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MORGANS HOTEL GROUP MANAGEMENT, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET

MARRIANA ZAPATA, individually, and on
behalf of all others similarly situated,
Plaintiff,

vs.

SBE ENTERTAINMENT GROUP, LLC, a
limited liability company;
MORGANS HOTEL GROUP
MANAGEMENT, LLC DBA THE
MONDRIAN HOTEL, LLC, a Delaware limited
liability company; and,
DOES 2 through 10, inclusive,
Defendants.

Case No.: 20STCV28106

[Assigned for all purposes to the Honorable Elihu
M. Berle, Dept. 6]

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint filed: July 23, 2020
Trial date: Not set

1 **JOINT STIPULATION OF CLASS ACTION AND REPRESENTATIVE ACTION**

2 **SETTLEMENT**

3 This Joint Stipulation of Class Action and Representative Action Settlement (“Joint Stipulation of
4 Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff
5 MARRIANA ZAPATA, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class
6 Representative”), and Defendant MORGANS HOTEL GROUP MANAGEMENT, LLC DBA THE
7 MONDRIAN HOTEL, LLC (“MONDRIAN” or “Defendant”). Plaintiff and Defendant are collectively
8 referred to herein as “the Parties.”

9
10 THE PARTIES STIPULATE AND AGREE as follows:

11 **DEFINITIONS**

12 1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which will
13 be the First Amended Complaint adding a PAGA claim that will be filed prior to approval of this
14 Settlement.

15 2. For purposes of this Settlement, this matter, entitled *Marriana Zapata v. Morgans Hotel*
16 *Group Management, LLC et al.*, Case No. 20STCV28106, is referred to herein as the “Action.”

17 3. For purposes of this Settlement, the “Class Period” is July 23, 2016 through the date the
18 court issues an order granting preliminary approval or May 31, 2022, whichever is sooner.

19 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-
20 exempt employees of Defendant who worked in California during the Class Period at the Mondrian Los
21 Angeles for any period of time. “Settlement Class Members” are those Class Members who do not submit
22 timely exclusion requests to the Settlement Administrator. Defendant’s best estimate is that the Class
23 included approximately 686 individuals on October 30, 2021.

24 5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

25 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
26 Class Member worked at the Mondrian Los Angeles in California during the Class Period. Covered
27 Workweeks shall be determined by dividing the total number of shifts worked by a Class Member at any
28 time during the Class Period by five (Covered Workweeks = shifts worked during Class Period ÷ 5).

1 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after
2 the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on
3 which Settlement Class Members may submit a request for exclusion or written objection to the
4 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days
5 after initial mailing or 14 calendar days from re-mailing, up to a maximum of 74 days after the initial
6 mailing. The Response Deadline may be extended only as expressly described herein.

7 8. For purposes of the Settlement, “Defendant’s Counsel” means JACKSON LEWIS, PC.

8 9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties
9 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
10 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA
11 Allocation will be \$60,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent
12 (75%), or \$45,000, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and
13 Twenty Five Percent (25%), or \$15,000, of the PAGA Allocation will be included in the Net Settlement
14 Amount for PAGA Employees (“PAGA Settlement Payment”).

15 10. For purposes of this Settlement, “PAGA Period” means the period between July 19, 2019
16 through the date the court issues an order granting preliminary approval or May 31, 2022, whichever is
17 sooner.

18 11. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
19 at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all
20 PAGA Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA Employees cannot
21 opt out of or object to the settlement of the PAGA claim.

22 12. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
23 each PAGA Employee worked during the PAGA Period.

24 13. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

25 14. For purposes of this Settlement, “Released PAGA Claims” means all claims asserted
26 through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representative in the
27 Notice to the LWDA and are alleged in the Complaint. Plaintiff’s Notice to the LWDA is attached hereto
28 as **Exhibit “B.”**

15. For purposes of this Settlement, “Released PAGA Claims Period” means the period between July 19, 2019 through the date the court issues an order granting preliminary approval or May 31, 2022, whichever is sooner.

16. For purposes of this Settlement, “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

17. On July 23, 2020, Plaintiff filed a putative Class Action against Defendants SBE Entertainment Group, LLC and Morgans Hotel Group Management, LLC alleging the following labelled causes of action: (1) Failure to Pay Minimum Wage and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent. On January 6, 2021, the court issued an order dismissing the class and individual claims against Defendant SBE Entertainment Group, LLC based on Plaintiff’s application after Plaintiff met and conferred with Defendants and Defendants submitted a declaration attesting that SBE Entertainment Group, LLC was not an employer of Plaintiff.

18. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). On December 21, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically, the Parties stipulate and agree that:

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
- 1) Whether or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant paid compensation timely throughout Class Members' employment;
 - 6) Whether or not Defendant provided accurate itemized statements to the Class;
 - 7) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
 - 8) Whether or not Defendant maintained requisite records;
 - 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
 - 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.
- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the

1 Class predominate over any questions affecting any individual member in such
2 Class, and that a class action is superior to other available means for the fair and
3 efficient adjudication of the controversy.

4 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
5 were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall
6 not be admissible in connection with, the issues of whether the Class Members and/or the Class Claims
7 should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly
8 reserves its right to oppose claim and class certification in this or any other action should this Settlement
9 not become effective.

10 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
11 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this
12 lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims,
13 Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper
14 wages, have been provided meal periods, have been provided rest periods, have been paid timely wages
15 upon separation of employment, and have been provided with accurate itemized wage statements.
16 Defendant contends, among other things, that it has complied at all times with the California Labor Code
17 and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all
18 claims, Defendant contends that it has complied at all times with the California Business and Professions
19 Code.

20 22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
21 all disputes and claims arising from or related to the Complaint.

22 23. Class Counsel has conducted a thorough investigation into the facts of this Action,
23 including an extensive review of relevant documents, and has diligently pursued an investigation of the
24 claims of the Class and PAGA claims against Defendant. Based on its own independent investigation and
25 evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on
26 the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best
27 interest of the Class and PAGA employees in light of all known facts and circumstances, including the risk
28 of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant,

1 and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the
2 Settlement is fair and in the best interest of the Class.

3 24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
4 preliminary and final approval of this Settlement.

5 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
6 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
7 Court.

8 **PRIMARY TERMS OF SETTLEMENT**

9 26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
10 set forth herein, the Parties agree, subject to the Court's approval, as follows:

11 (a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant
12 that this case and any claims, damages, or causes of action arising out of the
13 disputes which are the subject of this case, be settled and compromised as between
14 the Settlement Class, PAGA Employees, and Defendant, subject to the terms and
15 conditions set forth in this Settlement and the approval of the Court.

16 (b) Effective Date: The terms of settlement embodied in this Settlement
17 shall become effective when all of the following events have occurred:
18 (i) the Stipulation of Settlement has been executed by all Parties, Class Counsel
19 and Defendant's Counsel; (ii) the court has given preliminary approval to the
20 Stipulation of Settlement; (iii) the Notice of Class Action Settlement has been
21 given to the putative members of the Settlement Class, providing them with an
22 opportunity to object to the terms of this Stipulation of Settlement or to opt out
23 of the Stipulation of Settlement; (iv) the court has held a formal fairness hearing
24 and entered a final Order and Judgment certifying the Settlement Class,
25 dismissing the Action with prejudice, and approving the Stipulation of
26 Settlement; (v) sixty-five (65) calendar days have passed since the Court has
27 entered a final Order and Judgment certifying the Settlement Class, and
28 approving the Stipulation of Settlement; and (vi) in the event there are written

1 objections filed prior to the final fairness hearing which are not later withdrawn
2 or denied, the later of the following events: (a) five business days after the
3 period for filing any appeal, writ or other appellate proceeding opposing the
4 Court's final Order approving the Stipulation of Settlement has elapsed without
5 any appeal, writ or other appellate proceeding having been filed; or, (b) if any
6 appeal, writ or other appellate proceeding opposing the court's final Order
7 approving the Stipulation of Settlement has been filed, five (5) business days
8 after any appeal, writ or other appellate proceedings opposing the Stipulation of
9 Settlement has been finally and conclusively dismissed with no right to pursue
10 further remedies or relief. In this regard, it is the intention of the Parties
11 that the Settlement shall not become effective until the Court's order
12 approving the Settlement is completely final, and there is no further
13 recourse by an appellant or objector who seeks to contest the Settlement.

14 (c) Gross Settlement Amount: Defendant's maximum total payment under the
15 Settlement, including all attorney's fees and costs, the Service Payment to the
16 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
17 any other payments provided by this Settlement, is \$500,000.00 ("Gross Settlement
18 Amount"), subject to the Escalator Clause and except that, to the extent that any
19 portions of the Class Members' Settlement Payments constitute wages, Defendant
20 will be separately responsible for any employer payroll taxes required by law,
21 including the employer FICA, FUTA, and SDI contributions.

22 (d) Escalator Clause: The number of Covered Workweeks during the Class
23 Period is estimated to be 40,282.08. If it is later determined that, on the
24 date of preliminary approval or May 31, 2022, whichever is sooner, the
25 number of actual Covered Workweeks during the Class Period exceeds
26 10% of the estimated Covered Workweeks (i.e., exceeds 44,310.29
27 workweeks), the Gross Settlement Amount will be increased by 1% for
28 every percentage point that the Covered Workweeks exceed the 10% threshold

(i.e., if the Workweeks are 12% higher than 40,282.08, the Maximum Settlement Amount will increase by 2% = 12% - 10%.)

- (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.
- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$500,000.00) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$ 166,666.67); (2) reasonable litigation costs (not to exceed \$15,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$45,000.00 to the California Labor and Workforce Development Agency (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$15,000). Settlement Payments to the Settlement Class Members and PAGA Employees will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.
- (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

(i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$15,000, as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: $[\text{Covered Workweeks worked by a Settlement Class Member}] \div [\text{Sum of all Covered Workweeks worked by all Settlement Class Members}] \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments}] = \text{individual Settlement Class Payment for a Settlement Class Member}$. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $[\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}] \times [\text{PAGA Settlement Payment to Employees, i.e. \$15,000}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment}$. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement

1 Administrator by mail to the PAGA Employees at the same time Settlement Class
2 Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned
3 checks, shall be transmitted to the California Controller's Office, as set forth
4 below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same
5 time Settlement Payments issue to the Settlement Class.

6 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class
7 Payments will be allocated as follows: 33.33% to wages, 33.33% to penalties and
8 33.34% to interest and civil penalties. The PAGA Settlement Payment shares to
9 PAGA Employees will be entirely allocated to penalties. Appropriate federal, state
10 and local withholding taxes will be taken out of the wage allocations, and each
11 Class Member will receive an IRS Form W-2 with respect to this portion of the
12 Settlement Payment. The employer's share of payroll taxes and other required
13 withholdings will be paid as set forth above, including but not limited to the
14 Defendant's FICA and FUTA contributions, based on the payment of claims to the
15 Class Members. To the extent required by law, IRS Forms 1099 will be issued to
16 each Class Member reflecting the payments for penalties and interest. Class
17 Members are responsible to pay appropriate taxes due on the Settlement Payments
18 they receive.

19 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
20 Payments to individual Class Members shall be deemed to be paid to such Class
21 Member solely in the year in which such payments actually are received by the
22 Class Member. It is expressly understood and agreed that the receipt of such
23 Settlement Payments will not entitle any Class Member to additional compensation
24 or benefits under any company bonus, contest or other compensation or benefit
25 plan or agreement in place during the period covered by the Settlement, nor will it
26 entitle any Class Member to any increased retirement, 401(k) benefits or matching
27 benefits or deferred compensation benefits. It is the intent that the Settlement
28 Payments provided for in this Settlement are the sole payments to be made by

1 Defendant to the Class Members, and that the Class Members are not entitled to
2 any new or additional compensation or benefits as a result of having received the
3 Settlement Payments (notwithstanding any contrary language or agreement in any
4 benefit or compensation plan document that might have been in effect during the
5 period covered by this Settlement).

6 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
7 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
8 the Gross Settlement Amount (\$166,666.67) and reimbursement of litigation costs
9 and expenses not to exceed \$15,000.00. Approved attorney's fees and litigation
10 costs shall be paid at the same time Settlement Payments issue to the Settlement
11 Class. Should the Court approve attorney's fees and costs in an amount less than
12 that set forth above, the difference between the lesser amount(s) approved by the
13 Court and the attorney's fees and costs set forth above shall be added to the Net
14 Settlement Amount.

15 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
16 Defendant will not object to Class Counsel's application for an additional payment
17 of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service
18 Payment"). It is understood that the Service Payment is in addition to the individual
19 Settlement Payment to which a Class Representative is entitled to along with the
20 other Class Members. In exchange, Plaintiff has agreed to release from all
21 claims, demands, rights, liabilities and causes of action of every nature and
22 description whatsoever, known or unknown, asserted or that might have been
23 asserted, whether in tort, contract, or for violation of any state or federal statute,
24 rule or regulation arising out of, relating to, or in connection with any act or
25 omission by or on the part of any of the Released Parties committed or omitted
26 prior to the execution hereof ("Plaintiff's Released Claims"). Plaintiff
27 understands that this release includes unknown claims and that she is, as a
28 result, waiving all rights and benefits afforded by Section 1542 of the California

Civil Code, which provides:

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

Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation benefits. The Service Payment will issue at the same time all Settlement Payments are mailed to the Settlement Class.

- (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (p) Settlement Administrator: The Settlement Administrator will be ILYM GROUP, Inc. The Parties agree that Settlement Administration Costs should not reasonably exceed \$15,000, and the Settlement Administrator's bid for settlement administration services in the amount of \$11,600 was selected for the reasonable price and the quality of administration services provided by ILYM GROUP, Inc. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.
- (q) Funding of Settlement Account: Defendant will fund the settlement account within fourteen (14) calendar days of the Effective Date of the Settlement, provided that the Settlement Administrator has delivered to the Parties an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.
- (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the

1 Settlement Payments to be mailed to the Class Members within 14 calendar days of
2 receipt of the Gross Settlement Amount from Defendant, provided that the
3 Settlement Administrator has delivered to the Parties an accounting of the amounts
4 to be paid by Defendant pursuant to the terms of this Settlement.

5 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
6 material terms of the proposed Settlement, along with instructions about how to
7 object or request exclusion from the proposed class action Settlement (“Notice”).
8 For each Class Member, there will be pre-printed information on the mailed
9 Notice, based on Defendant’s records, stating the Class Member’s Covered
10 Workweeks during the Class Period and the estimated total Settlement Payment
11 under the Settlement, including the Settlement Class Payment and the PAGA
12 Settlement Payment that will be distributed irrespective of any exclusion request.
13 The pre-printed information based on Defendant’s records shall be presumed to be
14 correct. A Class Member may dispute the pre-printed information on the Notice as
15 to his or her Covered Workweeks during the Class Period. Class Members must
16 submit any dispute regarding the information on the Notice as to his or her
17 Covered Workweeks within the Response Deadline. Unless a disputing Class
18 Member submits documentary evidence in support of his or her dispute, the
19 records of the Defendant will be dispositive.

20 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

21 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
22 Class Members submitting a Request for Exclusion will nevertheless receive their
23 pro-rata share of the PAGA Settlement Payment. If the Court approves the
24 compromise of the PAGA Claim, all Class Members are bound by the Court’s
25 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
26 California Labor and Workforce Development Agency at or before the time
27 Plaintiff files the motion for preliminary approval.

28 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of

1 Defendant's records used to calculate Covered Workweeks, and the Parties'
2 counsel and the Settlement Administrator cannot resolve the dispute informally, the
3 matter will be referred to the court for final resolution. The Class Member must
4 submit information or documents supporting his or her position to the Settlement
5 Administrator prior to the expiration of the Response Deadline. Information or
6 documents submitted after the expiration of the Response Deadline will not be
7 considered by the Settlement Administrator, unless otherwise agreed to by the
8 Parties.

9 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
10 Member may request to be excluded from the Class by mailing a "Request for
11 Exclusion" from the Settlement within the Response Deadline. A Request for
12 Exclusion must clearly and unequivocally state a desire to be excluded from the
13 Class, with a statement comparable to the following:

14 "I WANT TO BE EXCLUDED FROM THE CLASS IN THE
15 ZAPATA V. MORGANS HOTEL GROUP MANAGEMENT,
16 LLC, CLASS ACTION LAWSUIT, LOS ANGELES
COUNTY SUPERIOR COURT CASE NO. 20STCV28016."

17 No specific wording is required to state a Request for Exclusion, so long as it is
18 clear and unequivocal. Any Request for Exclusion must include the name, address,
19 telephone number, last four digits of the Class Member's Social Security Number,
20 and the signature of the Class Member requesting exclusion. Any such request
21 must be made in accordance with the terms of the Notice, and the Notice will
22 advise Class Members of these requirements. Any Class Member who timely
23 requests exclusion in compliance with these requirements (i) shall not have any
24 rights under this Settlement other than a right to receive a pro-rata share of the
25 portion of the PAGA payment allocated to the Class Members if the Class Member
26 is also PAGA Employee; (ii) shall not be entitled to receive any Settlement
27 Payments under this Settlement other than as stated in (i) in this paragraph; and (iii)
28 shall not be bound by this Settlement or the Court's Order and Final Judgment

other than as it applies to the PAGA Claim.

(x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear in person (including through an audio or video call appearance via LACourtConnect) at the Final Approval Hearing to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any Class Member chooses to submit a written objection, the written objection should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within the Response Deadline to permit adequate time for processing and review by the Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may file

responses to any written objections submitted to the Court.

(y) Opt-in to Release Under Fair Labor Standards Act: Settlement Class Members will be advised that they will opt in to a settlement of claims for unpaid compensation under the Fair Labor Standards Act (“FLSA”) by cashing or otherwise depositing the check for their Settlement Class Payment. This will be set forth in the Notice.

(z) No Right to Object to or Request Exclusion from the PAGA Settlement. The Parties agree that there is no statutory right for any PAGA Settlement Member to opt out of, or otherwise exclude himself or herself from the settlement of the Released PAGA Claims.

(aa)

THE SETTLEMENT ADMINISTRATOR’S PRIMARY DUTIES

27. Subject to the Court’s approval, and subject to reconsideration by the Parties after a competitive bidding process, the Parties have agreed to the appointment of ILYM GROUP, Inc. to perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in English and Spanish, to the Class Members.

28. The Settlement Administrator will independently review the Covered Workweeks and PAGA Pay Periods attributed to each Class Member and will calculate the estimated amounts due to each Class Member and the actual amounts due to each Settlement Class Member and PAGA Employee in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The Settlement Administrator shall be granted reasonable access to Defendant’s records in order to perform its duties.

29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement Administrator’s performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

1 30. The Settlement Administrator will post the final judgment approving the Settlement on a
2 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
3 final judgment is entered. The website will use a page on the Settlement Administrator's website, and not
4 a custom domain for this Settlement. The address of that website will be included in the Notice.

5 **ATTORNEY'S FEES AND COSTS**

6 31. In consideration for resolving this matter and in exchange for the release of all claims by
7 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
8 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount
9 (\$166,666.67 of \$500,000.00) and litigation costs not to exceed \$15,000.00. The amounts set forth above
10 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
11 fees and costs to be incurred in connection with the approval by the Court of this Settlement and
12 administration of the Settlement. As with the Settlement Payments to the Settlement Class, the attorney's
13 fees and costs approved by the Court shall be paid to Class Counsel within 14 calendar days of receipt of
14 the Gross Settlement Amount from Defendant, provided that the Settlement Administrator has delivered to
15 the Parties an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.
16 Class Counsel shall disclose to the Court any fee sharing agreements in existence.

17 **THE NOTICE PROCESS**

18 32. A Notice in approximately the form attached hereto as **Exhibit "A,"** and as approved by
19 the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The
20 Notice shall be translated into Spanish so that Spanish and English language versions of the Notice are
21 included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be
22 utilized by the Settlement Administrator to forward the Notices to the Class.

- 23 (a) Within 14 calendar days from the date of preliminary approval of this Settlement
24 by the Court, Defendant shall provide to the Settlement Administrator a class
25 database containing the following information for each Class Member: (1) name;
26 (2) last known address; (3) social security number; (5) dates of employment at
27 Defendant's locations in California, and (6) respective Covered Workweeks. This
28 database shall be based on Defendant's payroll and other business records and shall

1 be provided in a format acceptable to the Settlement Administrator. The
2 Settlement Administrator will run a check of the Class Members' addresses against
3 those on file with the U.S. Postal Service's National Change of Address List; this
4 check will be performed only once per Class Member by the Settlement
5 Administrator. Absent mutual written agreement of counsel for the Parties or
6 Court order, the Settlement Administrator will keep this database confidential and
7 secure and use it only for the purposes described herein, and will return this
8 database to Defendant upon final approval of the settlement or destroy electronic
9 records containing the database after the Settlement is final and all payments are
10 distributed as required under this Agreement. However, Plaintiff's Counsel shall
11 be entitled to review anonymized data showing the workweeks worked by each
12 Class Member, with Class Member identity concealed through use of an employee
13 number or number assigned by the Settlement Administrator.

14 (b) Within 14 calendar days after the Class database is provided to the Settlement
15 Administrator, the Settlement Administrator will mail the Notices to the Class
16 Members by First Class United States mail.

17 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
18 the initial Response Deadline shall be resent to the forwarding address, if any, on
19 the returned envelope. A returned Notice will be forwarded by the Settlement
20 Administrator any time that a forwarding address is provided with the returned
21 mail. If there is no forwarding address, the Settlement Administrator will do a
22 computer search for a new address using the Class Member's social security
23 number or other information. In any instance where a Notice is re-mailed, that
24 Class Member will have until the extended Response Deadline as described above.
25 A letter prepared by the Settlement Administrator will be included in the re-mailed
26 Notice in that instance, stating the extended Response Deadline if different than the
27 original Response Deadline. Upon completion of these steps by the Settlement
28 Administrator, Defendant and the Settlement Administrator shall be deemed to

1 have satisfied their obligations to provide the Notice to the affected Class Member.
2 The affected Class Member shall remain a member of the Settlement Class and
3 shall be bound by all the terms of the Settlement and the Court's Order and Final
4 Judgment.

5 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
6 final approval hearing, or such other date as set by the Court, a declaration by the
7 Settlement Administrator of due diligence and confirming mailing of the Notices.

8 (e) The Parties authorize their respective Counsel to approve modifications to the
9 Notice to correct drafting errors or make changes required by the Court without the
10 need to amend this Settlement.

11 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

12 33. As set forth above, each Class Member will have until the expiration of the applicable
13 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
14 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
15 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
16 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
17 Administrator and a record of proof of mailing.

18 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
19 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
20 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
21 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
22 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
23 within that time, and the Class Member's relevant claims will remain released by the Settlement.
24 Settlement Payment checks which have expired will not be reissued.

25 35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void
26 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
27 each Class Member who failed to cash their Settlement Payment check prior to the void date.

28 36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator

1 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
2 be made to Class Members (to be identified anonymously by employee number or other identifier). A
3 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
4 Defendant's Counsel and filed with the Court by Class Counsel.

5 **RELEASE BY THE CLASS**

6 37. Upon the final approval by the Court of this Settlement and Defendant's payment of all
7 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
8 Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and
9 timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- 10 (a) **Identity of Released Parties.** The released parties are Defendant, and each of
11 its/their former and present direct and/or indirect owners, dba's, affiliates, parents,
12 subsidiaries, brother and sister corporations, divisions, related companies,
13 successors and predecessors, and current and former employees, attorneys, officers,
14 directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries,
15 subrogees, executors, partners, privies, agents, servants, insurers, representatives,
16 administrators, employee benefit plans, and assigns of said entities (collectively
17 "Releasees").
- 18 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
19 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's
20 obligation to provide to the Settlement Administrator a sum in the amount required
21 to satisfy all required payments and distributions pursuant to this Settlement and
22 the Order and Judgment of final approval. Class Members will not release the
23 Released Claims or Released PAGA Claims until both the Effective Date of the
24 Settlement has occurred, **and** Defendant has paid all amounts owing under the
25 Settlement.
- 26 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
27 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
28 submitted a timely and valid Request for Exclusion (which will not effectuate an

opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

- 1) all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands or suits which arise from the facts asserted in the Action, including, without limited to the foregoing, all claims under the California Labor Code as alleged in the Action, including violations for meal periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages, wage statements, waiting time penalties, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) or other remuneration whether sought under statute, tort, contract or as an unfair business practice (“Released Claims”);
- 2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,
- 3) in addition, as to *all* Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, the Released PAGA Claims (see Paragraph 14, above).

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff’s unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney’s fees and costs, and the Class

Representatives' service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;

- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM GROUP, Inc. as the Settlement Administrator and order the Settlement Administrator to issue Notices as outlined above.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

39. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action as to all PAGA and Class Claims and related issues;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion,

Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished;

(h) Directing the posting of the final judgment on a website maintained by the Settlement Administrator for a period of not less than 90 calendar days after entry of final judgment.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

40. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of the Service Payment; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

41. If 5% or more of the Class Members opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 20 court days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

42. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been

1 neither entered into nor filed with the Court.

2 **PARTIES' AUTHORITY**

3 43. The signatories hereto hereby represent that they are fully authorized to enter into this
4 Settlement and bind the Parties hereto to the terms and conditions thereof.

5 **MUTUAL FULL COOPERATION**

6 44. The Parties agree to fully cooperate with each other to accomplish the terms of this
7 Settlement including, but not limited to, execution of such documents and taking such other action as
8 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
9 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
10 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
11 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
12 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
13 Court's preliminary and final approval of this Settlement.

14 **NO PRIOR ASSIGNMENTS**

15 45. The Parties and their respective counsel represent, covenant, and warrant that they have not
16 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
17 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
18 released and discharged except as set forth herein.

19 **NO ADMISSION OF LIABILITY**

20 46. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
21 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
22 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
23 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
24 attendant inconvenience and expenses.

25 **ENFORCEMENT ACTIONS**

26 47. In the event that one or more of the Parties to this Settlement institutes any legal action or
27 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
28 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover

1 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
2 incurred in connection with any enforcement actions.

3 **NOTICES**

4 48. Unless otherwise specifically provided herein, all notices, demands or other
5 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
6 third business day after mailing by United States registered or certified mail, return receipt requested,
7 addressed as follows:

8 Class Counsel:

9 Kane Moon
10 H. Scott Leviant
Lilit Tunyan
11 **MOON & YANG, APC**
1055 W. Seventh St., Suite 1880
12 Los Angeles, California 90017
Telephone: (213) 232-3128
13 Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
14 scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Counsel for Defendant:

Mia Farber
Michael D. Thomas
15 **JACKSON LEWIS, PC**
725 South Figueroa Street, Suite 2500
16 Los Angeles, California 90017
Telephone: (213) 689-0404
17 Facsimile: (213) 689-0430
Mia.Farber@jacksonlewis.com
18 michael.thomas@jacksonlewis.com

15 **CONSTRUCTION**

16 49. The Parties hereto agree that the terms and conditions of this Settlement are the result of
17 lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed
18 in favor of or against any party by reason of the extent to which any party or his, her or its counsel
19 participated in the drafting of this Settlement.

20 **CAPTIONS AND INTERPRETATIONS**

21 50. Paragraph titles or captions contained herein are inserted as a matter of convenience and
22 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision
23 hereof. Each term of this Settlement is contractual and not merely a recital.

24 **MODIFICATION**

25 51. This Settlement may not be changed, altered, or modified, except in writing and signed by
26 the Parties hereto, and approved by the Court. This Settlement may not be discharged except by
27 performance in accordance with its terms or by a writing signed by the Parties hereto.
28

52. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

53. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the Gross Settlement Amount as attorney's fees.

54. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

55. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

56. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

57. The Class Representative and Class Counsel agree they will not make any disparaging comments about Defendant relating to this Settlement of this class action or disclose the negotiations of the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public

record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a statement that a matter was settled between a putative class and a “nutritional products business.” Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse or (2) accountants or lawyers as necessary for tax purposes. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media (“Social Media Bar”). Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

58. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

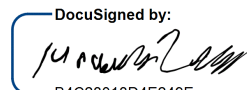
Plaintiff & Class Representative:

Dated: - 2/8/2022

By: _____

MARRIANA ZAPATA

DocuSigned by:



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Plaintiff's Counsel:

Dated: 2/8/2022

MOON & YANG, APC

By: _____

Kane Moon
H. Scott Leviant
Lilit Tunyan

Attorneys for Plaintiff MARRIANA ZAPATA

Defendant:

Dated: -----2022

MORGANS HOTEL GROUP MANAGEMENT, LLC

By: _____

Print Name

Signature

Title

Defendant's Counsel:

Dated: -----2022

JACKSON LEWIS P.C.

By: _____

Mia Farber
Michael D. Thomas

Attorneys for Defendant MORGANS HOTEL
GROUP MANAGEMENT, LLC

Plaintiff's Counsel:

Dated: -----2022

MOON & YANG, APC

By: _____

Kane Moon
H. Scott Leviant
Lilit Tunyan

Attorneys for Plaintiff MARRIANA ZAPATA

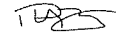
Defendant:

Dated: 2/18-----2022

MORGANS HOTEL GROUP MANAGEMENT, LLC

By: _____
Philippe Zrihen

Print Name



Signature

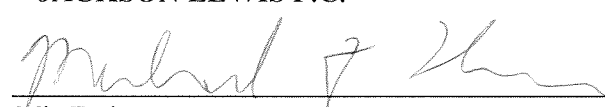
Head of Americas

Title

Defendant's Counsel:

Dated: February 23-----2022

JACKSON LEWIS P.C.

By: _____

Mia Farber
Michael D. Thomas

Attorneys for Defendant MORGANS HOTEL
GROUP MANAGEMENT, LLC

Exhibit “A”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Marriana Zapata v. v. Morgans Hotel Group Management, LLC et al.
Los Angeles Superior Court Case No. 20STCV28106

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF MORGANS HOTEL GROUP MANAGEMENT, LLC DBA THE MONDRIAN HOTEL, LLC (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 23, 2016 AND [REDACTED] (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Marriana Zapata v. v. Morgans Hotel Group Management, LLC et al.*, Los Angeles Superior Court Case No. 20STCV28106 (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Elihu M. Berle on <<FA DATE>>, at <<FA TIME>>, in Department 6 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written request to be excluded (“Opt-Out Request”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Opt-Out Requests must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit an Opt-Out Request if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 23, 2016 through _____.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 19, 2019 through - _____.

What is this case about?

In the Action, Plaintiff Marriana Zapata (“Plaintiff”) alleges on behalf of herself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Defendant’s Counsel

Mia Farber
Michael D. Thomas
JACKSON LEWIS, PC
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Mia.Farber@jacksonlewis.com
michael.thomas@jacksonlewis.com

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$500,000 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$166,666.67 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be \$11,600.)

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<Estimated Settlement Payment>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<Work Weeks>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<RESPONSE DEADLINE>> (the “Response Deadline”) at:

ILYM GROUP INC.

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. If you dispute the accuracy of Defendant’s records used to calculate Workweeks, and the counsel both parties and the Settlement Administrator cannot resolve the dispute informally, the matter will be referred to the court for final resolution. The Court will resolve and decide all work week disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<RESPONSE DEADLINE>>.

For tax reporting purposes, the payments to Class Members will be allocated 33.33% as wages, 33.33% as penalties and 33.4% as interest, civil penalties and reimbursement. The PAGA Settlement Payment will be allocated 100% as penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 14 calendar days of receipt of the Gross Settlement Amount from Defendant, the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is when all of the following events have occurred: (i) the Stipulation of Settlement has been executed by all Parties, Class Counsel and Defendant’s Counsel; (ii) the court has given preliminary approval to the Stipulation of Settlement; (iii) the Notice of Class Action Settlement has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of this Stipulation of Settlement or to opt out of the Stipulation of Settlement; (iv) the court has held a formal fairness hearing and entered a final Order and Judgment certifying the Settlement Class, dismissing the Action with prejudice, and approving the Stipulation of Settlement; (v) sixty-five (65) calendar days have passed since the Court has entered a final Order and Judgment certifying the Settlement Class, and approving the Stipulation of Settlement; and (vi) in the event there are written objections filed prior to the final fairness hearing which are not later withdrawn or denied, the later of the following events: (a) five business days after the period for filing any appeal, writ or other appellate proceeding opposing the Court’s final Order approving the Stipulation of Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or, (b) if any appeal, writ or other appellate proceeding opposing the court’s final Order approving the Stipulation of Settlement has been filed, five (5) business days after any appeal, writ or other appellate proceedings opposing the Stipulation of Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel’s Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys’ fees up to \$166,666.67 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$15,000. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendant’s payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba’s, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively “Releasees”).

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion

(which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

- 1) all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands or suits which arise from the facts asserted in the Action, including, without limited to the foregoing, all claims under the California Labor Code as alleged in the Action, including violations for meal periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages, wage statements, waiting time penalties, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) or other remuneration whether sought under statute, tort, contract or as an unfair business practice (“Released Claims”);
- 2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,
- 3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA and any Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly file an Opt-Out Request. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can’t object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can’t ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at -----. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Marriana Zapata v. Morgans Hotel Group Management, LLC et al.*, Los Angeles Superior Court Case No. 20STCV0986); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties

shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

If you wish to attend the Final Approval Hearing telephonically or by remote video, visit <https://my.lacourt.org/laccwelcome> for instructions on how to do so. You will need to use the Case Number for this case (20STCV28106) to schedule a telephonic or video appearance.

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must submit a written request to be excluded from the Class Settlement to the Settlement Administrator at ----- . In order to be valid, your written request to be excluded from the Class Settlement must be signed and include your full name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with a statement like the following:

“I hereby request to be excluded from the Class Action Settlement in *Marriana Zapata v. Morgans Hotel Group Management, LLC et al.*”

Your written request to be excluded from the Class Settlement must then be signed and postmarked on or before <<**RESPONSE DEADLINE**>>. If you do not submit a written request to be excluded from the Class Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Class Settlement by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<**FINAL APPROVAL HEARING DATE & TIME**>>, in Department 6 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. If you wish to attend the Final Approval Hearing remotely (by telephone or video), visit <https://my.lacourt.org/laccwelcome> for instructions on how to do so. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<**website**>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff’s Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Los Angeles Superior Court.

Because of the Los Angeles Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: www.lacourt.org/casesummary/ui/index.aspx?casetype=civil. NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.moon@moonyanglaw.com

July 19, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

SBE Entertainment Group, LLC
2780 Las Vegas Blvd. South
Las Vegas, NV 89109

Mondrian Los Angeles
8440 West Sunset Blvd.
Los Angeles, CA 90069

VIA CERTIFIED MAIL

SBE Entertainment Group, LLC
9247 Alden Drive
Beverly Hills, CA 90210

Notice of Labor Code Violations and PAGA Penalties

Re: ***Marriana Zapata v. SBE Entertainment Group, LLC***

To Whom It May Concern:

Please be advised that my office has been retained by Marriana Zapata ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, SBE Entertainment Group, LLC and Mondrian Los Angeles. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a housekeeper and room attendant from approximately 2005 to June 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-

the-clock”. For example, Plaintiff and the Aggrieved Employees were required to wait in line in order to clock into work each workday, uncompensated. Additionally, when patrons of the hotel claimed personal items were stolen, Plaintiff and the Aggrieved Employees were required to go through a thorough security check after clocking out, whereby Plaintiff and the Aggrieved Employees spent this time under the instruction and control of Defendants uncompensated. Plaintiff and the Aggrieved Employees were also required to work off-the-clock at the request of supervisors. As a result, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of which should have been paid at the overtime rate. As a further result, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant’s policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-

two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;

6. Labor Code § 226 by failing to provide accurate itemized wage statements; and
7. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law