be withheld from the
24 Service Award. No Party has made any representation to Plaintiff regarding the taxability of
25 any Service Award. The Settlement Administrator will report the Service Award on a 1099
26 form, which it will provide to the Plaintiff and the pertinent taxing authorities, as required by
27 law.

28 F. Non-Admission of Liability.

1 1. The Parties enter into this Settlement to resolve the dispute that has arisen between
2 them and to avoid the burden, expense and risk of continued litigation. In entering into this
3 Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or
4 local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
5 applicable laws, regulations or legal requirements; breached any contract; violated or breached any
6 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
7 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor
8 any of the negotiations connected with it, will be construed as an admission or concession by
9 Defendant of any such violations or failures to comply with any applicable law. Except as necessary
10 in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and
11 provisions will not be offered or received as evidence in any action or proceeding to establish any
12 liability or admission on the part of Defendant or to establish the existence of any condition
13 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

14 G. No Public Comment.

15 1. Plaintiff and Plaintiff's counsel agree that neither Plaintiff nor Plaintiff's
16 counsel shall issue any press release to the news media or social media, or communicate in any way
17 with any news media or social media, concerning the Settlement or the litigation.

18 H. Miscellaneous.

19 1. The parties agree to fully cooperate with each other to accomplish the
20 terms of this Agreement, including but not limited to executing such documents as may be
21 reasonably necessary to implement the terms of the Settlement.

22 2. The parties agree that the terms and conditions of this Agreement are
23 the result of lengthy, intensive, arm's-length negotiations between the parties and that this
24 Agreement shall not be construed in favor of or against any of the parties by reason of their
25 participation in the drafting of this Agreement.

26 3. This Agreement shall be subject to and governed by the laws of the
27 State of California and subject to the continuing jurisdiction of the Superior Court of
28 California for the County of Los Angeles, which shall have authority to enforce all terms of

1 this Settlement.

2 4. This Agreement may not be changed, altered, or modified, except in
3 writing and signed by counsel for the parties and approved by the Court.

4 5. This Agreement contains the entire agreement between the parties
5 concerning the subject matter hereof and supersedes all prior and contemporaneous
6 agreements and understandings, whether oral or written.

7 6. This Agreement shall be binding upon and inure to the benefit of the
8 parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

9 7. This Agreement may be executed in counterparts.

10 8. Each person signing below warrants that he or she has the authority to
11 enter into this Agreement on behalf of the party or entity for which that person signs.

12 9. Should the release provisions of this Agreement, found in Section E,
13 be declared, or be determined by any court of competent jurisdiction to be illegal, invalid, or
14 unenforceable, this Agreement will be null and void. However, the parties shall meet and
15 confer to negotiate and make reasonable efforts to address any issues relating to the release
16 raised by the Court in order to obtain the Court's approval. Should any other provision of this
17 Agreement be declared or be determined by any court of competent jurisdiction to be illegal,
18 invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts,
19 terms, or provisions shall not be affected thereby, and the illegal, unenforceable, or invalid
20 part, term, or provision shall be deemed not to be a part of this Agreement.

21 10. The Court will retain jurisdiction to enforce the settlement, pursuant to
22 California Code of Civil Procedure section 664.6.

1 IN WITNESS WHEREOF, the parties and their counsel have caused this Agreement
2 to be executed:

3
4 Dated: 03 / 02, 2022



Jill Tizekker

5
6
7 Dated: _____, 2022

BEL-AIR BAY CLUB LTD.

8
9 Signature: _____

10 Title: _____
11

12 APPROVED AS TO FORM:
13

14
15 Dated: March 3, 2022

SCHNEIDER WALLACE
COTTRELL KONECKY LLP



Carolyn Hunt Cottrell
Caroline N. Cohen
Kristabel Sandoval

*Attorneys for Plaintiff Jill Tizekker, on behalf of
the State of California and Aggrieved Employees*

16
17
18
19
20
21
22
23 Dated: _____, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

24
25
26 _____
Katherine C. Den Bleyker

27 *Attorneys for Defendant*
28

1 IN WITNESS WHEREOF, the parties and their counsel have caused this Agreement
2 to be executed:

3
4 Dated: _____, 2022
5 Jill Tizekker

6
7 Dated: March 3, 2022
8 BEL-AIR BAY CLUB LTD.

9 Signature: 
10 Title: Controller

11
12 APPROVED AS TO FORM:

13
14
15 Dated: _____, 2022
16 SCHNEIDER WALLACE
17 COTTRELL KONECKY LLP

18
19 Carolyn Hunt Cottrell
20 Caroline N. Cohen
21 Kristabel Sandoval
22
23 *Attorneys for Plaintiff Jill Tizekker, on behalf of*
24 *the State of California and Aggrieved Employees*

25
26 Dated: 2/23, 2022
27 LEWIS BRISBOIS BISGAARD & SMITH LLP

28
29
30 
31 Katherine C. Den Bleyker
32 *Attorneys for Defendant*

EXHIBIT 2

May 12, 2020

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

Re: Private Attorneys General Act of 2004 Notice

Employee: Jill Tizekker

Employer: Bel-Air Bay Club, Ltd.

To Whom It May Concern:

We represent Jill Tizekker, who is a current employee of Bel-Air Bay Club, Ltd. (“Defendant”). We intend to file a Private Attorneys General Act (“PAGA”) complaint against Defendant on behalf of Ms. Tizekker and all other similarly situated, hourly, non-exempt employees of Defendant in California (the “Aggrieved Employees”). Pursuant to California Labor Code § 2699.3, we hereby provide notice of our client’s intent to bring claims under California Labor Code § 2699(a) and (f).

Defendant is a California non-profit corporation that owns, manages, and operates the Bel-Air Bay Club in Pacific Palisades.

Ms. Tizekker and Aggrieved Employees are current and former similarly situated, hourly, non-exempt employees of Defendant in California. Ms. Tizekker intends to file a complaint against Defendant on behalf of herself and other current and former non-exempt employees of Defendant who have been denied proper gratuity payments, minimum wages, payment for all hours worked, and unreimbursed business expenses. Ms. Tizekker will pursue claims pursuant to California Labor Code § 351 (gratuity violation), § 1194 (failure to pay minimum wage), § 204 (failure to compensate for all hours worked), § 2802 (failure to reimburse for necessary business expenses), §§ 226 and 226.3 (failure to provide timely and compliant itemized wage statements), and California Business and Professions Code §§ 17200, *et seq.* (engaging in unfair business practices).

Ms. Tizekker intends to state causes of action pursuant to California Labor Code §§ 2699(a) and (f) for civil penalties for violating the various California Labor Code provisions enumerated above. Pursuant to Section 2699(a), Ms. Tizekker will seek civil penalties pursuant to each provision of the Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, including but not limited to those Labor Code provisions referenced above, as well as Sections 225.5, 226.3, 256, and 558 of the California Labor Code. To the extent a provision of the Labor Code does not provide for a civil penalty, Ms. Tizekker will seek civil



Attn: PAGA Administrator
Labor and Workforce Development Agency
May 12, 2020
Page 2 of 3

penalties pursuant to California Labor Code Section 2699(f). Defendant, at all relevant times, was an employer who violated the rights of Ms. Tizekker and other Aggrieved Employees by violating various sections of the California Labor Code as outlined in this letter.

Ms. Tizekker works at the Bel-Air Bay Club as a banquet bartender from approximately September 2016 to the present. Ms. Tizekker is paid at an hourly rate of \$20 per hour, plus tips. On average, Ms. Tizekker works approximately six hours per shift, and one shift per month.

Defendant charges their customers a mandatory “service fee” of 22%, which customers reasonably believe represents gratuity/tips for Ms. Tizekker and the Aggrieved Employees. In reality, Ms. Tizekker and Aggrieved Employees do not receive any portion of that service fee, with Defendant retaining the entire amount. As a result, Ms. Tizekker and Aggrieved Employees are denied all gratuity payments that customers reasonably believe would be paid to these service workers. Defendant and their non-service worker employees improperly keep the gratuity that customers believe to be left for or given to Ms. Tizekker and Aggrieved Employees.

Defendant also requires Ms. Tizekker and the Aggrieved Employees to work off-the-clock while they perform work before clocking in for their shifts. Namely, Bel-Air Bay Club requires Ms. Tizekker and the Aggrieved Employees to arrive at the club early for their shifts, pick up a parking pass from inside the club, drive to a designated parking lot, and then walk back to the club to start their shifts, all before they officially clock in for work. This work goes unrecorded and uncompensated, even though it should be compensated under California law, giving rise to minimum wage violations.

Defendant also requires Ms. Tizekker and the Aggrieved Employees to incur expenses for the benefit of Defendant, namely that the Aggrieved Employees purchase and maintain certain items of clothes, including button-down shirts and pants, and non-slip shoes in order to work at the club. Despite requiring Ms. Tizekker and the Aggrieved Employees to incur these expenses for their jobs, Defendant does not reimburse the employees for these necessary business expenses.

Ms. Tizekker and the Aggrieved Employees experience a number of derivative issues from these wage and hour practices, including but not limited receiving incorrect wage statements and not receiving all pay owing to them during and at the end of their employment as to those Aggrieved Employees who no longer work at Bel-Air Bay Club. Upon information and belief, compensation for off-the-clock work unreimbursed business expenses remain outstanding after termination for those Aggrieved Employees who are no longer employed at the Bel-Air Bay Club.

Ms. Tizekker is represented by Schneider Wallace Cottrell Konecky LLP (“SWCK”), a law firm based in Emeryville, California. SWCK has extensive experience in the successful litigation and resolution of employment and representative actions nationwide. A description of the work, mission, and credentials of the firms can be found at www.schneiderwallace.com. Ms. Tizekker and her counsel are committed to zealously pursuing redress on behalf of the State of California and all other similarly situated employees for the violations and civil penalties set forth above.



Attn: PAGA Administrator
Labor and Workforce Development Agency
May 12, 2020
Page 3 of 3

Sincerely,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

/s/ Carolyn H. Cottrell

CAROLYN H. COTTRELL
Attorney at Law

CC via certified mail:

Bel-Air Bay Club, Ltd.
c/o Charlotte Pattison
16801 Pacific Coast Highway
Pacific Palisades, California 90272

Registered Agent for Bel-Air Bay Club, Ltd.

EXHIBIT 3

<<DATE>>

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: *Jill Tizekker, on behalf of the State of California and Aggrieved Employees v. Bel-Air Bay Club Ltd.*
Los Angeles Superior Court, Case No. 20SMCV01006

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of a lawsuit entitled *Jill Tizekker, on behalf of the State of California and Aggrieved Employees v. Bel-Air Bay Club Ltd.*, California Superior Court, County of Los Angeles, Case No. 20SMCV01006 (the “Lawsuit”). That case was filed against Bel-Air Bay Club, Ltd. (“BABC”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). You have been identified as one of the employees covered by the Lawsuit and thus, eligible to receive a settlement payment (“Aggrieved Employee”). Those employees include all front-of-house and back-of-house hourly employees of Defendant in California at any time between May 26, 2019 through the earlier of the date of approval of the Settlement by the Court or 60 days after the date on which the MOU was signed by the last party to sign it, January 4, 2021, and excluding the period of March 15, 2020 to June 18, 2020 when employees were furloughed due to COVID-19 (“PAGA Recovery Period”). BABC’s records indicate you worked [REDACTED] total pay periods during the PAGA Recovery Period.

The Plaintiff in the case, Jill Tizekker, claimed that BABC owed penalties pursuant to the PAGA for certain California Labor Code violations. BABC denies that it violated any law, or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, BABC agreed to pay a certain amount of money categorized as PAGA penalties. BABC vigorously disputes that any PAGA penalties are due, but nonetheless has agreed to resolve the claims raised in the Lawsuit without further court action.

The Court approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL]. Under California law, any settlement of a PAGA case results in 75% of the awarded PAGA penalty being paid to the State of California and 25% of the penalty being paid to the alleged Aggrieved Employees who worked during the applicable period. You are receiving a payment as your share of the settlement.

Payments were calculated and apportioned based on the number of Pay Periods¹ an Aggrieved Employee worked during the PAGA Recovery Period.² Specific calculations of individual payments were made as follows:

- a. The Settlement Administrator calculated the number of Pay Periods worked by each Aggrieved Employee (“Individual Pay Periods”) during the PAGA Recovery Period, the amount to be paid per pay period, and the individual payments to Aggrieved Employees.
- b. Defendant’s pay period data is presumed correct unless a particular Aggrieved Employee proves

¹ “Pay Periods” means, for each Aggrieved Employee, the number of full or partial pay periods in which he or she was employed by Defendant during the PAGA Recovery Period, according to Defendant’s time punch and payroll records.

² “PAGA Recovery Period” is the period time between May 26, 2019 through the earlier of the date of approval of the Settlement by the Court or 60 days after the date on which the MOU was signed by the last party to sign it, January 4, 2021, and excluding the period of March 15, 2020 to June 18, 2020.

otherwise to the Settlement Administrator by credible evidence. All pay period disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all pay period disputes will be subject to Counsel's and the Court's review.

- c. The payment to each Aggrieved Employee will be determined as follows:

The Settlement Administrator will calculate the total number of Pay Periods for the entire group of Aggrieved Employees (as weighted, as described below). The Settlement Administrator will divide 25% of the Net Settlement Amount³ by the total number of pay periods (as weighted), resulting in the Pay Period Value. The Settlement Administrator will multiply the Pay Period Value by the number of pay periods worked by each Aggrieved Employee (as weighted, as described below), to determine the payment to each Aggrieved Employee.

To account for the additional penalties relating to the underlying Labor Code § 351 allegations, the Individual Pay Periods for Aggrieved Employees who worked for the Upper Club Banquets Department shall be multiplied by 2.0.

(For example, if an Aggrieved Employee worked in the Upper Club during the PAGA Recovery Period and worked ten (10) pay periods, the Settlement Administrator will multiply 10 pay periods by a multiplier of 2.0 for the purposes of calculating the Pay Period Value and calculating his or her individual payment as to those Pay Periods worked for the Upper Club Banquets Department.)

You have 180 days to cash the settlement check, after which point the check will no longer be valid. If there are funds attributable to uncashed settlement checks after the 180-day period, the Settlement Administrator shall redistribute them to all Aggrieved Employees who cashed their checks. If funds still remain following the second distribution, the funds will be remitted to the *cy pres* recipient that is approved by the Court.

You will receive a tax form 1099 for the check. You may also contact the Settlement Administrator, Simpluris, at [phone number], [mailing address/PO Box] with questions or to submit evidence to dispute the number of pay periods cited above.

In exchange for these payments, the settlement releases claims for civil penalties alleged in the complaint under PAGA for the period of May 26, 2019, through [INSERT DATE the earlier of the date of approval of the Settlement by the Court or 60 days after the date on which the MOU was signed by the last party to sign it, January 4, 2021], and excluding the period of March 15, 2020 to June 18, 2020, including claims for failure to pay minimum wage and all hours worked, failure to pay tip wages owed from service charge gratuity payments, failure to reimburse necessary business expenses, inaccurate itemized wage statements, and waiting time penalties. By way of this settlement, you are releasing PAGA claims based on or arising out of these above-described violations, but you are not releasing any individual labor code claims you may have for damages.

To view the entirety of the Settlement Agreement, including its defined terms, you may visit <https://www.lacourt.org/documentimages/civilImages/SearchByCaseNumber.aspx>, enter Case No. 20SMCV01006, and review the entire public docket of this Lawsuit.

³ "Net Settlement Fund" and/or "Net Settlement Amount" mean the Gross Settlement Amount less the Court-approved attorneys' fees and costs, Plaintiff's Service Award, and settlement administration costs – the remaining amount wherein 75% shall be paid to LWDA and 25% shall be distributed to Aggrieved Employees.

EXHIBIT 4

Tizekker, Jill, et al. v. Bel-Air Bay Club (Los Angeles County - PAGA)

TIME KEEPER	RATE	TIME	CHARGES
Partners			
Cottrell, Carolyn (CMH)	\$1,105	9.70	\$10,718.50
Of Counsel / Associates			
Cohen, Caroline (CNC)	\$900	109.60	\$98,640.00
Daniels, Bryant (BCD)	\$680	3.90	\$2,652.00
Edelstein, Ori (OXE)	\$935	0.90	\$841.50
Fuchs, Heather (HGF)	\$700	0.20	\$140.00
Hogg, William (WMH)	\$775	6.90	\$5,347.50
Jrade, Moises (MXJ)	\$680	1.90	\$1,292.00
Okeke, Onyebuchi (OJO)	\$680	0.30	\$204.00
Sandoval, Kristabel (KXS)	\$725	160.50	\$116,362.50
Law Clerks / Paralegals			
Barnett, Thomas (TRB)	\$350	12.50	\$4,375.00
Bonilla Castaneda, Amelia (AGB)	\$450	10.10	\$4,545.00
Carter, Silvia (SGC)	\$450	0.60	\$270.00
Castro, Lourdes (LEC)	\$450	0.40	\$180.00
Christopher, Lonnie (LRC)	\$275	7.90	\$2,172.50
Espinoza, Rocio (RDE)	\$450	0.10	\$45.00
Hermann, Ashley (AZH)	\$450	6.70	\$3,015.00
Hoover, Collin (CEH)	\$325	0.50	\$162.50
Huffman, Eugene (ENH)	\$450	0.70	\$315.00
Kahey, Kristine (KDK)	\$450	4.10	\$1,845.00
King-Cash, Sarah (SKC)	\$450	16.70	\$7,515.00
McClain, Tracey (TLM)	\$425	0.60	\$255.00
McKay, Joseph (JXM)	\$275	7.00	\$1,925.00
Price, Sarah (SQP)	\$500	0.90	\$450.00
Rawlinson, Ruby (RVR)	\$300	0.40	\$120.00
Rodriguez, Brianda (BCR)	\$350	1.50	\$525.00
Roque, Omar (OFR)	\$450	2.50	\$1,125.00
Smith, Tyler (TBS)	\$500	2.10	\$1,050.00
Solano-Florez, Diana (DMS)	\$400	3.00	\$1,200.00
Yasay, Vincent (VCY)	\$450	4.50	\$2,025.00

Clerical Staff

Ramirez, Stephanie (SXR)	\$300	10.00	\$3,000.00
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Grand Total

386.70	\$272,313
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EXHIBIT 5

CASE COSTS

Tizekker, Jill v Bel-Air-LA-PAGA

Matter No. 102121

Date: 02/22/22

DATE	VENDOR	DESCRIPTION	AMOUNT
04/29/2020	LWDA	PAGA Filing Fee	\$ 75.00
05/12/2020	Neilson & MacRitchie	PNC - Jill Tizekker In re service fee	\$ 525.00
07/30/2020	One Legal LLC (Info Track)	Complaint,Civil Case Cover Sheet,Civil Case Cover Sheet,Summons	\$ 463.51
08/07/2020	One Legal LLC (Info Track)	Complaint, Civil Case Cover Sheet, Summons, Notice to Parties of Court-Directed Al	\$ 130.00
08/10/2020	One Legal LLC (Info Track)	Proof of Personal Service	\$ 14.15
09/22/2020	One Legal LLC (Info Track)	Memorandum	\$ 14.15
09/30/2020	RELX Inc DBA LexisNexis	Document Retrieval - Period: 09/01/20 thru 09/30/20	\$ 0.44
10/04/2020	Peggy N. Tsujimoto, CSR	Court Reporting for October 2, 2020 - Paid 100%	\$ 473.00
10/09/2020	Superior Court of California Los Ang	Remote Telephonic Appearance	\$ 15.00
12/30/2020	Superior Court of California Los Ang	Jury Fee, Case No. 20SMCV01006, Dept. P	\$ 150.00
01/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 12/01/20 thru 12/31/20	\$ 1.45
01/11/2021	One Legal LLC (Info Track)	Case Management Statement, eFiling Charge	\$ 16.20
01/13/2021	One Legal LLC (Info Track)	Case Management Statement	\$ 79.25
01/16/2021	Superior Court of California Los Ang	Remote Appearance - Kristabel Sandoval	\$ 15.00
01/19/2021	FedEx	01/11/21 FedEx to Clerk of the Court from Jennifer A. Perez	\$ 17.22
02/01/2021	Superior Court of California Los Ang	Remote Appearance - Kristabel Sandoval	\$ 15.00
04/02/2021	Steven J Rottman LLC	Balance due on mediation - No Split	\$ 9,000.00
05/05/2021	One Legal LLC (Info Track)	Proof of Service (not Summons and Complaint)	\$ 16.20
06/09/2021	Veritext (Western Region)	5/24/21 Witness: Jill Tizekker- No Split	\$ 864.50
06/14/2021	One Legal LLC (Info Track)	Proof of Service (not Summons and Complaint)- No Split	\$ 16.20
06/21/2021	One Legal LLC (Info Track)	Status Report - No Split	\$ 16.20
07/06/2021	Superior Court of California Los Ang	Remote Appearance: Kristabel Sandoval	\$ 15.00
07/08/2021	Superior Court of California Los Ang	Remote Appearance: Caroline N. Cohen	\$ 15.00
11/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 10/01/2021 - 10/31/2021	\$ 7.75
11/05/2021	Steno Agency, Inc	10/27/21 - Depo Charlotte Pattison - Transcripts & Videography - Deferred 100%	\$ 2,320.50
11/08/2021	One Legal LLC (Info Track)	Proof of Service (not Summons and Complaint) - No Split	\$ 18.20
11/08/2021	One Legal LLC (Info Track)	Notice to Court of Improved Financial Situation or Settlement - No Split	\$ 18.20
11/19/2021	One Legal LLC (Info Track)	Joint Status Conference Report - No Split	\$ 16.20
12/31/2021	SWCK	Copies and Printing from Shared Printing (2021)	\$ 0.50
01/26/2022	One Legal LLC (Info Track)	Joint Status Conference Report - No Split	\$ 16.20
			\$ 14,345.02

EXHIBIT 6



March 3, 2022

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

Re: *Tizekker, Jill, et al. v. Bel-Air Bay Club*
Superior Court of California County of Los Angeles, Case No. 20SMCV01006
LWDA Case No. LWDA-CM- 786374-20

Dear PAGA Administrator:

We represent Jill Tizekker in the above-entitled action. On May 12, 2020, our office provided notice to the LWDA by sending a letter to the PAGA Administrator of the intent to file a lawsuit on behalf of Jill Tizekker.

The action was filed in the Superior Court of California County of Los Angeles, Case No. 20SMCV01006, on July 30, 2020.

The parties in this case have reached settlement. A copy of the Settlement Agreement is attached hereto as Attachment 1. Approval papers are forthcoming.

Sincerely,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

CAROLINE N. COHEN
Attorney at Law

Encl.

Amelia G. Bonilla Castaneda

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Thursday, March 3, 2022 5:04 PM
To: Amelia G. Bonilla Castaneda
Subject: Thank you for your Proposed Settlement Submission

03/03/2022 05:03:08 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: <https://protect-us.mimecast.com/s/YJCFC1wM36slWgqsLjXSS>



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Court and Hearing Information

Court *

Superior Court of Californi

Court Case Number *

20SMCV01006

Hearing Date (if any)

4/4/2022

Hearing Time

8:30 a.m.

Hearing Location

Department P

Number of aggrieved employees *

257

Gross settlement amount *

200,000

Gross penalty amount *

104,378.32

Penalties to LWDA *

78,283.74

Date of proposed settlement *

03/03/2022

Proposed Settlement and Other Documents

Proposed Settlement *

 Letter to LWD...t_220303.pdf

Other Attachment (if any)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☐ I understand that, if I file, I must comply with the redaction rules consistent with this notice.