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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

DAVID MARTINELLO, on behalf of himself,
and others similarly situated,

Plaintiff,

v.

CENTURY WILSHIRE, INC., a California
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No: 20STCV32613

**DECLARATION OF SHANI O. ZAKAY
IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: February 22, 2022
Hearing Time: 10:30AM

Honorable Carolyn Kuhl
Department 12

Trial Date: Not Set
Action Filed: August 24, 2020

1 I, SHANI O. ZAKAY, declare as follows:

2 1. I am the managing partner of the law firm of Zakay Law Group, APC, co-lead
3 counsel of record for Plaintiff David Martinello (“Plaintiff”) in this matter. As such, I am fully
4 familiar with the facts, pleadings and history of the matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters
6 stated herein. This declaration is being submitted in support of the Motion for Final Approval of
7 the Class Settlement by Plaintiff.

8 2. Over the course of the litigation during the last 18 months, a number of attorneys
9 from two firms have worked on this matter. The credentials of counsel in this action are reflected
10 in the Zakay Law Group, APC resume, a true and correct copy of which are attached hereto as
11 Exhibit #1, and the declaration of Jean-Claude Lapuyade. Some of the major cases those two
12 firms have undertaken are also set forth in Exhibit #1 and the Lapuyade declaration. The bulk of
13 the attorneys involved in this matter at have had substantial class litigation experience, mostly in
14 the area of employment class actions, unfair business practices and other complex litigation.
15 These attorneys have extensive experience in cases involving labor code violations and wage and
16 hour claims. Class Counsel has litigated similar wage and hour cases against other employers on
17 behalf of employees. Class Counsel have been approved as experienced class counsel during
18 contested motions in state and federal courts throughout California. It is this level of experience
19 which enabled the firm to undertake the instant matter and to successfully combat the resources of
20 the defendants and their capable and experienced counsel.

21 **3. Summary of the Proposed Settlement**

- 22 a. A true and correct copy of the Class Action Settlement Agreement and amendments
23 thereto (hereinafter the “Agreement”) are attached hereto as Exhibit #2.¹ Plaintiff and
24 Defendant reached a full and final Settlement of the above-captioned action, which is
25 embodied in the Agreement filed concurrently with the Court. As consideration for
26 this Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of
27 Three Hundred and Twenty-Five Thousand Dollars (\$325,000) (“Gross Settlement
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¹ Capitalized terms are defined in the Agreement.

Amount”). The Gross Settlement Amount includes all payments of the Settlement Shares to Participating Class Members, the Class Representative Service Award to Plaintiff, Settlement Administration Expenses, the PAGA Payment, and Court-approved attorneys’ fees and costs. Defendant will separately pay the employer’s share of payroll taxes to the qualified settlement fund, per the Agreement. (Agreement at ¶ 3(a)).

b. The Net Settlement Amount shall equal the net amount available for Individual Settlement Payments (or “Settlement Shares”) to Participating Class Members from the Gross Settlement Amount after deducting the Court-approved amounts for the Class Representative Service Award, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the expenses the Settlement Administration Costs. The Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required in order for the Participating Class Member to be paid his or her Settlement Share. The Settlement Share for each Participating Class Member will be calculated as follows: (a) dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and (b) multiplying the result by each individual Settlement Class Member’s workweeks that occurred during the Class Period. The entire Net Settlement Amount shall be distributed.

c. Class Members were sent the Court approved Class Notice, using the procedure approved by the Court, by mailing the notice packets after updating class members’ addresses using the National Change of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to any forwarding address provided or updated address located through skip tracing. Class Members were provided with the opportunity to exclude themselves (“opt out”) if they did not want to participate in the Settlement. Class Members who did not “opt out” are deemed Participating Class Members who are bound by the Settlement and will be mailed a settlement payment.

1 The Notice advised the PAGA Employees that they will receive payment from the Net
2 PAGA Amount regardless of their decision to participate in the Action. The Class
3 Notice also advised Class Members of their right to object to the Settlement. This
4 notice process is documented in the accompanying Declaration of Madely Nava (the
5 Settlement Administrator).

6 4. If a Participating Class Member's Settlement Share check is not cashed within 180
7 days after its last mailing to the Participating Class Member, the funds from such uncashed checks
8 will be paid to Children's Advocacy Institute ("CAI") in accordance with California Code of Civil
9 Procedure section 384 in the name of the Class Member and the Class Member will remain bound
10 by the Settlement. None of the Parties or counsel has any interest, pecuniary or otherwise, in CAI.

11 5. The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3
12 of the Gross Settlement Amount, currently estimated to be \$108,333, as their Class Counsel Fees
13 Payment. Class Counsel will apply separately for an award of litigation expenses incurred in the
14 prosecution and settlement of the Action in an amount not exceeding \$20,000, as their Class
15 Counsel Costs Payment. The Class Counsel Fees Payment and Class Counsel Costs Payment are
16 referred to collectively as the "Class Counsel Award," to be divided equally between Class
17 Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC). In support of this
18 request, Class Counsel is providing evidentiary support, including lodestar, in the declarations
19 submitted concurrently herewith. The Agreement provides for payment of Class Representative
20 Service Award of no more than \$7,500 for Plaintiff, or such lesser amount as may be approved by
21 the Court in compensation for his services. Defendant does not oppose the requested Class
22 Counsel Award, Settlement Administration Costs, or Class Representative Service Award.

23 6. The Parties allocated \$15,000 from the Gross Settlement Amount for settlement of
24 civil penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of
25 Labor Code §2699(i) the PAGA Payment shall be allocated \$11,250 to the LWDA ("LWDA
26 Payment" or the "PAGA Payment") as the LWDA's share of the settlement of civil penalties and
27 \$3,750 to the Net Settlement Amount for distribution to the PAGA Employees ("Net PAGA
28 Amount").

1 7. The Settlement was reached through arm's length negotiations. On April 27, 2021,
2 the Parties attended an arm's-length private mediation before Tripper Ortman, Esq., a respected
3 mediator of wage and hour class and PAGA actions. Prior to the mediation, the Parties prepared
4 for the mediation by exchanging data and records, calculating damages, and submitting mediation
5 briefs to the mediator. Defendant provided Class Counsel with requested records and information
6 for the members of the putative Class. Defendant produced a sample consisting of pay records
7 and time records for the Class Members for the entire Class Period. Defendant also produced
8 Defendant's relevant employment policies, including compensation policies and timekeeping
9 policies. Plaintiff, through Class Counsel, analyzed the data with the help of an expert and
10 prepared and submitted a mediation brief to Mr. Ortman. At the conclusion of the mediation, the
11 Parties were able to reach an agreement to settle the Action based on Mr. Ortman's informed
12 mediator's proposal. The basic terms were set forth in a signed Memorandum of Understanding.
13 The Parties then prepared the full Agreement which was signed by the Parties and received
14 preliminary approval from the Court by Order dated October 26, 2021.

15 8. The Settlement is fair, adequate and reasonable to the Class and should be finally
16 approved for the same reasons the Court granted preliminary approval to the Settlement, finding
17 that it is fair, adequate, and reasonable as to all potential Class Members. In sum, this Settlement
18 valued at \$325,000 is an excellent result for the Class. This result is particularly favorable in light
19 of the fact that liability in this case was far from certain in light of the defenses asserted by
20 Defendant. There have been no objections and no opt outs. Given the complexities of this case,
21 the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at
22 trial and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally
23 approved.

24 9. **Procedural Status of the Settlement** - The Court preliminarily approved the
25 Agreement via its Preliminary Approval Order dated October 26, 2021 ("Preliminary Approval
26 Order"); and pursuant to the Preliminary Approval Order the approved Class Notice has been
27 disseminated to the Class. On November 12, 2022, the Settlement Administrator mailed the
28 Court-approved Class Notice to the Class Members, which provided each Class Member with the

terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service awards that were being sought, how individual settlement awards would be calculated, and the specific, estimated payment amount to that individual. In disseminating the Class Notice, the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and no opt outs. (See Declaration of Madely Nava at ¶¶ 11-12.) As a result, the entire Class has elected to participate in the Settlement and will be sent a settlement check. The final administration results are documented in the accompanying Declaration of Lluvia Islas.

10. **Description of Plaintiff's Claims** – The Action generally alleges that Defendant failed to pay the Class Members' wages, including minimum wages, overtime wages, and tips, failed to provide them with proper meal breaks and rest breaks, failed to pay them wages for all time worked, failed to provide them with complete and accurate wage statements, failed to reimburse them for business expenses, engaged in unfair business practices, and failed to timely pay them all wages owed at the time of the separation of their employment,. The Action seeks unpaid wages, statutory penalties, civil penalties, attorneys' fees, litigation costs², and any other equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing claims.

11. **Procedural History of the Litigation**

- a. On June 11, 2020, Plaintiff filed a Notice of Violations with the LWDA and served the same on Defendant. The Notice to the LWDA included a proposed Complaint which Plaintiff planned on filing with the Court, which asserted the Defendant: (1) Violated California Business and Professions Code § 17200 et seq.; (2) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of California Labor Code §§ 510, et seq.; (4) Failed to provide meal periods in violation of California Labor Code §§ 226.7 & 512, and IWC

² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 Wage Order; (5) Failed to provide rest periods in violation of California Labor Code
2 §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and complete
3 itemized wage statements in violation of California Labor Code §226; (7) Failed to
4 provide wages when due in violation of California Labor Code §§ 201, 202, and 203;
5 (8) Failed to reimburse employees for required expenses in violation of California
6 Labor Code §2802; and (9) Failed to provide gratuities in violation of California Labor
7 Code §351. On August 24, 2020, Plaintiff filed a class action and PAGA Complaint
8 against Defendant in the Superior Court of the State of California, County of Los
9 Angeles. In addition to the causes of action asserted in the Notice to the LWDA,
10 Plaintiff's complaint included a tenth cause of action for Defendant's violation of the
11 Private Attorneys General Act in violation of California Labor Code §2698.

- 12 b. Class Counsel has conducted a thorough investigation into the facts of the class action.
13 Class Counsel has diligently evaluated the Class Members' claims against Defendant.
14 Class Counsel engaged in informal discovery in preparation for the mediation, and
15 received significant responses and documents to the discovery requests. Defendant
16 produced a large sample consisting of pay records and time records for the Class
17 Members for the entire Class Period. Defendant also produced relevant employment
18 policies, including compensation policies and timekeeping policies. Class Counsel
19 conducted extensive review of time records and data with the help of an expert. Based
20 on the foregoing data and their own independent investigation, evaluation and
21 experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate
22 and is in the best interest of the Class in light of all known facts and circumstances,
23 including the risk of significant delay, the defenses asserted by Defendant, and
24 potential appellate issues.

25 **12. History of Settlement Discussion**

- 26 a. This Settlement was the result of arm's-length negotiations as well as informal
27 settlement conferences between the Parties through their respective attorneys. After
28 comprehensive legal and factual analysis, Class Counsel possessed sufficient

1 information for intelligent evaluation of the case for purposes of settlement. Prior to
2 the initiation of settlement discussions, Class Counsel reviewed and outlined the case
3 based upon the information for the Class, and determined the conditions of settlement
4 which would be fair and reasonable to the Class with the assistance of an expert. Class
5 Counsel was experienced in the types of settlement appropriate to resolve these wage
6 and hour claims on behalf of employees.

7 b. On April 27, 2021, the Parties attended an arm's-length private mediation before
8 Tripper Ortman, Esq., a respected mediator of wage and hour class and PAGA actions.
9 Prior to the mediation, the Parties prepared for the mediation by exchanging data and
10 records, calculating damages, and submitting mediation briefs to the mediator.
11 Defendant provided Class Counsel with requested records and information for the
12 members of the putative Class. Defendant produced a sample consisting of pay
13 records and time records for the Class Members for the entire Class Period. Defendant
14 also produced Defendant's relevant employment policies, including compensation
15 policies and timekeeping policies. Plaintiff, through Class Counsel, analyzed the data
16 with the help of an expert and prepared and submitted a mediation brief to Mr.
17 Ortman. At the conclusion of the mediation, the Parties were able to reach an
18 agreement to settle the Action based on Mr. Ortman's informed mediator's proposal.
19 The basic terms were set forth in a signed Memorandum of Understanding. The
20 Parties then prepared the full Agreement which was signed by the Parties and received
21 preliminary approval from the Court by Order dated October 26, 2021.

22 c. The Order dated October 26, 2021 preliminarily approved the Class Settlement
23 contained in the Agreement as fair, reasonable and adequate.

24 d. Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate.
25 In my judgment as experienced Class Counsel, this Settlement should be finally
26 approved.

27 **13. The Outcome of this Case would Have Been Uncertain and Fraught with Risks**
28

1 a. Here, a number of defenses asserted by Defendant presented serious threats to the
2 claims of the Plaintiffs and the other Class Members. Defendant asserted that the
3 employment practices complied with all applicable Labor Laws.

4 i. First, Defendant strongly argued that Plaintiff and the Class Members
5 did not forfeit any gratuities because service charge is a separately
6 designated amount collected by a hotel from patrons that is part of the
7 amount due the hotel for services rendered, rather than something “over
8 and above the actual amount due.” (See LAMC, § 184.01, subd. F.)
9 Thus, a service charge by definition is not a gratuity. Defendant
10 contends that the Legislature has made clear that amounts due for
11 services (which include service charges) are not gratuities, which is
12 evidenced by recent amendments to the definition of gratuity carving
13 out an exception for dancing services. (§ 350, subd. (e).)” (*See Garcia*
14 *v. Four Points Sheraton LAX*, 188 Cal. App. 4th 364, 377 (2010).)
15 Defendant therefore argued that the portion of the service charge, which
16 was added to the banquet bills but allegedly not paid to employees in
17 the chain of service, constituted only a charge for the actual amount due
18 for managerial and planning services of the banquet as well as ancillary
19 services and equipment provided by the hotel, and not any sum over
20 and above the actual amount due for food and drink sold to its patrons.
21 Defendant further argued that it specifically suggested to its banquet
22 customers to pay gratuities separately and additionally to the service
23 staff, and that its customers regularly paid such additional gratuities.
24 Defendant argued, therefore, that California Labor Code § 351 did not
25 apply to the banquet service charges and did not impact Plaintiff and
26 the Class Members. This defense could substantially reduce any
27 recovery to the class. While Plaintiff believes that this defense, and
28

others, could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery for the Class.

ii. Second, Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period claims. A major component of the damages alleged to have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded the Class Members an opportunity to take timely meal and rest breaks, and that if non-compliant breaks occurred, employees like the Plaintiff *voluntarily chose* not to take compliant breaks notwithstanding the fact that Defendant afforded all employees the full opportunity to take compliant, uninterrupted meal and rest periods. Defendant argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks whatsoever. Defendant argued further that it adopted and strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant meal and rest breaks, and had a system in place to pay premiums when breaks were missed, short or untimely, regardless of the reason. Finally, Defendant argued that certain of the Class Members executed meal period waivers and provided evidence of voluntarily waived meal periods, as permitted by California law, which would require a unique and individualized assessment of each and every employee. Plaintiff and Class Counsel appreciate that the court may find remitter/reduction of the statutory damages appropriate based on such defenses. See e.g. *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D. Pa. 2007). If successful, such defenses could eliminate or substantially

1 reduce any recovery to the Class. While Plaintiff believes that these
2 defenses, and others, could be overcome, Defendant maintains these
3 defenses have merit and therefore present a serious risk to recovery for
4 the Class.

5 iii. Third, regarding reimbursement claims, Defendant argued *inter alia*
6 that neither Plaintiff nor any Class Member was required to use a
7 personal device for work. Defendant has available telephone and
8 walkie-talkies/radios on-site for employees to carry out their work
9 duties. Defendant maintains and enforces a strict policy prohibiting
10 employees from carrying their mobile devices on them while on-the-
11 clock. Moreover, for any management level personnel who elected to
12 use their personal devices, Defendant required them to execute a “Bring
13 Your Own Device Policy” and provided a monthly stipend to account
14 for business use of such approved devices.

15 iv. Finally, Defendant argued that most clothing worn by hotel employees
16 does not qualify as a “uniform” under California law. *See Bright v.*
17 *Dennis Garberg & Assocs.* (C.D. Cal. May 4, 2011) 2011 WL
18 13147441, at *3–6 (basic articles of clothing—such as a white shirt and
19 black pants—arguably do not fall within the definition of “uniform” as
20 used in the Wage Orders). Basic wash and wear does not have to be
21 reimbursed by the employers, only if something more than “minimal
22 care” is required does the employer have a duty to reimburse. *See Myles*
23 *v. Securitas Critical Infrastructure Servs., Inc.* (Cal. Ct. App. Nov. 29,
24 2018) 2018 WL 6241488, at *4–7 (“whether a Securitas employee
25 must be compensated for maintaining a uniform depends on whether it
26 is ‘wash and wear’ or requires special treatment.”); *O’Connor v.*
27 *Starbucks Corp.* (2008) 2008 WL 2761586 *5 (California law states
28

1 employers owe duty to maintain uniform if it requires special
2 laundering or care).

- 3 b. There was also a significant risk that, if the Action was not settled, Plaintiff would be
4 unable to obtain class certification and thereby not recover on behalf of any employee
5 other than himself. Defendant argued that the individual experience of each employee
6 varied with respect to the alleged claims. While other cases have approved class
7 certification of wage and hour claims, class certification in this action would have been
8 hotly disputed and was by no means a foregone conclusion. Finally, even if class
9 certification was successful, as demonstrated by the California Supreme Court decision
10 in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant
11 hurdles to overcome for a class-wide recovery even where the class has been certified.
- 12 c. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
13 and trying the Action against Defendant through possible appeals which even if
14 successful could take several years. Class Counsel have also taken into account the
15 uncertain outcome and risk of litigation, especially in complex actions such as this
16 Action. Class Counsel are also mindful of and recognize the inherent problems of
17 proof under, and alleged defenses to, the claims asserted in the Action. As
18 demonstrated by the decision in *Duran*, the complexities and duration of further
19 litigation cannot be overstated. There is little doubt that Defendant would post a bond
20 and appeal in the event of an adverse judgment. A post-judgment appeal by Defendant
21 would have required many more years to resolve, assuming the judgment was
22 affirmed. If the judgment was not affirmed in total, then the case could have dragged
23 on for years after the appeal. The benefits of a guaranteed recovery today outweigh an
24 uncertain result three or more years in the future. Moreover, post-trial motions and
25 appeals would have been inevitable. Costs would have mounted and recovery would
26 have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
27 Plaintiff and Class Counsel believe that the Settlement confers substantial benefits
28 upon the Class. Based upon their evaluation, Plaintiff and Class Counsel have

determined that the Settlement set forth in the Agreement is in the best interest of the Class Members.

d. In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant recovery, particularly when viewed in light of the fact that Defendant asserted serious and substantial defenses both to liability and to class certification. Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved.

e. It is impossible to predict with certainty whether, under the facts of this case, Plaintiff would prevail against the Defendant's factual and legal defenses. While Plaintiff and Class Counsel believe in the merits of the claims, Defendant has asserted real and substantial defenses to these claims and to class certification. Settlement in this case clearly benefits the Class when measuring the strengths of Plaintiff's case and the risk of establishing class wide liability and damages.

14. The Result Achieved by this Litigation and Settlement

a. The Settlement in this case is fair, reasonable and adequate. As detailed during preliminary approval, the Gross Settlement Amount compares favorably to the value of the claims. Class Members will receive immediate and certain payments of considerable amounts under the Settlement. Currently, the overall maximum and average Participating Class Member allocations are estimated to be \$1,940.70 and \$340.12, respectively (Decl. Islas at ¶ 14).

b. Faced with the serious doubts as to recovery, the Settlement of approximately \$325,000 represents almost 16.3% of the value of the maximum actual damages at issue. Furthermore, the Settlement represents almost 9.4% of the maximum combination of damages and penalties to the Class, assuming all of these amounts could be proved at trial.

15. Plaintiff used Berger Consulting to analyze the data and determine the potential damages for the employees. Plaintiff estimates that Defendant was subject to maximum liability for

1 damages in the amount of \$1,996,949, consisting of \$359,354 for unpaid wages, including
2 unpaid gratuities, and \$1,637,595 for non-compliant meal and rest break periods. In addition,
3 Plaintiff calculated that Defendant could be liable for \$1,201,151 for waiting time penalties
4 and \$256,300 for wage statement penalties. Finally, Plaintiff's expert calculated that
5 Defendant could be liable for PAGA penalties in an amount of \$3,219,800. Consequently, the
6 Settlement of approximately \$325,000 represents almost 16.3% of the value of the maximum
7 actual damages at issue. Furthermore, the Settlement represents almost 9.4% of the maximum
8 combination of damages and penalties to the Class, assuming all of these amounts could be
9 proved at trial.

10 **i. Unpaid Wages** - The allegation of unpaid minimum and overtime wages in this
11 case is based on a theory that Defendant engaged in unlawful rounding practices,
12 and required employees to work off the clock before and after their shifts.
13 According to the data received and assumptions made based on conversations
14 with the Plaintiff, the potential damages were estimated to be \$133,354.

15 **a. Meal and Rest Period Damages** – Meal and rest break premiums were calculated
16 as 1 hour of wages for each violation. Plaintiffs calculated the potential maximum
17 value of the meal and rest break damages to be \$2,112,660. The allegation of
18 unpaid meal break and rest break premiums in this case is based on a theory that
19 Class Members were unable to take a compliant break on a consistent basis, and
20 that some meal breaks were non-compliant due to Defendant's rounding practices.
21 Defendant presented significant defenses to this claim, as discussed in detail
22 above.

23 **b. Waiting Time and Wage Statement Penalties** – Waiting Time Penalties were
24 calculated by multiplying the Class Members' average hourly rate by 8-hours, and
25 then again by 30-days. Plaintiff assumed a 100% violation rate for this claim.
26 Wage statement penalties were calculated pursuant to California Labor Code
27 Section 226(e) as \$50 per employee per pay period with a violation, subject to a
28 \$4,000 maximum penalty per employee. Plaintiff assumed a 100% violation rate

1 for this claim. The result was an estimated maximum waiting time penalty claim
2 in the amount of \$1,201,151, and a maximum wage statement penalty claim in the
3 amount of \$256,430. It is important to note that the California Court of Appeals
4 in *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018), recently
5 held that liability under Section 226 cannot be derivative. In other words, the
6 court held that Plaintiff cannot recover penalties under Section 226 based on
7 Plaintiff's allegations that the Defendant violated other Labor Code sections that
8 affected the accuracy of the wage statements. Because Plaintiff's Section 226
9 claim here is partly based on Defendant's meal break and rest break violations,
10 and Defendant's failure to include the meal and rest break premiums on the Class
11 Members' wage statements, Plaintiffs' claim could be construed as derivative. It is
12 possible that Plaintiff's claim would be subject to the *Maldonado* decision,
13 resulting in a significant reduction in its value.

14 **ii. PAGA Penalties** - PAGA penalty calculations are highly variable. Class Counsel
15 is unaware of any PAGA judgment in which substantial PAGA penalties were
16 awarded at the full statutory rate. Rather, PAGA judgments have typically
17 decreased the amount of the per violation penalty to a fraction of the statutory
18 amount. Without reducing or mitigating the PAGA penalties, Plaintiff calculated
19 that the potential PAGA penalties at the maximum rate of \$4,219,800. These
20 PAGA penalty amounts were duplicative and were likely not awardable at the
21 maximum rate. In addition to the defenses presented by Defendant, as detailed
22 above, there is another basis for concluding that the Settlement is reasonable even
23 with PAGA penalties in this amount. Specifically, PAGA penalty claims are
24 routinely settled at a small fraction of the potential penalties. For example, Judge
25 Nelson in *Price v. Uber Technologies*, (Los Angeles Superior Court case no.
26 BC554512), recently approved a PAGA settlement of \$7.75 million for 1.5
27 million drivers where the maximum PAGA liability was \$151 billion. Thus, the
28 PAGA penalties were settled for 0.005% of the PAGA liability. Notably, this was

1 the largest PAGA settlement in the 15-year history of PAGA. So, while PAGA
2 penalty figures may be inflated to significant numbers, realistic settlements of
3 PAGA claims result in a settlement amount of less than 1% of the PAGA liability.

4 16. **Notice to LWDA.** On January 26, 2022 at the time this motion was submitted for filing, I
5 submitted a copy of the fully executed settlement agreement to the LWDA through their
6 online filing system, and received an email confirming the submission of the proposed
7 settlement (See Exhibit 3).

8 17. Given the uncertainty of litigation and the value of the claims alleged, the Settlement amount
9 of \$350,000 is certainly reasonable, and the goal of this litigation has clearly been met.

10
11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 27th day of January 2022, at San Diego, California.

13
14 By: 
15 Shani O. Zakay
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EXHIBIT 1

Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Court of California (all courts)
United States District Court of Indiana for the Northern District
United States Court of Appeals for the 9th Circuit

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. **Attorney Jackland K. Hom Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657
Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	Settled

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	In Litigation

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	In Litigation

43. Sabrina Iyon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification
Status	In Litigation

45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226
Status	In Litigation

52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	In Litigation

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	In Litigation

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
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Case No.	34-2020-00287054
Nature	Regular Rate
Status	In Litigation

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	In Litigation

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	In Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	In Litigation

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	In Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	In Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	
Nature	Meal and Rest Break + Regular Rate
Status	In Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	In Litigation

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

EXHIBIT 2

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID MARTINELLO, an individual, on
behalf of himself and all persons similarly
situated,

Plaintiffs,

vs.

CENTURY WILSHIRE, INC., a California
corporation and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 20STCV32613

[Action Filed 08/24/2020]

**JOINT STIPULATION OF
SETTLEMENT OF CLASS ACTION
CLAIMS AND RELEASE OF CLAIMS**

Judge: Hon. Carolyn B. Kuhl
Dept.: 12

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff DAVID MARTINELLO (hereinafter “Plaintiff”), individually and on behalf of the
3 Settlement Class, and Defendant CENTURY WILSHIRE, INC. (hereinafter “Defendant”):

4 **I. DEFINITIONS**

- 5 A. “Action” shall mean *Martinello v. Century Wilshire, Inc.*, currently pending in the
6 Superior Court for the County of Los Angeles, Case No. 20STCV32613 filed August
7 24, 2020, as a class action and representative action pursuant to the Private Attorney
8 General Act of 2004, Labor Code § 2698 *et seq.* (hereinafter, “PAGA”).
9
10 B. “Aggrieved Employees” shall mean all of Defendant’s current and former non-
11 exempt employees employed in California between June 10, 2019 and April 27, 2021.
12
13 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
14 Class Action and Release of Claims.
15
16 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
17 Shani Zakay of Zakay Law Group, APLC.
18
19 E. “Class Counsel Award” means the award of fees and expenses that the Court
20 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
21 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
22 third of the Total Settlement Amount currently estimated to be \$108,333 out of
23 \$325,000 plus costs and expenses not to exceed \$20,000.00. Class Counsel’s award
24 for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law
25 Firm, APC and 50% to Zakay Law Group, APLC).
26
27
28

- 1 F. "Class Data" means information regarding Settlement Class Members that Defendant
2 will in good faith compile from its records and provide to the Settlement
3 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall
4 include: each Settlement Class Member's full name; last known address; Social
5 Security Number; start dates and end dates of employment, and number of
6 Workweeks as a Settlement Class Member during the Class Period and PAGA Period
7 and email address, if known.
8
- 9 G. "Class Period" means the period from April 6, 2016 to the earlier of July 27, 2021 or
10 the date or preliminary approval of settlement.
11
- 12 H. "Class Representative Service Award" means the amount that the Court authorizes to
13 be paid to the Class Representative, in addition to his Individual Settlement Payment
14 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
15 in assisting with the prosecution of the Action and in exchange for executing a
16 General Release of Defendant.
17
- 18 I. "Class Representative" means Plaintiff DAVID MARTINELLO.
19
- 20 J. "Court" means the Superior Court for the State of California, County of Los Angeles.
21
- 22 K. "Defendant" shall mean CENTURY WILSHIRE, INC., a California corporation.
23
- 24 L. "Effective Date" means the earliest date, following entry by the Court of an order
25 and judgment finally approving this Settlement, upon which one of the following have
26 occurred: (i) if no objection is filed to the settlement and no objector appears at the
27 hearing on final approval, the date of the Court's entry of the order granting final
28

1 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
2 hearing on final approval, then the earlier of the following: (a) the expiration of all
3 potential appeal periods without a filing of a notice of appeal of the final approval
4 order or judgment; (b) final affirmance of the final approval order and judgment by
5 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
6 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
7 the final approval order and judgment is no longer subject to further judicial review.
8

9
10 M. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
11 is the date Defendant transfers the Total Settlement Amount into the QSF in accord
12 with the terms of this Agreement.

13
14 N. "Individual Settlement Payment" means the amount payable from the Net Settlement
15 Amount to each Settlement Class Member and excludes any amounts distributed to
16 Settlement Class Members pursuant to PAGA

17
18 O. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
19 Counsel Award, Class Representative Service Award, PAGA Settlement, and
20 Settlement Administration Costs.

21
22 P. "Notice Packet" means the Class Notice to be provided to the Settlement Class
23 Members by the Settlement Administrator in the form set forth as Exhibit A to this
24 Agreement (other than formatting changes to facilitate printing by the Settlement
25 Administrator).

26
27 Q. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
28 Labor Code § 2698 *et seq.*

- 1 R. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
2 for each Aggrieved Employee divided by the sum total of the Workweeks for all
3 Aggrieved Employees during the PAGA Period.
4
- 5 S. "PAGA Period" means the period between June 10, 2019 and April 27, 2021.
6
- 7 T. "PAGA Settlement" shall mean Fifteen Thousand Dollars (\$15,000.00) to be
8 allocated from the Total Settlement Amount.
9
- 10 U. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
11 Plaintiff or Defendant, individually.
12
- 13 V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
14 divided by the sum total Workweeks for all Settlement Class Members.
15
- 16 W. "Plaintiff" shall mean DAVID MARTINELLO.
17
- 18 X. "QSF" means the Qualified Settlement Fund established, designated and maintained
19 by the Settlement Administrator to fund the Total Settlement Amount.
20
- 21 Y. "Released Claims" means all claims, charges, complaints, liens, demands, causes of
22 action, obligations, damages and liabilities, against the Released Parties that were
23 asserted in the Complaint, or that could have been asserted in the Complaint based on
24 any of the facts, alleged in Plaintiff's Complaint, regardless of whether such claims
25 arise under federal, state and/or local law, statute, ordinance, regulation, common law,
26 or other source of law. The Release Claims specifically include claims for: (1) Failure
27 to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
28 1197.1; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§

1 510, *et seq.*; (3) Failure to Provide Required Meal Periods in Violation of California
2 Labor Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (4) Failure to
3 Provide Required Rest Periods in Violation of California Labor Code §§ 226.7 and
4 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate Itemized
5 Wage Statements in Violation of California Labor Code § 226; (6) Failure to Provide
6 Wage When Due in Violation of California Labor Code §§ 201, 202, and 203; (7)
7 Failure to Reimburse Employees for Required Expenses in Violation of California
8 Labor Code § 2802; (8) Failure to Provide Gratuities in Violation of California Labor
9 Code § 351; and (9) Unfair Competition in Violation of California Business and
10 Professions Code § 17200, *et seq.* arising from the claims listed above at (1)-(8), and
11 expressly excluding all other claims, including claims for vested benefits, wrongful
12 termination, unemployment insurance, disability, social security, workers'
13 compensation, and class claims outside of the Class Period.
14

15
16 Z. "Released PAGA Claims" mean any and all PAGA Claims alleged in the operative
17 complaint and Plaintiff's PAGA notice to the LWDA which occurred during the
18 PAGA Period, and expressly excluding all other claims, including claims for vested
19 benefits, wrongful termination, unemployment insurance, disability, social security,
20 workers' compensation, and PAGA claims outside the PAGA Period.
21

22
23 AA. "Released Parties" means Defendant and each of its subsidiaries, officers, directors,
24 members, partners, owners, shareholders, employees, former employees, agents,
25 servants, attorneys, assigns, affiliates, independent contractors, volunteers,
26 predecessors, successors, parent companies and organizations, insurers, and any and
27 all other persons, firms and corporations in which Defendant may have an interest.
28

1
2
3 BB. "Response Deadline" means the date forty-five (45) days after the Settlement
4 Administrator mails Notice Packets to Settlement Class Members and the last date on
5 which Settlement Class Members may submit requests for exclusion or objections to
6 the Settlement.

7
8 CC. "Settlement" means the disposition of the Action pursuant to this Agreement.

9
10 DD. "Settlement Administrator" means ILYM Group. The Settlement Administrator
11 establishes, designates and maintains, as a QSF under Internal Revenue Code section
12 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total
13 Settlement Amount is deposited for the purpose of resolving the claims of Settlement
14 Class Members. The Settlement Administrator shall maintain the funds until
15 distribution in an account(s) segregated from the assets of Defendant and any person
16 related to Defendant. *All accrued interest shall be paid and distributed to the*
17 *Settlement Class Members as part of their respective Individual Settlement*
18 *Payment.*

19
20 EE. "Settlement Class Members" or "Settlement Class" means all of Defendant's current
21 and former non-exempt employees employed in California between April 6, 2016 and
22 the earlier of July 27, 2021 or the date of preliminary approval of settlement. The
23 "Settlement Class Members" shall not include any person who submits a timely and
24 valid request for exclusion as provided in this Agreement.

25
26 FF. "Total Settlement Amount" means Three Hundred Twenty-Five Thousand Dollars
27 (\$325,000.00) that Defendant must pay into the QSF in connection with this
28

Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Settlement Class Member worked. The Settlement Administrator will calculate the number of Workweeks by calculating the number of days each Settlement Class Member was employed during the Class Period, dividing by seven (7), and rounding up to the nearest whole number. Each Settlement Class Members will receive an Individual Settlement Payment pursuant to the following formula: Individual Workweeks ÷ Class Workweeks × Net Settlement Amount. All Class Members who do not opt-out of settlement are understood to be Settlement Class Members and shall be called "Settlement Class Members." For purposes of distributing the PAGA Settlement to the Settlement Class, Workweeks means the number of weeks of employment for each Settlement Class Member during the PAGA Period.

II. RECITALS

A. On June 11, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant.

B. On August 24, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court for:

1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;

2. failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*;
4. failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512;
5. failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512;
6. failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
7. failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203;
8. failure to reimburse employees for required business expenses in violation of California Labor Code section 2802;
9. failure to provide gratuities in violation of California Labor Code section 351; and,
10. Violations of the Private Attorney General Act (“PAGA”) Labor Code §§ 2698 *et seq.*

C. On April 27, 2021, the Parties participated in mediation presided over by Tripper Ortman, a respected mediator of wage and hour class and representative actions.

1 Following the mediation, each side, represented by its respective counsel, were able
2 to agree to settle the Action based on the mediator's proposal, which was
3 memorialized in the form of a Memorandum of Understanding.
4

5 D. This Agreement replaces and supersedes the Memorandum of Understanding and any
6 other agreements, understandings, or representations between the Parties. This
7 Agreement represents a compromise and settlement of highly disputed claims.
8 Nothing in this Agreement is intended or will be construed as an admission by
9 Defendant that the claims in the Action of Plaintiff or the Settlement Class Members
10 have merit or that Defendant bears any liability to Plaintiff or the Class on those
11 claims or any other claims, or as an admission by Plaintiff that Defendant's defenses
12 in the Action have merit. The Parties agree to certification of the Class for purposes
13 of this Settlement only. If for any reason the settlement does not become effective,
14 Defendant reserves the right to contest certification of any class for any reason and
15 reserves all available defenses to the claims in the Action.
16
17

18 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
19

20 **III. TERMS OF AGREEMENT**

21 A. Settlement Consideration and Settlement Payments by Defendant.

- 22
- 23 1. Settlement Consideration. In full and complete settlement of the Action, and
24 in exchange for the releases set forth below, Defendant will pay the sum of
25 the Individual Settlement Payments, the Class Representative Service Award,
26 the Class Counsel Award, PAGA Settlement, and the Settlement
27 Administration Costs, as specified in this Agreement, equal to the Total
28

1 Settlement Amount of Three Hundred Twenty-Five Thousand Dollars
2 (\$325,000.00). The Parties agree that this is a non-reversionary Settlement and
3 that no portion of the Total Settlement Amount shall revert to Defendant.
4 Other than the Defendant's share of employer payroll taxes, Defendant shall
5 not be required to pay more or less than the Total Settlement Amount, except
6 as provided for hereinbelow.
7

8
9 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
10 Class was comprised of 480 individuals that collectively worked
11 approximately 21,179 Workweeks ("Projected Workweeks") during the Class
12 Period. In regard hereto, Defendant will provide a declaration under penalty
13 of perjury confirming the number of Class Members and Workweeks they
14 worked during the Class Period at the time of filing of the motion for
15 preliminary approval. If, at the time of Defendant's declaration, the actual
16 number of Workweeks is 15% higher than the Projected Workweeks (i.e.,
17 greater than 24,356), the end date of the Release Period and Class Period will
18 be adjusted so that the number of Workweeks in the Release Period and Class
19 Period does not exceed 15% of the estimate (24,356 workweeks).
20

21
22 3. Settlement Payment. Defendant shall pay, via wire transfer, the Total
23 Settlement Amount to the Settlement Administrator on the Funding Date.

24
25 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
26 payroll taxes is in addition to the Total Settlement Amount and shall be paid
27 by Defendant within ten (10) calendar days of request by the Settlement
28 Administrator.

- 1 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
3 release the Released Parties from the Released Claims for the Class Period.
- 4 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
5 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
6 California release the Released Parties from the PAGA Released Claims for the PAGA
7 Period.
- 8 D. General Release by Plaintiff. As of the Funding Date, in consideration for the
9 consideration set forth in this Agreement, Plaintiff, for himself, waives, releases,
10 acquits and forever discharges the Released Parties from any and all claims, actions,
11 charges, complaints, grievances and causes of action, of whatever nature, whether
12 known or unknown, which exist or may exist on their behalf as of the date of this
13 Agreement, including but not limited to any and all tort claims, contract claims, wage
14 claims, wrongful termination claims, disability claims, benefit claims, public policy
15 claims, retaliation claims, statutory claims, personal injury claims, emotional distress
16 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
17 claims, and any and all claims arising under any federal, state or other governmental
18 statute, law, regulation or ordinance, including, but not limited to claims for violation
19 of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of
20 California's Industrial Welfare Commission, other state wage and hour laws, the
21 Americans with Disabilities Act, the Age Discrimination in Employment Act
22 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
23 Rights Act of 1964, the California Fair Employment and Housing Act, the California
24 Family Rights Act, the Family Medical Leave Act, the California Government Code,
25
26
27
28

1 California's Whistleblower Protection Act, California Business & Professions Code
2 Section 17200 et seq., and any and all claims arising under any federal, state or other
3 governmental statute, law, regulation or ordinance. Plaintiff also waives and
4 relinquishes any and all claims, rights or benefits that they may have under California
5 Civil Code § 1542, which provides as follows:
6

7 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
8 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
9 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
10 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
11 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
12 ***DEBTOR OR RELEASED PARTY.***
13

14
15 Plaintiff is a creditor and/or "releasing party" within the meaning of Civil Code §
16 1542. Plaintiff may discover claims or facts in addition to, or different from, those
17 which he now knows or believes to exist, but Plaintiff expressly agrees to fully,
18 finally and forever settle and release any and all claims against the Released Parties,
19 known or unknown, suspected or unsuspected, which exist or may exist on behalf of
20 or against the other at the time of execution of this Agreement, including, but not
21 limited to, any and all claims relating to or arising from Plaintiff's employment with
22 Defendant. The Parties further acknowledge, understand, and agree that this
23 representation and commitment is essential to the Agreement and that this
24 Agreement would not have been entered into were it not for this representation and
25 commitment.
26
27
28

1 E. Conditions Precedent: This Settlement will become final and effective only upon the
2 occurrence of all of the following events:

- 3
- 4 1. The Court enters an order granting preliminary approval of the Settlement;
- 5
- 6 2. The Court enters an order granting final approval of the Settlement and a Final
7 Judgment;
- 8
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14
- 15 4. Defendant fully funds the Total Settlement Amount.

16 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
17 not preliminarily or finally approved by the Court, fails to become effective, or is
18 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
19 Defendant from obtaining a complete resolution of the Released Claims:

20

- 21 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
22 and shall not be admissible in any judicial, administrative or arbitral
23 proceeding for any purpose or with respect to any issue, substantive or
24 procedural;
- 25
- 26 2. The conditional class certification (obtained for any purpose) shall be void *ab*
27 *initio* and of no force or effect, and shall not be admissible in any judicial,
28

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

3
4 3. None of the Parties to this Settlement will be deemed to have waived any
5 claims, objections, defenses or arguments in the Action, including with respect
6 to the issue of class certification.

7
8 G. Certification of the Settlement Class. The Parties stipulate to conditional class
9 certification of the Settlement Class for the Class Period for purposes of settlement
10 only. In the event that this Settlement is not approved by the Court, fails to become
11 effective, or is reversed, withdrawn or modified by the Court, or in any way prevents
12 or prohibits Defendant from obtaining a complete resolution of the Released Claims,
13 the conditional class certification (obtained for any purpose) shall be void *ab initio* and
14 of no force or effect, and shall not be admissible in any judicial, administrative or
15 arbitral proceeding for any purpose or with respect to any issue, substantive or
16 procedural.

17
18
19 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
20 effect of the payments called for, and Settlement Class Members are not relying on
21 any statement or representation by the Parties in this regard. Settlement Class
22 Members understand and agree that they will be responsible for the payment of any
23 taxes and penalties assessed on the Individual Settlement Payments described and will
24 be solely responsible for any penalties or other obligations resulting from their
25 personal tax reporting of Individual Settlement Payments.

1 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
2 the “acknowledging party” and each Party to this Agreement other than the
3 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
4 of this Agreement, and no written communication or disclosure between or among the
5 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
6 such communication or disclosure constitute or be construed or be relied upon as, tax
7 advice within the meaning of United States Treasury Department circular 230 (31 CFR
8 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
9 her or its own, independent legal and tax counsel for advice (including tax advice) in
10 connection with this Agreement, (b) has not entered into this Agreement based upon
11 the recommendation of any other Party or any attorney or advisor to any other Party,
12 and (c) is not entitled to rely upon any communication or disclosure by any attorney
13 or adviser to any other party to avoid any tax penalty that may be imposed on the
14 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
15 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
16 strategies (regardless of whether such limitation is legally binding) upon disclosure by
17 the acknowledging party of the tax treatment or tax structure of any transaction,
18 including any transaction contemplated by this Agreement.

22 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
23 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
24 which shall include this Settlement Agreement.

26 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
27 establishing and administering the QSF; calculating, processing and mailing payments
28

1 to the Class Representatives, Class Counsel, LWDA and Settlement Class Members;
2 printing, mailing and emailing the Notice Packets to the Settlement Class Members as
3 directed by the Court; establishing and maintaining the a landing page hosted on its
4 website to containing information about the Settlement; receiving and reporting the
5 objections and requests for exclusion; calculating, deducting and remitting all legally
6 required taxes from Individual Settlement Payments and distributing tax forms for the
7 Wage Portion and Non-Wage Portion of the Individual Settlement Payments;
8 processing and mailing tax payments to the appropriate state and federal taxing
9 authorities; providing declaration(s) as necessary in support of preliminary and/or final
10 approval of this Settlement; posting notice of entry of judgment on its website; and
11 other tasks as the Parties mutually agree or the Court orders the Settlement
12 Administrator to perform. The Settlement Administrator shall keep the Parties timely
13 apprised of the performance of all Settlement Administrator responsibilities by among
14 other things, sending a weekly status report to the Parties' counsel stating the date of
15 the mailing, the of number of Elections Not to Participate in Settlement it receives
16 (including the numbers of valid and deficient), and number of objections received.
17
18
19

20 L. Notice Procedure.

- 21
22 1. Class Data. No later than fifteen (15) calendar days after the Preliminary
23 Approval Date, Defendant shall provide the Settlement Administrator an
24 electronic file with the Class Data for purposes of preparing and mailing
25 Notice Packets to Settlement Class Members. The Class Data shall include the
26 following information for each Settlement Class Member: (a) full name, last
27 known address, social security number; and (b) the start and end dates for each
28

1 period the Settlement Class Member was employed by Defendant within the
2 Class Period. Defendant shall verify the total number of Workweeks at the
3 time Class Data is provided to the Settlement Administrator
4

5 2. Notice Packets.

6
7 a) The Notice Packet shall contain the Notice of Class Action Settlement
8 in a form substantially similar to the form attached as Exhibit A. The
9 Notice of Class Action Settlement shall inform Settlement Class
10 Members that they need not do anything in order to receive an
11 Individual Settlement Payment and to keep the Settlement
12 Administrator apprised of their current mailing address, to which the
13 Individual Settlement Payments will be mailed following the Funding
14 Date. The Notice of Class Action Settlement shall set forth the release
15 to be given by all members of the Settlement Class who do not request
16 to be excluded from the Settlement Class in exchange for an Individual
17 Settlement Payment, the number of Workweeks worked by each
18 Settlement Class Member during the Class Period, and the estimated
19 amount of their Individual Settlement Payment if they do not request
20 to be excluded from the Settlement. The Settlement Administrator
21 shall use the Class Data to determine Class Members' Workweeks.
22

23
24 b) The Notice Packet's mailing envelope shall include the following
25 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
26 ENTITLED TO PARTICIPATE IN A CLASS ACTION
27 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
28

1 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
2 NOTICE.”

3
4 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
5 the Settlement Administrator will perform a search based on the National
6 Change of Address Database to update and correct any known or identifiable
7 address changes. No later than fourteen (14) calendar days after receiving the
8 Class Data from Defendant, the Settlement Administrator shall mail and email
9 copies of the Notice Packet to all Settlement Class Members via regular First-
10 Class U.S. Mail and electronic mail. The Settlement Administrator shall
11 exercise its best judgment to determine the current mailing address for each
12 Settlement Class Member. The address identified by the Settlement
13 Administrator as the current mailing address shall be presumed to be the best
14 mailing address for each Settlement Class Member.
15

16
17 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
18 Administrator as non-delivered on or before the Response Deadline shall be
19 re-mailed to any forwarding address provided. If no forwarding address is
20 provided, the Settlement Administrator shall promptly attempt to determine a
21 correct address by lawful use of skip-tracing, or other search using the name,
22 address and/or Social Security number of the Settlement Class Member
23 involved, and shall then perform a re-mailing, if another mailing address is
24 identified by the Settlement Administrator. In addition, if any Notice Packets,
25 which are addressed to Settlement Class Members who are currently
26 employed by Defendant, are returned to the Settlement Administrator as non-
27
28

1 delivered and no forwarding address is provided, the Settlement Administrator
2 shall notify Defendant. Defendant will request that the currently employed
3 Settlement Class Member provide a corrected address, and transmit to the
4 Administrator any corrected address provided by the Settlement Class
5 Member. Settlement Class Members who received a re-mailed Notice Packet
6 shall have their Response Deadline extended fifteen (15) days from the
7 original Response Deadline.
8

9
10 5. Disputes Regarding Individual Settlement Payments. Settlement Class
11 Members will have the opportunity, should they disagree with Defendant's
12 records regarding the start and end dates of employment while paid on a draw,
13 as stated on their Employment Information Sheet, to provide documentation
14 and/or an explanation to show contrary dates. If there is a dispute, the
15 Settlement Administrator will consult with the Parties to determine whether
16 an adjustment is warranted. The Settlement Administrator shall determine the
17 eligibility for, and the amounts of, any Individual Settlement Payments under
18 the terms of this Agreement. The Settlement Administrator's determination
19 of the eligibility for and amount of any Individual Settlement Payment shall
20 be binding upon the Settlement Class Member and the Parties.
21

22
23 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
24 by the Settlement Administrator concerning the administration of the
25 Settlement will be resolved by the Court under the laws of the State of
26 California. Before any such involvement of the Court, counsel for the Parties
27
28

1 will confer in good faith to resolve the disputes without the necessity of
2 involving the Court.

3
4 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
5 Packet shall state that Settlement Class Members who wish to exclude
6 themselves from the Settlement must submit a written request for exclusion
7 by the Response Deadline. The written request for exclusion must state that
8 the Settlement Class Member wishes to exclude himself or herself from the
9 Settlement and (1) must contain the name, address, and the last four digits of
10 the Social Security number of the person requesting exclusion; (2) must be
11 signed by the Settlement Class Member; (3) must be postmarked or fax
12 stamped by the Response Deadline and returned to the Settlement
13 Administrator at the specified address or fax telephone number; and (4)
14 contain a typewritten or handwritten notice stating in substance: "I wish to
15 opt out of the settlement of the class action lawsuit entitled *Martinello v.*
16 *Century Wilshire, Inc.*, currently pending in the Superior Court for the County
17 of Los Angeles, Case No. 20STCV32613. I understand that by requesting to
18 be excluded from the settlement, I will receive no money from the Settlement
19 described in this Notice." The request for exclusion will not be valid if it is
20 not timely submitted, if it is not signed by the Settlement Class Member, or if
21 it does not contain the name and address and last four digits of the Social
22 Security number of the Settlement Class Member. The date of the postmark
23 on the mailing envelope or fax stamp on the request for exclusion shall be the
24 exclusive means used to determine whether the request for exclusion was
25 timely submitted. Any Settlement Class Member who requests to be excluded
26
27
28

1 from the Settlement Class will not be entitled to an Individual Settlement
2 Payment and will not be otherwise bound by the terms of the Settlement or
3 have any right to object, appeal or comment thereon. However, any
4 Settlement Class Member that submits a timely request for exclusion that is
5 also a member of the Aggrieved Employees will still receive their pro rata
6 share of the PAGA Settlement, as specified below, and in consideration, will
7 be bound by the Released PAGA Claims as set forth herein. Settlement Class
8 Members who fail to submit a valid and timely written request for exclusion
9 on or before the Response Deadline shall be bound by all terms of the
10 Settlement and any final judgment entered in this Action if the Settlement is
11 approved by the Court. No later than fourteen (14) calendar days after the
12 Response Deadline, the Settlement Administrator shall provide counsel for
13 the Parties with a final list of the Settlement Class Members who have timely
14 submitted written requests for exclusion. At no time shall any of the Parties
15 or their counsel seek to solicit or otherwise encourage members of the
16 Settlement Class to submit requests for exclusion from the Settlement.
17
18
19

- 20 8. Objections. The Notice of Class Action Settlement contained in the Notice
21 Packet shall state that Settlement Class Members who wish to object to the
22 Settlement must mail to the Settlement Administrator a written statement of
23 objection ("Notice of Objection") by the Response Deadline. The postmark
24 date of mailing shall be deemed the exclusive means for determining that a
25 Notice of Objection was served timely. The Notice of Objection must be
26 signed by the Settlement Class Member and state: (1) the case name and
27 number; (2) the name of the Settlement Class Member; (3) the address of the
28

1 Settlement Class Member; (4) the last four digits of the Settlement Class
2 Member's Social Security number; (4) the basis for the objection; and (5) if
3 the Settlement Class Member intends to appear at the Final
4 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
5 to make objections in writing in the manner specified above may make their
6 objections orally at the Final Approval/Settlement Fairness Hearing with the
7 Court's permission. Settlement Class Members will have a right to appear at
8 the Final Approval/Settlement Fairness Hearing in order to have their
9 objections heard by the Court. At no time shall any of the Parties or their
10 counsel seek to solicit or otherwise encourage Settlement Class Members to
11 file or serve written objections to the Settlement or appeal from the Order and
12 Final Judgment. Settlement Class Members who submit a written request for
13 exclusion may not object to the Settlement.
14
15

16 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
17 the Total Settlement Amount on or before the Funding Date, plus any employer's share
18 of payroll taxes as mandated by law within the time specified herein.
19

20 1. Individual Settlement Payments. Individual Settlement Payments shall be
21 paid from the Net Settlement Amount and shall be paid pursuant to the
22 formula set forth below.
23

24 a) Calculation of Individual Settlement Payments. Using the Class Data,
25 the Settlement Administrator shall add up the total number of
26 Workweeks for all Settlement Class Members. The respective
27 Workweeks for each Settlement Class Member will be divided by the
28

1 total Workweeks for all Settlement Class Members, resulting in the
2 Payment Ratio for each Settlement Class Member. Each Settlement
3 Class Member's Payment Ratio will then be multiplied by the Net
4 Settlement Amount to calculate each Settlement Class Member's
5 estimated Individual Settlement Payments. Each Individual
6 Settlement Payment will be reduced by any legally mandated
7 employee tax withholdings (e.g., employee payroll taxes, etc.).
8 Individual Settlement Payments for Class Members who submit valid
9 and timely requests for exclusion will be redistributed to Settlement
10 Class Members who do not submit valid and timely requests for
11 exclusion on a pro rata basis based on their respective Payment Ratios.
12
13

14 b) Calculation of Individual Payments to the Aggrieved Employees.

15 Using the Class Data, the Settlement Administrator shall add up the
16 total number of Workweeks for all Aggrieved Employees during the
17 PAGA Period. The respective Workweeks for each Aggrieved
18 Employee will be divided by the total Workweeks for all Aggrieved
19 Employees, resulting in the "PAGA Payment Ratio" for each
20 Aggrieved Employee. Each Aggrieved Employee's PAGA Payment
21 Ratio will then be multiplied by the Aggrieved Employee Payment to
22 calculate each Aggrieved Employee's estimated Individual PAGA
23 Settlement.
24

25
26 c) Allocation of Individual Settlement Payments. For tax purposes,
27 Individual Settlement Payments shall be allocated and treated as
28

1 follows: 33.33% as wages (“Wage Portion”); 66.67% as penalties and
2 interest (“Non-Wage Portion”). The Wage Portion is subject to wage
3 withholdings and shall be reported on IRS Form W-2. The Non-Wage
4 Portion shall not be subject to wage withholdings and shall be reported
5 on IRS Form 1099.

6
7 d) Allocation of Aggrieved Employee Payments. For tax purposes,
8 Aggrieved Employee Settlement Payments shall be allocated and
9 treated as 100% penalties and shall be reported on IRS Form 1099.

10
11 e) Mailing. Individual Settlement Payments and Aggrieved Employee
12 Payments shall be mailed by regular First-Class U.S. Mail to
13 Settlement Class Members’ last known mailing address no later than
14 fifteen (15) calendar days after the Funding Date.

15
16 f) Expiration. Any checks issued to Settlement Class Members shall
17 remain valid and negotiable for one hundred and eighty (180) days
18 from the date of their issuance. If a Settlement Class Member does not
19 cash his or her settlement check within 90 days, the Settlement
20 Administrator will send a letter to such persons, advising that the
21 check will expire after the 180th day, and invite that Settlement Class
22 Member to request reissuance in the event the check was destroyed,
23 lost or misplaced. In the event an Individual Settlement Payment
24 check has not been cashed within one hundred and eighty (180) days,
25 all funds represented by such uncashed checks, plus any interest
26 accrued thereon, shall be distributed consistent with California Code
27
28

1 of Civil Procedure Section 384 as follows: The Children Advocacy
2 Institute. Neither Class Counsel nor Defendant's counsel has any
3 interest, pecuniary or otherwise, in the Children Advocacy Institute.
4

- 5 2. Class Representative Service Award. In addition to the Individual Settlement
6 Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award
7 of not more than \$7,500 as the Class Representative Service Award.
8 Defendant does not presently intend to oppose a Class Representative Service
9 Award of no more than \$7,500 for Plaintiff. The Settlement Administrator
10 shall pay the Class Representative Service Award, either in the amount stated
11 herein if approved by the Court or some other amount as approved by the
12 Court, to Plaintiff from the Total Settlement Amount no later than ten (10)
13 calendar days after the Funding Date. Any portion of the requested Class
14 Representative Service Award that is not awarded to the Class Representative
15 shall be part of the Net Settlement Amount and shall be distributed to
16 Settlement Class Members as provided in this Agreement. The Settlement
17 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class
18 Representative Service Award. Plaintiff shall be solely and legally
19 responsible to pay any and all applicable taxes on his Class Representative
20 Service Award and shall hold harmless the Released Parties from any claim
21 or liability for taxes, penalties, or interest arising as a result of the Class
22 Representative Service Award. The Class Representative Service Award shall
23 be in addition to Plaintiff's Individual Settlement Payment as a Settlement
24 Class Member. Approval of this Settlement shall not be conditioned on Court
25 approval of the requested amount of the Class Representative Service Award.
26
27
28

1 In the event that the Court reduces or does not approve the requested Class
2 Representative Service Award, Plaintiff shall not have the right to revoke the
3 Settlement, and it will remain binding.
4

- 5 3. Class Counsel Award. Defendant understands a motion by Class Counsel for
6 attorneys' fees not to exceed one-third of the Total Settlement Amount
7 currently estimated to be \$108,333.00 plus costs and expenses supported by
8 declaration not to exceed Twenty Thousand Dollars (\$20,000.00), from the
9 Total Settlement Amount will be filed. Any portion of the requested Class
10 Counsel Award that is not awarded to Class Counsel shall be part of the Net
11 Settlement Amount and shall be distributed to Settlement Class Members as
12 provided in this Agreement. The Settlement Administrator shall allocate and
13 pay the Class Counsel Award to Class Counsel from the Total Settlement
14 Amount no later than five (5) calendar days after the Funding Date. Class
15 Counsel shall be solely and legally responsible to pay all applicable taxes on
16 the payment made pursuant to this paragraph. The Settlement Administrator
17 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
18 made pursuant to this paragraph. In the event that the Court reduces or does
19 not approve the requested Class Counsel Award, Plaintiff and Class Counsel
20 shall not have the right to revoke the Settlement, or to appeal such order, and
21 the Settlement will remain binding.
22
23
24

- 25 4. PAGA Settlement. Fifteen Thousand Dollars (\$15,000) shall be allocated
26 from the Total Settlement Amount for settlement of claims for civil penalties
27 under the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
28

1 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
2 Settlement (\$11,250) to the California Labor and Workforce Development
3 Agency no later than twenty-five (25) calendar days after the Funding Date
4 (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA Settlement
5 (\$3,750) will be distributed to the Aggrieved Employees as described in this
6 Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of
7 distributing the PAGA Settlement to the Aggrieved Employees, each
8 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
9 Employee Payment using the PAGA Payment Ratio as defined above.
10

11
12 5. Settlement Administration Costs. The Settlement Administrator shall be paid
13 for the costs of administration of the Settlement from the Total Settlement
14 Amount. The estimate of the Settlement Administration Costs is not to exceed
15 \$15,000. The Settlement Administrator shall be paid the Settlement
16 Administration Costs no later than twenty-five (25) calendar days after the
17 Funding Date.
18

19 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
20 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
21 twenty-eight (28) days following the expiration of the Response Deadline, which
22 motion shall request final approval of the Settlement and a determination of the
23 amounts payable for the Class Representative Service Award, the Class Counsel
24 Award, the PAGA Settlement, and the Settlement Administration Costs.
25

26
27 1. Declaration by Settlement Administrator. No later than fourteen (14) days
28 after the Response Deadline, the Settlement Administrator shall submit a

1 declaration in support of Plaintiff's motion for final approval of this
2 Settlement detailing the number of Notice Packets mailed and re-mailed to
3 Settlement Class Members, the number of undeliverable Notice Packets, the
4 number of timely requests for exclusion, the number of objections received,
5 the amount of the average Individual Settlement Payment and highest
6 Individual Settlement Payment, the Settlement Administration Costs, and any
7 other information as the Parties mutually agree or the Court orders the
8 Settlement Administrator to provide.
9

10
11 2. Final Approval Order and Judgment. Class Counsel shall present an Order
12 Granting Final Approval of Class Action Settlement to the Court for its
13 approval, and Judgment thereon, at the time Class Counsel files the Motion
14 for Final Approval.
15

16 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to
17 revoke the Settlement and Defendant shall have, in its sole discretion, the option to
18 terminate this Settlement if, after the Response Deadline, the number of Settlement
19 Class Members who submitted timely and valid written requests for exclusion from
20 the Settlement is at least ten percent (10%) of all Settlement Class Members or if
21 Settlement Class Members whose potential Individual Settlement Payments of the
22 Net Settlement Amount exceeds ten percent (10%) opt-out of the Settlement. If
23 Defendant exercises the option to terminate this Settlement, Defendant shall: (a)
24 provide written notice to Class Counsel within five (5) calendar days after the
25 Settlement Administrator provides information regarding opt outs (which is to occur
26 no later than fourteen (14) calendar days after the Response Deadline, and (b) pay all
27
28

1 Settlement Administration Costs incurred up to the date or as a result of the
2 termination. The Parties' agreements will be void *ab initio*; and the Parties shall
3 proceed in all respects as if this Agreement had not been executed.
4

5 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
6 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
7 Final Approval, including the Order Granting Final Approval of Class Action
8 Settlement, and Judgment before filing with the Court. The Parties and their counsel
9 will cooperate with each other and use their best efforts to affect the Court's approval
10 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
11 Judgment.
12

13
14 P. Cooperation. The Parties and their counsel will cooperate with each other and use
15 their best efforts to implement the Settlement.

16
17 Q. Confidentiality. Class Counsel agrees they will not solicit putative Class Members to
18 exclude themselves from this Settlement, and further agrees that it will not initiate or
19 contact or have any communications with putative Class Members during the
20 Settlement approval process. Nothing will prevent Class Counsel from responding to
21 inquiries from putative Class Members. For its party, Defendant agrees it shall not
22 discourage putative Class Members from participating in the Settlement and shall refer
23 any questions to the Claims Administrator.
24

25 1. No media. No public comment, communications to media, or any form of
26 advertising or public announcement (including social media) regarding the case shall
27 be made by Plaintiff or Class Counsel at any time.
28

1 2. Confidentiality. Prior to filing of the Motions for Preliminary and Final
2 Approval, Class Counsel shall not discuss the terms of the settlement or the
3 negotiations leading to settlement with any person other than the Plaintiff and Class
4 Administrator.

5
6 R. Destruction of Return of Evidence. Upon distribution of all settlement funds, the
7 Parties shall destroy all confidential documents related to the Complaint, the litigation
8 and this Settlement.

9
10 S. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
11 including an agreement to stay and/or withdraw all discovery, except such proceedings
12 necessary to implement and complete the Settlement, pending the Final
13 Approval/Settlement Fairness Hearing to be conducted by the Court

14
15 T. Amendment or Modification. This Agreement may be amended or modified only by
16 a written instrument signed by counsel for all Parties or their successors-in-interest.

17
18 U. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
19 Agreement among these Parties, and no oral or written representations, warranties or
20 inducements have been made to any Party concerning this Agreement or its Exhibit
21 other than the representations, warranties and covenants contained and memorialized
22 in this Agreement and its Exhibit.

23
24 V. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate
26 this Agreement and to take all appropriate Action required or permitted to be taken by
27 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
28

documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

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

X. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

Y. Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email for which purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Z. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

AA. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction under California Code of Civil Procedure Section 664.6 with respect to the

1 interpretation, implementation and enforcement of the terms of this Agreement and all
2 orders and judgments entered in connection therewith, and the Parties and their counsel
3 submit to the jurisdiction of the Court for purposes of interpreting, implementing and
4 enforcing the settlement and all orders and judgments entered in connection with this
5 Agreement. The Parties further agree that the time within which to bring this action to
6 trial under California Code of Civil Procedure section 583.310 shall be extended from
7 the date of the signing of this agreement by all parties until entry of the final approval
8 order and judgment, or if not entered, the date this agreement shall not longer be of
9 any force or effect.
10

11
12 BB. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
13 the Court shall first attempt to construe the provisions valid to the fullest extent
14 possible consistent with applicable precedents so as to define all provisions of this
15 Agreement valid and enforceable.
16

17 CC. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently
18 intend to pursue any claims against the Released Parties, including, but not limited to,
19 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
20 regardless of whether Class Counsel is currently aware of any facts or legal theories
21 upon which any claims or causes of action could be brought against Released Parties,
22 including those facts or legal theories alleged in the operative complaint in this Action.
23 The Parties further acknowledge, understand and agree that this representation is
24 essential to the Agreement and that this Agreement would not have been entered into
25 were it not for this representation.
26
27
28

DD. Court Filings. The Parties agree not to object to any Court filings consistent with this Agreement.

EE. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

FF. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability or damages, whatsoever. This Agreement is a compromise of highly disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 8/18/2021

DocuSigned by:

David Martinello

0698C4C42B414DF...

DAVID MARTINELLO

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

CENTURY WILSHIRE, INC.

Printed Name

Title

1 DD. Court Filings. The Parties agree not to object to any Court filings consistent with this
2 Agreement.

3
4 EE. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
5 certification for purposes of this settlement only.

6
7 FF. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
8 Released Claims have merit and give rise to liability on the part of Defendant.
9 Defendant claims that the Released Claims have no merit and do not give rise to
10 liability or damages, whatsoever. This Agreement is a compromise of highly disputed
11 claims. Nothing contained in this Agreement and no documents referred to and no
12 action taken to carry out this Agreement may be construed or used as an admission by
13 or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof
14 of the claims asserted. Other than as may be specifically set forth herein, each Party
15 shall be responsible for and shall bear its/his own attorney's fees and costs.
16

17
18 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

19
20 DATED: _____

21 DAVID MARTINELLO

22 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

23 DATED: 8/20/21

24 
CENTURY WILSHIRE, INC.

25 Maya Mallick
26 Printed Name

27 Managing Member
28 Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 8/18/2021

JCL LAW FIRM, A.P.C.

By: _____

DocuSigned by:

Jean-Claude Lapuyade

0EBC25D5B9CD469...

Attorneys for the Named Plaintiffs and the Plaintiff Class

DATED: 8/18/2021

ZAKAY LAW GROUP, APLC

By: _____

DocuSigned by:

[Signature]

4ECDE73A91D4420...

Attorneys for the Named Plaintiff and the Class

DATED: 8/20/2021

LITTLER MENDELSON, P.C.

By: _____

Kate A Cole

Attorneys for Defendants

EXHIBIT A

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT AND FINAL HEARING DATE

(Martinello v. Century Wilshire, Inc., Case No. 20STCV32613)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Los Angeles (the “Court”) has been reached between Plaintiff David Martinello (“Plaintiff”) and Defendant Century Wilshire, Inc. (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

all of Defendant Century Wilshire, Inc.’s current and former non-exempt employees employed in California at any time during the Class Period.

The “Class Period” is the period of time running from April 6, 2016 to the earlier of July 27, 2021 or the date of preliminary approval of the settlement.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

- A. On August 24, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Los Angeles. Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; (h) Failed to reimburse employees for required business expenses in violation of California Labor Code § 2802; (i) Failed to provide gratuities in violation of California Labor Code § 351; and (j) Violations of the Private Attorneys General Act (“PAGA”).

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their separations from employment; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

Notwithstanding, the Parties have reached an agreement to settle the Action in lieu of protracted litigation. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of Zakay Law Group, APC and The JCL Law Firm, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Net Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) (the “Net Settlement Amount”) to fund the settlement. The Net Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payment to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Net Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid From the Net Settlement Amount. The Settlement provides for certain payments to be made from the Net Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Net Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$15,000, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.

- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Net Settlement Amount (currently \$108,333) and a Class Counsel Litigation Expenses Payment of not more than \$20,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payments. Class Representative Service Payments of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$15,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$11,250 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$3,750 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Net Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Settlement Share for each Settlement Class Member will be calculated as follows: dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and (b) multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of Workweeks worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of Workweeks worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all of Defendant Century Wilshire, Inc.'s current and former non-exempt employees employed in California at any time during the PAGA Period. PAGA Period means the period of time from June 10, 2019 and April 27, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Thirty-Three and 1/3 Percent (33.33%) of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Sixty-Six and 2/3 Percent (66.67%) of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon the Funding Date of the Total Settlement Amount Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims are defined as all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, against the Released Parties that were asserted in the Complaint, or that could have been asserted in the Complaint based on any of the facts, alleged in Plaintiff's Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Release Claims specifically include claims for: (1) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510, *et seq.*; (3) Failure to Provide Required Meal Periods in Violation of California Labor Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (4) Failure to Provide Required Rest Periods in Violation of California Labor Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code § 226; (6) Failure to Provide Wage When Due in Violation of California Labor Code §§ 201, 202, and 203; (7) Failure to Reimburse Employees for Required Expenses in Violation of California Labor Code § 2802; (8) Failure to Provide Gratuities in Violation of California Labor Code § 351; and (9) Unfair Competition in Violation of California Business and Professions Code § 17200, *et seq.* arising from the claims listed above at (1)-(8), and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Funding Date the Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" are defined any and all PAGA Claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have <<____>> workweeks worked during the Class Period. ().

Based on this information, your estimated Settlement Share is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, 2021 [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____, 2021. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Martinello, et al. v. Century Wilshire, Inc., Case No. 20STCV32613*." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, 2021, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Martinello, et al. v. Century Wilshire, Inc., Case No. 20STCV32613*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____, 2021. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, CA 92110

Class Counsel:

Jean-Claude Lapuyade, Esq.
The JCL Law Firm, APC
3990 Old Town Ave. Suite C204
San Diego, CA 92110

Counsel for Defendant:

Jon Yonemitsu, Esq.
Kara Adelle Ritter Cole, Esq.
Littler Mendelson, P.C. 501 W.
Broadway, Suite 900

Tel: (619) 892-7095
 Email: shani@zakaylaw.com
 Website: www.zakaylaw.com

Tel: 619-599-8292
 Email: jlapyade@jcl-lawfirm.com
 Website: www.jcl-lawfirm.com

San Diego, CA 92101
 Tel: (619) 232-0441
 Email: jyonemitsu@littler.com
kcole@littler.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** _____, at the Los Angeles County Superior Court, located at 312 N Spring St, Los Angeles, CA 90012 in Department 9 before Judge Carolyn B. Kuhl. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

Under General Order (2020-GEN-25-00), public access to courthouses is limited at all times to judicial officers, court employees, co-lessees, Judicial Council staff, vendors, jurors, mediators, authorized persons (including news media representatives and news reporters), attorneys, litigants and witnesses with matters on calendar, and individuals with confirmed appointments. Members of the public, not otherwise referenced above, who wish to attend a court proceeding may do so upon advance request and at the discretion of the judicial officer presiding over the matter. Instructions on how to make such a request are available on the Court's website at the [Here for You | Safe for You](#) page.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Martinello, et al. v. Century Wilshire, Inc., Case No. 20STCV32613*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to The JCL Law Firm, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Children Advocacy Institute. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 3