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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

ALVARO VASQUEZ MADRIGAL, on behalf of
himself and the Class members and Aggrieved
Employees,

Plaintiffs,

vs.

MISSION LAKES COUNTRY CLUB, INC.,

Defendant.

Case No. RIC2003428

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT**

Complaint Filed: August 31, 2020

1 **CLASS AND PAGA ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 1. This Class and Private Attorney Generals Act ("PAGA") Action Settlement
3 Agreement and Release (the "Settlement Agreement," "Settlement" or "Agreement") is entered
4 into between Plaintiff Alvaro Vasquez Madrigal ("Named Plaintiff"), individually and on behalf
5 of all other similarly-situated persons, and Defendant Mission Lakes Country Club, Inc.
6 ("Defendant"), subject to the approval of the Court. Plaintiff and Defendant are collectively
7 referred to as the "Parties."

8 **DEFINITIONS**

9 2. The following terms used in this Settlement Agreement shall have the meanings
10 ascribed to them below:

11 a. "Action" means the above-captioned action, *Alvaro Vasquez Madrigal v.*
12 *Mission Lakes Country Club, Inc.*, Superior Court of California, County of Riverside, Case
13 Number RIC20033428.

14 b. The "California Class" or "Members of the California Class" means all
15 current and former hourly, non-exempt employees, including but not limited to servers, waiters,
16 bussers, bartenders, host/hostess or other front of the house employees with similar job duties
17 employed by Defendant in California between August 31, 2016 through the date of Preliminary
18 Approval.¹ Defendant has represented that there are approximately 60 California Class Members
19 at issue.

20 c. "Class Counsel" means Schneider Wallace Cottrell Konecky LLP.

21 d. "Class Counsel's Costs" refers to the amount of reasonable litigation
22 expenses Class Counsel incurred in connection with this Action, which shall not exceed
23 \$8,000.00, including their pre-filing investigation, their filing of the Action and all related
24 litigation activities, but exclusive of Settlement Administration costs and/or post-Settlement
25 compliance procedure costs.

26 e. "Class List" means a list of Settlement Class Members that Defendant will
27 compile from their records. The Class List shall include: each California Class Member's full
28 name; last known address; last known email address; last known telephone number; Social
Security number; and the total number of workweeks that each Settlement Class Member worked
in the state of California between August 31, 2016 through the date of Preliminary Approval.

 f. The "Aggrieved Employees" means all current and former hourly, non-
exempt employees, including but not limited to servers, waiters, bussers, bartenders, or other
front of the house employees with similar job duties employed by Defendant in California
between June 9, 2019 through the date of Preliminary Approval.²

¹ The Class excludes back of the house employees (i.e., kitchen staff, cooks and dishwashers).

² The Aggrieved Employee group excludes back of the house employees.

g. "Defendant" means Mission Lakes Country Club, Inc.

h. "Defendant's Counsel" means FitzGerald & Mulé LLP.

i. "Effective Date" means (i) if there is an objection(s) to the settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court's Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an objector(s), then after such appeal(s) is dismissed or the Court's Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court's order granting Final Approval of the Settlement.

j. "Fee Award" means the award of attorneys' fees that the Court authorizes to be paid to Class Counsel for the services they rendered to Named Plaintiff and the Settlement Class in the Action. Class Counsel will not seek more than thirty-three and one-third percent of the Gross Settlement Amount as their Fee Award.

k. "Final" shall mean, with respect to a judgment or order, that the judgment or order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to intervene or other review proceeding of the judgment or order has been commenced, such appeal, motion or petition to intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment or order in its entirety. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to the award of attorneys' fees, attorneys' costs, or any Service Award shall not by itself in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming "Effective."

l. "Final Approval" or "Final Approval Order" means the Court's Final Approval Order approving the Settlement and entering judgment.

m. "Final Approval Hearing" means the hearing to be held by the Court to consider the Final Approval of the Settlement.

n. "Gross PAGA Amount" means the amount apportioned from the Gross Settlement Amount designated as payment of civil penalties pursuant to PAGA, or Ten Thousand Three Hundred Fifty Dollars (\$10,350.00).

o. "Gross Settlement Amount" means the non-reversionary total amount that Defendant shall pay in connection with this Settlement, including any interest earned on such funds, in exchange for the release of the Settlement Class Members' Released Claims. The Gross Settlement Amount is the gross sum of Three Hundred and Forty-Five Thousand Dollars (\$345,000.00). The Gross Settlement Amount includes: (a) all Settlement Awards to Settlement

1 Class Members; (b) civil penalties under the Private Attorneys' General Act ("PAGA"); (c) Class
2 Representative Enhancement Payment; (d) Attorneys' Fees and Costs to Class Counsel, and (e)
3 Settlement Administration Costs to the Settlement Administrator. Except for the Defendant's
4 employers portion of payroll taxes on Settlement Awards to Eligible Class Members
5 ("Defendant's Payroll Taxes"), the Parties agree that Defendant will have no obligation to pay
6 any amount in connection with this Settlement Agreement apart from the Gross Settlement
7 Amount and Defendant's Payroll Taxes. There will be no reversion.

8 p. "Net PAGA Amount" means the amount apportioned from the Gross
9 Settlement Amount designated as payment to the Aggrieved Employees in the amount of
10 Twenty-Five Percent (25%) of the Gross PAGA Amount, or Two Thousand Five Hundred and
11 Eighty-Seven Dollars and Fifty Cents (\$2,587.50). The LWDA shall receive the remaining
12 Seventy-Five Percent (75%) of the Gross PAGA Amount, or Seven Thousand Seven Hundred
13 Sixty Two Dollars and Fifty Cents (\$7,762.50).

14 q. "Net Settlement Amount" means the Gross Settlement Amount less: (i)
15 Service Awards; (ii) Fee Award; (iii) Class Counsel's Costs; (iv) Settlement Administrator
16 Costs; (v) the payment to Labor and Workforce Development Agency ("LWDA") for its share
17 of PAGA penalties; (vi) and the Net PAGA Amount. The Parties acknowledge that all of these
18 amounts are subject to the Court's approval.

19 r. "Notice Deadline" means the date sixty (60) days after the Settlement
20 Notice is initially mailed to the Settlement Class. California Class Members shall have until the
21 Notice Deadline to object to, or opt-out of, the Settlement.

22 s. "Participating Individuals" means any California Class Members who do
23 not submit a valid letter requesting to be excluded from the Settlement, consistent with the terms
24 set forth in this Settlement Agreement. All Participating Individuals will be bound by all terms
25 and conditions of the Settlement Agreement, including the release of the Released Claims.

26 t. "Parties" means the parties to this Agreement: Named Plaintiff and
27 Mission Lakes Country Club, Inc.

28 u. "Preliminary Approval" or "Preliminary Approval Order" means the
Court's Preliminary Approval Order preliminarily approving the terms and conditions of this
Agreement.

v. "Qualified Settlement Fund" means a qualified settlement fund under
Section 468B of the Internal Revenue Code established by the Settlement Administrator for the
purpose of administering this Settlement.

w. "Releasees" or "Released Parties" means Defendant and its present and
former parent companies, subsidiaries, related or affiliated companies, and its shareholders,
officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
individual or entity that could be liable for any of the Released Claims, and Defendant's Counsel.

x. "Service Award" means the payment to Named Plaintiff Alvaro Vasquez

1 Madrigal for his efforts in bringing and prosecuting this matter. The Service Award will not
2 exceed the following amounts: Seven Thousand Five Hundred Dollars (\$7,500.00).

3 y. "Settlement Administrator" means ILYM Group, Inc., the third-party class
4 action settlement administrator that will handle the administration of this Settlement, subject to
approval by the Court.

5 z. "Settlement Administrator Costs" refer to the costs the Settlement
6 Administrator will incur to distribute the Settlement Notice and Settlement Awards, which are
estimated to be \$5,800.

7 aa. "Settlement Award" means the payment that each Settlement Class
8 Member shall be entitled to receive pursuant to the terms of this Agreement.

9 bb. "Settlement Class Members" means all Members of the California Class,
10 Aggrieved Employees, and the Named Plaintiff.

11 cc. "Settlement Notice" means the Notice of Class Action Settlement to the
12 Settlement Class Members substantially in the form as Exhibit A attached hereto, or as approved
by the Court.

13 RECITALS

14 3. Plaintiff Alvaro Vasquez Madrigal filed a Class Action and Private Attorneys
15 General Act Complaint against Defendant in the Superior Court of California, County of Riverside
on August 31, 2020. *Alvaro Vasquez Madrigal v. Mission Lakes Country Club, Inc.*, Superior
16 Court of California, County of Riverside, Case No. RIC20033428.

17 4. Defendant filed its Answer on November 3, 2020, denying Plaintiff's allegations
and asserting forty-one affirmative defenses.

18 5. Through the Class and PAGA action, Plaintiff alleges that Defendant violated the
19 wage and hour laws of California by failing to pay hourly-nonexempt employees earned wages,
failing to pay them earned gratuity payments, failing to provide legally compliant meal and rest
20 periods, and failing to provide accurate, itemized wage statements. On this basis, Plaintiff brought
claims against Defendant for (1) failure to pay all hours worked; (2) failure to pay overtime; (3)
21 failure to pay all gratuities owed; (4) intentional interference with advantageous relations; (5)
conversion; (6) unjust enrichment; (7) failure to authorize and permit and/or make available meal
22 and rest periods; (8) failure to provide timely and accurate itemized wage statements; (9) unlawful
business practices; and (10) - (11) civil penalties under the PAGA.

23 6. On May 27, 2021, the Parties conducted a full day mediation session which was
24 remotely held before well-respected mediator Hon. Gail Andler (Ret.). The Parties reached a
25 settlement in principle following that the mediation. On July 2, 2021, the Parties agreed to settle
26 this action under the terms provided in the instant Settlement Agreement.

1 7. Class Counsel has made a thorough and independent investigation of the facts and
2 law relating to the allegations in the Action. In agreeing to this Settlement Agreement, Named
3 Plaintiff has considered: (a) the facts developed during pre-mediation, informal discovery and the
4 Parties' mediation process and the law applicable thereto; (b) the attendant risks of continued
5 litigation and the uncertainty of the outcome of the claims alleged against Defendant; and (c) the
6 desirability of consummating this Settlement according to the terms of this Settlement Agreement.
7 Named Plaintiff has concluded that the terms of this Settlement are fair, reasonable and adequate,
8 and that it is in the best interests of Named Plaintiff and the Settlement Class (as defined above)
9 to settle their claims against Defendant pursuant to the terms set forth herein.

10 8. Defendant denies the allegations in the Action and denies any and all liability,
11 including any liability for alleged failure to pay overtime compensation, failure to pay any wages,
12 failure to pay gratuity payments, failure to provide meal and rest breaks, failure to provide accurate
13 wage statements, or any other wage and hour or similar violation. This Settlement Agreement shall
14 not be construed as an admission by Defendant or any of the Releasees (as defined above) of any
15 fault, liability or wrongdoing, which Defendant expressly denies. If this Settlement Agreement
16 does not become final, this Settlement Agreement, or the circumstances leading to this Settlement
17 Agreement, may not be used as an admission by Defendant or any wrongdoing or evidence of any
18 wrongdoing by Defendant.

19 9. The Parties recognize that notice to the Settlement Class of the material terms of
20 this Settlement, as well as Court approval of this Settlement, are required to effectuate the
21 Settlement, and that the Settlement will not become operative until the Court grants final approval
22 of it, Settlement becomes Final and the Settlement Effective Date occurs.

23 10. The Parties stipulate and agree that, for settlement purposes only, the requisites for
24 establishing class certification pursuant to CAL. CIV. CODE PROC. § 382 are met. Should this
25 Settlement not become Final, such stipulation to certification shall become null and void and shall
26 have no bearing on, and shall not be admissible in connection with, the issue of whether or not
27 class certification would be appropriate in a non-settlement context. Defendant denies that class
28 treatment is appropriate in the litigation context or for trial.

 11. In consideration of the foregoing and other good and valuable consideration, the
receipt and sufficiency of which is hereby acknowledged by each party to the other, IT IS
HEREBY AGREED, by and between the undersigned, subject to the final approval of the Court
and the other conditions set forth herein, that Named Plaintiff's and the Participating Individuals'
claims as described herein against Defendant shall be settled, compromised and dismissed, on the
merits and with prejudice, and that the Named Plaintiff's and Participating Individuals' Released
Claims shall be finally and fully compromised, settled and dismissed as to the Defendant and
Releasees, in the manner and upon the terms and conditions set forth below.

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RELEASES

12. In exchange for the consideration set forth in this Settlement Agreement, Named Plaintiff and Participating Individuals agree to release all claims as set forth herein as applicable.

13. **Settlement Class Members' Released Claims.** Upon Final Approval of the Settlement Agreement and payment of amounts set forth herein, and except as to such rights or claims as may be created by this Settlement Agreement, Named Plaintiff and all Participating Individuals shall and hereby do release and discharge all Releasees, finally, forever and with prejudice, from the claims from August 31, 2016 through the date of Preliminary Approval, as follows:

- a. **California Class Members:** The California Class Members release the Releasees from the following rights or claims: any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, including (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation and gratuities (including, but not limited to, service charges/fees, wages, overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices, including related premiums, statutory penalties, civil penalties, liquidated damages, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, or pursuant to a statutory remedy.

14. **Releases of PAGA Claims.** The release period for PAGA claims runs from June 9, 2019 through the date of Preliminary Approval.

15. **Named Plaintiff's Released Claims.** Named Plaintiff Released Claims means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Releasees, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, whether known or unknown, and whether anticipated or unanticipated, including all unknown claims covered by California Civil Code section 1542 that could be or are asserted based upon any theory or facts whatsoever, arising at any time up to and including the date of the execution of this Settlement Agreement, for any type of relief, including, without limitation, claims for all hours worked, overtime wages, gratuity payments, premium pay, other damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The Named Plaintiff's Released Claims include, but are not limited to, the Settlement Class Members' Released Claims, as well as any other claims under any provision of federal, state, or local law, including the FLSA, the California Labor Code, and California Wage Orders. Upon Final Approval, Named Plaintiff shall be deemed to have fully, finally, and forever released Releasees from all Named Plaintiff's Released Claims through the date of Preliminary Approval. Furthermore, upon Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may

1 otherwise have had relating to the Named Plaintiff's Released Claims pursuant to Section 1542 of
2 the California Civil Code, which provides as follows:

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

7 **CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION**

8 16. The Parties agree to the following procedures for obtaining Preliminary Approval
9 of the Settlement, certifying the Settlement Class, and notifying the Settlement Class of this
10 Settlement:

- 11 a. **Request for Class Certification and Preliminary Approval Order.**
12 Named Plaintiff shall file an Unopposed Motion for Preliminary Approval
13 of Settlement Agreement, requesting that the Court certify the Settlement
14 Class pursuant to CAL. CIV. CODE PROC. § 382 for the sole purpose of
15 settlement; preliminarily approve the Settlement Agreement and its terms;
16 approve the proposed form of the Settlement Notice and find that the
17 proposed method of disseminating the Settlement Notice meets the
18 requirements of due process and is the best notice practicable under the
19 circumstances; set a date for Named Plaintiff's motion for Final Approval
20 of the Settlement, and approval of the requested Service Award, Fee Award,
21 Class Counsel's Costs, and Settlement Administrator's Costs; and set a date
22 for the Final Approval Hearing.
- 23 b. **Notice.** The Settlement Administrator shall be responsible for preparing,
24 printing, mailing, and emailing the Settlement Notice to all Settlement Class
25 Members. The Settlement Administrator will also create a website for the
26 Settlement, which will allow Settlement Class Members to view the Class
27 Notice (in generic form), this Settlement Agreement, and all papers filed by
28 Class Counsel to obtain preliminary and final approval of the Settlement
Agreement. Additionally, the Settlement website will provide contact
information for Class Counsel and the Settlement Administrator. The
Settlement Administrator will provide Class Counsel and Defendant's
counsel with a preview of the proposed website. Class Counsel and
Defendant's counsel must approve the website before it goes live and also
must approve any modifications to the website. The Settlement
Administrator shall also create a toll-free telephone number to field
telephone inquiries from Settlement Class Members during the notice and
settlement administration periods. The Settlement Administrator will be
directed to take the website and call center down after the 180-day check
cashing period for Settlement Award Checks.
- c. Within ten (10) business days after the Court's Preliminary Approval of the

1 Settlement, Defendant shall provide to the Settlement Administrator and
2 Class Counsel the Class List, an electronic database containing the names,
3 last known addresses, last known telephone numbers (if any), last known
4 email addresses (if any), social security numbers or tax ID numbers of each
5 Settlement Class Member, along with the total number of workweeks that
6 each Settlement Class Member worked for either Defendant in California
7 from August 31, 2016 through the date of Preliminary Approval.

- 8 d. In order to provide the best notice practicable, prior to mailing the
9 Settlement Notice, the Settlement Administrator will take reasonable efforts
10 to identify current addresses via public and proprietary systems.
- 11 e. Within ten (10) business days after receiving the contact information for the
12 Settlement Class Members, the Settlement Administrator shall mail and
13 email (if email addresses are available) the agreed-upon and Court-
14 approved Settlement Notice to Settlement Class Members. The Settlement
15 Administrator shall provide notice to Class Counsel and Defendant's
16 Counsel that the Settlement Notice has been mailed.
- 17 f. Any Settlement Notice returned to the Settlement Administrator with a
18 forwarding address shall be re-mailed within three (3) business days
19 following receipt of the returned mail. If no forwarding address is provided,
20 the Settlement Administrator shall promptly attempt to determine a correct
21 address using a skip-trace, or other search using the name, address and/or
22 Social Security number of the Settlement Class Member involved, and shall
23 re-mail the Notice of Settlement. In no circumstance shall such re-mailing
24 extend the Notice Deadline.
- 25 g. Within ten (10) business days after the Notice Deadline, the Settlement
26 Administrator shall provide Defendant's Counsel and Class Counsel,
27 respectively, a report showing: (i) the names of California Class Members;
28 (ii) the Settlement Awards owed to each California Class Member; (iii) the
final number of California Class Members who have submitted objections
or valid letters requesting exclusion from the Settlement; and (iv) the
number of undeliverable Notices of Settlement. Upon completion of
administration of the Settlement, the Settlement Administrator shall provide
written certification of such completion to counsel for all Parties and the
Court. This written certification shall include the total number of
Participating Individuals (including the total number of California Class
Members who do not request exclusion), the average recovery per
California Class Member who does not request exclusion, the median
recovery per California Class Member who does not request exclusion, the
largest and smallest amounts paid to California Class Members who do not
request exclusion, and the number and value of checks not cashed.
- h. Defendant will not take any adverse action against any current or former

employee on the grounds that he/she is eligible to participate and/or does participate in the Settlement. Defendant will not discourage participation in this Settlement Agreement or encourage objections or opt-outs.

- i. Within ten (10) business days after the conclusion of the 180-day check cashing period below, the Settlement Administrator shall provide Defendant's Counsel and Class Counsel, respectively, a report regarding the total amount of any funds that remain from checks that are returned as undeliverable or are not negotiated.

17. **Disputes Regarding Workweeks.** To the extent that any Settlement Class Member disputes the number of workweeks that the Settlement Class Member worked, as shown in his or her Settlement Notice, such Settlement Class Members may produce evidence to the Settlement Administrator establishing the dates they contend to have worked for Defendant. The deadline for Settlement Class Members to submit disputes pursuant to this paragraph is the Notice Deadline (disputes must be postmarked by the Notice Deadline). Unless the Settlement Class Member presents convincing evidence proving he or she worked more workweeks than shown by Defendant's records, his/her Settlement Award will be determined based on Defendant's records. The Settlement Administrator shall notify counsel for the Parties of any disputes it receives. Defendant shall review its records and provide further information to the Settlement Administrator, as necessary. The Settlement Administrator shall provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, it shall be presented to the Court for a resolution. The Settlement Administrator will notify the disputing Settlement Class Member of the decision.

18. **Objections.** The Settlement Notice shall provide that California Class Members who wish to object to the Settlement must, on or before the Notice Deadline, file with the court a written statement objecting to the Settlement. Such objection shall not be valid unless it includes the information specified in the Settlement Notice. The statement must be signed personally by the objector, and must include the objector's name, address, telephone number, email address (if applicable), the factual and legal grounds for the objection, and whether the objector intends to appear at the Final Approval Hearing. The Settlement Notice shall advise California Class Members that objections shall only be considered if the California Class Member has not opted out of the Settlement. No California Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through counsel), unless written notice of the California Class Member's intention to appear at the Final Approval Hearing has been filed with the Court and served upon Class Counsel and Defendant's Counsel on or before the Notice Deadline and the California Class Member has not opted out of the Settlement. The postmark date of mailing to Class Counsel and Defendant's Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. If postmark dates differ, the later of the two postmark dates will control. Absent good cause found by the court, persons who fail to make timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. However, the requirement that the Settlement Class Member submit a written objection may be excused by the Court upon a showing of good cause. None of the Parties, their counsel, nor any person on their

1 behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal
2 from any order of the Court that is consistent with the terms of this Settlement.

3 19. **Requests for Exclusion.** The Settlement Notice shall provide that Settlement Class
4 Members, other than Named Plaintiff, who wish to exclude themselves from the Settlement ("opt
5 out") must mail to the Settlement Administrator a written statement indicating that they do not
6 wish to participate or be bound by the Settlement. The written request for exclusion must contain
7 the Settlement Class Member's full name, address, telephone number, email address (if
8 applicable), and last four digits of their social security number, and must be signed individually by
9 the Class Member. No opt-out request may be made on behalf of a group. Such written statement
10 must be postmarked by the Notice Deadline. None of the Parties, their counsel, nor any person on
11 their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the
12 settlement.

13 20. **Cure Period.** In the event any request for exclusion is timely submitted but does
14 not contain sufficient information to be valid, the Settlement Administrator shall provide the
15 Settlement Class Member, within seven (7) calendar days, a letter requesting the information that
16 was not provided and giving the Settlement Class Member fourteen (14) days from the mailing of
17 such cure letter to respond. Any invalid submission that is not timely cured will be considered a
18 nullity.

19 21. **Final Approval Hearing.** Class Counsel will be responsible for drafting the
20 Unopposed Motion for Final Approval of Settlement Agreement, and approval of the requested
21 Service Award, Fee Award, Class Counsel's Costs, and Settlement Administrator's Costs to be
22 heard at the Final Approval Hearing. Class Counsel shall provide Defendant's Counsel a copy of
23 a draft Unopposed Motion for Final Approval of Settlement Agreement. Named Plaintiff shall
24 request that the Court schedule the Final Approval Hearing no earlier than thirty (30) days after
25 the Notice Deadline to determine final approval of the settlement and to enter a Final Approval
26 Order:

- 27 a. certifying this Action and Settlement Class as a class action pursuant to
28 CAL. CIV. CODE PROC. § 382 for purposes of settlement only;
- 29 b. finding dissemination of the Settlement Notice was accomplished as
30 directed and met the requirements of due process;
- 31 c. approving the Settlement as final and its terms as a fair, reasonable and
32 adequate;
- 33 d. approving the payment of the Service Award to Named Plaintiff Alvaro
34 Vasquez Madrigal;
- 35 e. approving Class Counsel's application for an award of attorneys' fees and
36 reimbursement of out-of-pocket litigation costs and expenses;
- 37 f. directing that the Settlement funds be distributed in accordance with the
38 terms of this Settlement Agreement;

- 1 g. directing that the Action be dismissed finally, fully, forever and with
2 prejudice and in full and final discharge of any and all Participating
3 Individuals' Released Claims; and
4 h. retaining continuing jurisdiction over this Action for purposes only of
5 overseeing all settlement administration matters.

6 22. **Post Judgment Report.** At the conclusion of the 180-day check cashing period set
7 forth below and following receipt of the Settlement Administrator's report showing the total funds
8 that were actually paid to Participating Individuals, Class Counsel shall submit a post-judgment
9 report to the Court regarding any funds that remain from checks that are returned as undeliverable
10 or are not negotiated.

11 **SETTLEMENT FUNDS AND AWARD CALCULATION**

12 23. **Gross Settlement Amount.**

- 13 a. **Funding of Settlement.** Within ten (10) business days of the Effective
14 Date, Defendant shall pay the Gross Settlement Amount into the Settlement
15 Administrator's Qualified Settlement Fund. Only the Settlement
16 Administrator shall have access to the Qualified Settlement Fund.
17 Defendant shall not have access to the Gross Settlement Amount, or to any
18 earned interest, once those funds are deposited into the Qualified Settlement
19 Fund. The Gross Settlement Amount is fully non-reversionary. All
20 disbursements shall be made from the Qualified Settlement Fund.

21 24. **Payments.** Subject to the Court's Final Approval Order, the following amounts
22 shall be paid by the Settlement Administrator from the Gross Settlement Amount:

- 23 a. **Service Awards to Named Plaintiff.** Subject to the Court's approval,
24 Plaintiff Alvaro Vasquez Madrigal shall receive Seven Thousand Five
25 Hundred Dollars (\$7,500.00) for his efforts in bringing and prosecuting this
26 matter. The Qualified Settlement Fund shall issue an IRS Form 1099 for
27 this payment. This payments shall be made within (30) days after the
28 Effective Date or as soon as reasonably practicable. If the Court approves
Service Award in amounts less than what Named Plaintiff requests, the
reduction in the Service Award shall not be a basis for nullification of this
Settlement. Nor shall a reduction in the Service Award in any way delay or
preclude the judgment from becoming a final judgment or the Settlement
from becoming Effective.
- b. **Fee Awards and Costs.**
- (i) Subject to the Court's approval, Class Counsel shall receive a Fee
Award in an amount up to one-third (1/3) of the Gross Settlement
Amount and paid from the Gross Settlement Amount, which will

1 compensate Class Counsel for all work performed in the Action as
2 of the date of this Settlement Agreement as well as all of the work
3 remaining to be performed, including but not limited to
4 documenting the Settlement, securing Court approval of the
5 Settlement, making sure that the Settlement is fairly administered
6 and implemented, and obtaining final dismissal of the Action. In
7 addition, Class Counsel shall, subject to Court approval, receive
8 reimbursement of Class Counsel's Costs (exclusive of Settlement
9 Administration costs and/or post-Settlement compliance procedure
10 costs) not to exceed Eight Thousand Dollars (\$8,000.00), to be
11 approved by the Court. Plaintiff shall have the right to seek recovery
12 of the Settlement Administration costs and/or post-Settlement
13 compliance procedure costs incurred following administration of the
14 Settlement. These payments of attorneys' fees and costs shall be
15 made within thirty (30) days after the Effective Date or as soon as
16 reasonably practicable.

- 17 (ii) An IRS Form 1099 shall be provided to Class Counsel for the
18 payments made to Class Counsel. Class Counsel shall be solely and
19 legally responsible to pay any and all applicable taxes on the
20 payment made to them.

21 c. **Labor and Workforce Development Agency Payment.** Subject to Court
22 approval, the Parties agree that the amount of Ten Thousand Three Hundred
23 and Fifty Dollars (\$10,350.00) from the Gross Settlement Amount will be
24 paid in settlement of all individual and representative claims brought in the
25 Action by or on behalf of Plaintiff and California Class Members and
26 aggrieved parties under the Labor Code Private Attorneys General Act of
27 2004 (Cal. Lab. Code §§ 2698, et seq., "PAGA"). Pursuant to PAGA,
28 Seventy-Five Percent (75%), or Seven Thousand Seven Hundred and Sixty-
Two Dollars and Fifty Cents (\$7,762.50), of this sum will be paid to the
Labor and Workforce Development Agency ("LWDA") and Twenty-Five
Percent (25%), or Two Thousand Five Hundred and Eighty-Seven Dollars
and Fifty Cents (\$2,587.50), will be allocated to the Net PAGA Amount.
The payment to the LWDA should be made within thirty (30) days after the
Effective Date or as soon as reasonably practicable.

d. **Settlement Administration Costs.** Settlement Administration costs are
estimated to be \$5,800 shall be paid from the Gross Settlement Amount.
The Parties agree to cooperate in the settlement administration process and
to make all reasonable efforts to control and minimize the costs incurred in
the administration of the Settlement.

e. **Settlement Awards to Eligible Class Members.** Settlement Awards shall
be made to Settlement Class Members as set forth below.

1
2 25. **No Claim Based Upon Distributions or Payments in Accordance with this**
3 **Settlement Agreement.** No person shall have any claim against Defendant, Class Counsel, or
4 Defendant's Counsel based on distributions or payments made in accordance with this Settlement
5 Agreement.

6
7
8 **CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS**

9 26. **Settlement Award Eligibility.** All Settlement Class Members shall be paid a
10 Settlement Award from the Net Settlement Amount.

11 27. Any California Class Member who fails to submit a timely request to exclude
12 themselves from the Settlement by following the procedure set forth in the Settlement Notice shall
13 automatically be deemed a Settlement Class Member whose rights and claims with respect to the
14 issues raised in the Action are determined by any order the Court enters granting final approval,
15 and any judgment the Court ultimately enters in the Action. Any such Settlement Class Member's
16 rights to pursue any Released Claims (as defined in this Settlement Agreement) will be
17 extinguished.

18 28. **Settlement Award Calculations.** The Settlement Administrator shall be
19 responsible for determining the amount of the Settlement Award to be paid to each Participating
20 Individual based on the below formulas:

- 21 a. Participating Individuals shall receive a *pro rata* portion of the Net
22 Settlement Amount as follows:
- 23 i. When calculating the individual Settlement Awards to Settlement
24 Class Members following Final Approval (for purposes of preparing
25 Individual Settlement Payment checks), the Settlement
26 Administrator will not include California Class Members who
27 validly request exclusion from the Settlement.
 - 28 ii. For each week during which the Participating Individual worked for
Defendant at any time from August 31, 2016 through the date of
Preliminary Approval, he or she shall be eligible to receive a *pro*
rata portion of the Net Settlement Amount based on the number of
workweeks the Participating Individual worked. Each workweek
will be equal to one (1) settlement share.
 - iii. The total number of settlement shares for all Participating
Individuals will be added together and the resulting sum will be
divided into the Net Settlement Amount to reach a per share dollar
figure. That figure will then be multiplied by each Participating
Individual's number of settlement shares to determine the
Participating Individual's *pro rata* portion of the Net Settlement
Amount.

1 b. Participating Individuals who are also Aggrieved Employees under the
2 PAGA shall also receive an equal portion of the Net PAGA Amount as
3 follows:

4 i. For any Participating Individual who worked for Defendant at any
5 time from June 9, 2019 through the date of Preliminary Approval in
6 California, he or she shall be eligible to receive an equal portion of
7 the Net PAGA Amount. The total number of eligible Participating
8 Individuals will be divided into the Net PAGA Amount. The
9 resulting Net PAGA Amount per Participating Individual, if any,
10 will be added to the Participating Individual's share of the Net
11 Settlement Amount, to determine the Participating Individual's
12 Settlement Award.

13 29. In addition to other information contained on the Settlement Notice, the Settlement
14 Notice shall state the estimated minimum payment the class member is expected to receive
15 assuming full participation of all Settlement Class Members.

16 30. All Settlement Award determinations shall be based on Defendant's timekeeping,
17 payroll, and/or other records. If the Parties determine, based upon further review of available data,
18 that a person previously identified as being a Settlement Class Member is not a Settlement Class
19 Member, or an individual who was not previously identified as a Settlement Class Member is in
20 fact a Settlement Class Member but was not so included, the Settlement Administrator shall
21 promptly make such addition or deletion as appropriate.

22 31. **Settlement Award Allocations.** Any portion of each Settlement Award that is
23 provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each
24 Settlement Award, one-third (1/3) of each Settlement Award shall be allocated as wages, one-third
25 (1/3) of each Settlement Award shall be allocated as liquidated damages and penalties, and one-
26 third (1/3) of each Settlement Award shall be allocated as interest. Settlement Awards will be paid
27 out to Participating Individuals subject to reduction for all employee's share of withholdings and
28 taxes associated with the wage-portion of the Settlement Awards, for which Participating
29 Individuals shall be issued an IRS Form W-2. Participating Individuals will also be issued an IRS
30 Form 1099 for the portions of the Settlement Awards that are allocated to liquidated damages,
31 penalties, and interest. Defendant shall pay the employer's share of all required FICA and FUTA
32 taxes on the wage portions of the Settlement Awards. The Settlement Administrator shall calculate
33 the employer share of taxes and provide Defendant with the total employer tax contributions within
34 five (5) business days after the final Settlement Award calculations are approved. Defendant shall
35 deposit the calculated employer tax contributions into the Qualified Settlement Fund within seven
36 (7) business days after the Settlement Administrator provides Defendant with the amount of the
37 total employer tax contributions due. Amounts withheld will be remitted by the Settlement
38 Administrator from the Qualified Settlement Fund to the appropriate governmental authorities.
39 Defendant shall cooperate with the Settlement Administrator to provide payroll tax information as
40 necessary to accomplish the income and employment tax withholding on the wage portion of each
41 Settlement Award, and the Form 1099 reporting for the non-wage portion of each Settlement
42 Award.

1 32. Class Counsel and Defendant's Counsel do not intend this Settlement Agreement
2 to constitute legal advice relating to the tax liability of any Settlement Class Member. To the extent
3 that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute
4 advice regarding any federal, state or local tax issue, such advice is not intended or written to be
5 used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

6 33. The Settlement Administrator shall provide Class Counsel and Defendant's
7 Counsel with a final report of all Settlement Awards, at least ten (10) business days before the
8 Settlement Awards to Participating Individuals are mailed.

9 34. The Settlement Administrator shall mail all Settlement Awards to Participating
10 Individuals within thirty (30) days after the Effective Date or as soon as reasonably practicable.
11 The Settlement Administrator shall then provide written certification of mailing to Class Counsel
12 and Defendant's Counsel.

13 35. All Settlement Award checks shall remain valid and negotiable for one hundred
14 eighty (180) days from the date of their issuance and may thereafter automatically be canceled if
15 not cashed within that time, at which time the right to recover any Settlement Award will be
16 deemed void and of no further force and effect. With ninety (90) days remaining, a reminder letter
17 will be sent via U.S. mail and email to those who have not yet cashed their settlement check, and
18 during the last sixty (60) days of the check cashing period, a call will be placed to those that have
19 still not cashed their check to remind them to do so. At the conclusion of the 180 day check cashing
20 deadline, Participating Individuals who have not cashed their Settlement Award checks shall
21 nevertheless be deemed to have finally and forever released the Named Plaintiff's Released Claims
22 or Participating Individuals' Released Claims, as applicable.

23 36. **Remaining Monies.** If at the conclusion of the 180-day check cashing period set
24 forth above, any funds remain from checks that are returned as undeliverable or are not negotiated,
25 those monies shall be distributed as follows, subject to the Court's approval:

- 26 a. If the total residual amount is less than \$5,000, then the amount will revert
27 to *cy pres*. The *cy pres* recipient shall be proposed by the parties and
28 approved by the Court. The Parties propose Legal Aid at Work which
provides legal services assisting low-income, working families and
promotes better understanding of the conditions, policies, and institutions
that affect the well-being of workers and their families and communities.
The Settlement Administrator shall distribute any *cy pres* payment.
- b. If the total residual amount is \$5,000 or greater, a second distribution will
occur to those Participating Individuals who cashed their Settlement Award
check. The second distribution will occur on a *pro rata* basis as provided
for in Paragraph 28. In the event of a redistribution of uncashed check
funds to Settlement Class Members who cashed their Settlement Award,
the additional settlement administration costs related to the redistribution
will be deducted from the total amount of uncashed checks prior to the
redistribution. If a check to a Settlement Class Member is returned to the

1 Settlement Administrator as undeliverable during the second distribution,
2 the Settlement Administrator shall promptly attempt to obtain a valid
3 mailing address by performing a skip trace search and, if another address is
4 identified, shall mail the check to the newly identified address. If none is
5 found, then said check shall revert to the *cy pres* recipient. If there are
6 uncashed check funds remaining from redistribution as described in this
7 Paragraph, then the amount will revert to *cy pres*.

- 8
9 c. Within twenty-one (21) days after the distribution of any remaining monies
10 to Participating Individuals who cashed their Settlement Award check or to
11 the *cy pres* recipient, Plaintiff will file a Post-Distribution Accounting. The
12 Post-Distribution Accounting will set forth the total settlement fund, the
13 total number of Settlement Class Members, the total number of Settlement
14 Class Members to whom notice was sent and not returned as undeliverable,
15 the number and percentage of opt-outs, the number and percentage of
16 objections, the average and median recovery per claimant, the largest and
17 smallest amounts paid to class members, the method(s) of notice and the
18 method(s) of payment to class members, the number and value of checks
19 not cashed, the amounts distributed to the *cy pres* recipient (if applicable),
20 the administrative costs, the attorneys' fees and costs, the attorneys' fees in
21 terms of percentage of the settlement fund, and the multiplier, if any.

22 MISCELLANEOUS

23 37. **Submissions to the LWDA.** At the same time as they submit this Class Action
24 Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy
25 of this Agreement to the LWDA, as required by California Labor Code § 2699(1)(2). Within ten
26 (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval
27 Order and Judgment entered by the Court to the LWDA, as required by California Labor Code §
28 2699(1)(3).

38. **No Admission of Liability.** Defendant expressly denies all of the allegations in the
Action. Defendant expressly denies that it has violated the California Labor Code, or any other
provision of federal or state law with respect to any of its employees. This Settlement Agreement
and all related documents are not and shall not be construed as an admission by Defendant or any
of the Releasees of any fault or liability or wrongdoing. If this Settlement Agreement does not
become final, this Settlement Agreement, or the circumstances leading to this Settlement
Agreement, may not be used as an admission by Defendant or any wrongdoing or evidence of any
wrongdoing by Defendant.

39. **Defendant's Legal Fees.** Defendant's legal fees and expenses in this Action shall
be borne by Defendant.

40. **Nullification of the Settlement Agreement.** In the event: (a) the Court does not
preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not
become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to

engage in follow up negotiations with the intent of resolving the Court's concerns that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then either Party may void this Agreement; at that point, the Parties agree that each shall return to their respective positions on the day before this Agreement and that this Agreement shall not be used in evidence or argument in any other aspect of their litigation.

41. **Defendant's Option to Void Settlement.** If more than ten percent (10%) of the total number of Settlement Class Members submit timely and valid Requests for Exclusion / Opt-Out Requests, then Defendant shall have the option to void the Settlement in their sole discretion. To exercise this option, Defendant must send written notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement Administrator informing Defendant's Counsel that the total number of timely and valid Requests for Exclusion / Opt-Out Requests is more than ten percent (10%). If Defendant chooses to exercise this option, the effect will be precisely the same as if Final Judgment did not occur, as discussed herein, and all Settlement Administrator Costs incurred by the Settlement Administrator through that date will be paid by Defendant.

42. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.

43. **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by CAL. CIV. CODE PROC. §§ 12, 12a), such time period shall be continued to the following business day. The term "days" shall mean calendar days unless otherwise noted.

44. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement. Further, without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

45. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

46. **Entire Settlement Agreement.** This Agreement with exhibits constitutes the entire Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous

1 negotiations, memoranda, agreements, understandings, and representations, whether written or
2 oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties
3 acknowledges that they have not relied on any promise, representation or warranty, express or
implied, not contained in this Agreement. No rights hereunder may be waived except in writing.

4 47. **Authorization to Enter into Settlement Agreement.** The Parties warrant and
5 represent that they are authorized to enter into this Agreement and to take all appropriate action
6 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms,
7 and to execute any other documents required to effectuate the terms of this Agreement. The Parties
8 and their counsel shall cooperate with each other and use their best efforts to effect the
9 implementation of the Agreement. In the event that the Parties are unable to reach resolution on
the form or content of any document needed to implement this Agreement, or on any supplemental
provisions or actions that may become necessary to effectuate the terms of this Agreement, the
Parties shall seek the assistance of the mediator, Hon. Gail Andler (Ret.), to resolve such
disagreement.

10 48. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and
11 inure to the benefit of Named Plaintiff, Defendant, the Settlement Class Members and their heirs,
12 beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any
13 corporation or any entity with which any party may merge, consolidate or reorganize. The Parties
14 hereto represent, covenant and warrant that they have not directly or indirectly assigned,
transferred, encumbered or purported to assign, transfer or encumber to any person or entity any
portion of any liability, claim, demand, action, cause of action or rights herein released and
discharged except as set forth herein.

15 49. **Counterparts.** This Agreement may be executed in one or more counterparts,
16 including by facsimile or email. All executed counterparts and each of them shall be deemed to be
17 one and the same instrument. All executed copies of this Agreement, and photocopies thereof
18 (including facsimile and/or emailed copies of the signature pages), shall have the same force and
effect and shall be as legally binding and enforceable as the original.

19 50. **No Signature Required by Eligible Class Members.** Only the Named Plaintiff
20 will be required to execute this Settlement Agreement. The Settlement Notice will advise all
21 Settlement Class Members of the binding nature of the release and such shall have the same force
and effect as if this Settlement Agreement were executed by each Settlement Class Member.

22 51. **Cooperation and Drafting.** The Parties have cooperated in the drafting and
23 preparation of this Agreement; hence the drafting of this Agreement shall not be construed against
24 any of the Parties. The Parties agree that the terms and conditions of this Agreement were
25 negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached
26 voluntarily based upon adequate information and sufficient discovery and after consultation with
27 experienced legal counsel.

28 52. **Governing Law.** All terms of this Settlement Agreement and the exhibits hereto
shall be governed by and interpreted according to the laws of the State of California.

1 53. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the
2 interpretation, implementation, and enforcement of the terms of this Settlement and all orders and
3 judgments entered in connection therewith, and the Parties and their Counsel submit to the
jurisdiction of the Court for this purpose.

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

6
7
8 **PLAINTIFF:**

9 

10 _____
11 Alvaro Vasquez Madrigal

07 / 22 / 2021

12 Date: _____, 2021

13 **APPROVED AS TO FORM BY CLASS COUNSEL:**

14 

15 _____
16 Carolyn Hunt Cottrell
17 Kristabel Sandoval
18 SCHNEIDER WALLACE
19 COTTRELL KONECKY LLP
20 2000 Powell Street, Suite 1400
21 Emeryville, California 94608

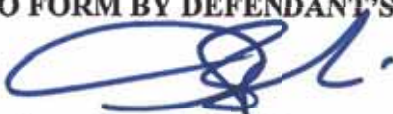
22 Date: July 22 _____, 2021

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2
3
4 DEFENDANT:

Patricia M. Carney Date: 7/13, 2021

5
6 PATRICIA M. CARNEY
7 Printed Name of Authorized Representative for
8 Mission Lakes Country Club, Inc.

9
10 APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:

11 

Date: 7/13, 2021

12 David Mulé (SBN 171238)
13 FITZGERALD & MULÉ LLP
14 74-770 Highway 111, Suite 205
15 Indian Wells, CA 92210