

1 Daniel V. Santiago (SBN 206532)
2 LAW OFFICES OF DANIEL V. SANTIAGO, P.C.
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, California 90071
5 Phone: (760) 652-9801
6 Facsimile: (760) 652-9802
7 E-mail: dvs@dvslawoffices.com
8 Attorney for Plaintiff, Kim D. Garcia

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
VAN NUYS COURTHOUSE EAST**

KIM D. GARCIA, individually and as
representative of the State of California on
behalf of herself and all aggrieved employees,

Plaintiff,

v.

GOOD KNIGHT INN, CORPORATION, a
California corporation, DIPANKAR ROY, an
individual, and DOES 1 through 20, inclusive,

Defendants.

Case No. 20VECV00968

**DECLARATION OF DANIEL V.
SANTIAGO IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN
ORDER (1) APPROVING THE
SETTLEMENT OF PLAINTIFF'S PAGA
CLAIMS AGAINST THE DEFENDANTS
AND (2) DISMISSING THOSE PAGA
CLAIMS WITH PREJUDICE**

Judge: The Honorable Valerie Salkin

Department: U

Complaint Filed: August 31, 2020

I, Daniel V. Santiago, declare:

1. I am a member in good standing of the State Bar of California (California Bar No. 206532). I am counsel for the Plaintiff, Kim D. Garcia, in the above-captioned representative action against the Defendants, Good Knight Inn, Corporation ("GKI") and Dipankar Roy, currently pending before the Honorable Judge Valerie Salkin in the Superior Court of the State of California, County of Los Angeles, Van Nuys Courthouse East, Case No. 20VECV00968 ("the Action").

2. I respectfully submit this declaration in support of Plaintiff's Motion for an Order: (1) approving the settlement of Plaintiff's PAGA claims against the Defendants; and (2) dismissing those PAGA claims with prejudice ("Plaintiff's Motion").

1 3. Plaintiff brings this representative action against Defendants under the Private
2 Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §2698 et seq., as
3 representative of the State of California on behalf of herself and all aggrieved employees of GKI.
4 Plaintiff's claims against Defendants arise from alleged violations of the Labor Code and Industrial
5 Welfare Commission ("IWC") Wage Order No. 5-2001. As used in Plaintiff's Complaint, the term
6 "aggrieved employees" consists of all California residents who worked for GKI as housekeepers
7 and/or janitors at the Good Knight Inn Motel in North Hills, California, at any time within one year
8 preceding the filing of the Complaint in this action up to and through the time of trial (hereinafter
9 referred to as "the liability period"). There are 4 aggrieved employees (Plaintiff and three other
10 persons) according to GKI's Responses to Plaintiff's First Set of Special Interrogatories that GKI's
11 counsel served on January 20, 2020. Of note, GKI's Responses to Plaintiff's First Set of Special
12 Interrogatories are verified to be true and correct under penalty of perjury pursuant to the laws of
13 the State of California.

14 4. By this representative action, Plaintiff seeks recovery of civil penalties arising from
15 Defendants' alleged: (a) failures to pay all wages due and owing in violation of Labor Code
16 §§204(a), 510(a), 1194(a) and 1197 (First and Sixth Causes of Action); (b) failures to furnish
17 accurate itemized wage statements in violation of Labor Code §226(a) (Second and Seventh Causes
18 of Action); (c) failures to provide meal periods under Labor Code §512(a) and IWC Wage Order
19 No. 5-2001, §11(A) and to pay meal period premiums in violation of Labor Code §226.7(c) and
20 IWC Wage Order No. 5-2001, §11(B) (Third and Eighth Causes of Action); (d) failures to authorize
21 and permit rest periods under IWC Wage Order No. 5-2001, §12(A), and to pay rest period
22 premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 5-2001, §12(B) (Fourth
23 and Ninth Causes of Action); (e) failures to timely pay all wages due upon termination of
24 employment in violation of Labor Code §§201-203 (Fifth and Tenth Causes of Action); and (f)
25 failures to timely pay all wages due in violation of Labor Code §204(a) (Eleventh Cause of Action).

26 5. On August 31, 2020, Plaintiff filed her Complaint against the Defendants asserting,
27 *inter alia*, the various causes of action listed above. Defendants have filed a general denial of the
28 material allegations in Plaintiff's Complaint and asserted various affirmative defenses.

1 Additionally, I am informed that Defendants deny any violation of the Labor Code or other
2 wrongdoing.

3 6. The Final Status Conference is set for June 17, 2022, at 8:30 a.m., and the jury trial
4 is set for June 27, 2022, at 10:00 a.m. If the Court grants the relief requested in Plaintiff's Motion,
5 Plaintiff would respectfully request that the Court vacate all dates on its calendar (including the
6 Final Status Conference and jury trial on June 17 and 27, 2022, respectively).

7 7. The parties recently agreed to settle the Plaintiff's PAGA claims against the
8 Defendants at issue in this action for Three Thousand Dollars (\$3,000) subject to the Court's entry
9 of an Order: (a) approving of the settlement of Plaintiff's PAGA claims; and (b) dismissing
10 Plaintiff's PAGA claims with prejudice.

11 8. The proposed settlement of Plaintiff's PAGA claims against the Defendants calls for
12 the following payments: (a) Two Thousand Two Hundred Fifty Dollars (\$2,250) (i.e., 75% of the
13 PAGA settlement in accordance with Labor Code §2699(i)) to the Labor and Workforce
14 Development Agency ("LWDA"); and (b) Seven Hundred Fifty Dollars (\$750) (i.e., 25% of the
15 PAGA settlement in accordance with Labor Code §2699(i)) to the Plaintiff and the other aggrieved
16 employees in an equal percentage or *pro rata* amount of One Hundred Eighty Seven Dollars and
17 Fifty Cents (\$187.50).

18 9. I respectfully submit that the proposed settlement in the Action is fair and reasonable
19 in light of the following factors, among others: (a) any settlement, including the proposed settlement
20 in the Action, should take into consideration the time, inconvenience and uncertainty of trial that are
21 avoided by the settlement; (b) under Labor Code §2699(i), the aggrieved employees are entitled to
22 receive only 25% of any PAGA settlement with the remaining 75% to be paid to the LWDA; and
23 (c) Plaintiff contends that the penalties recoverable with regard to her PAGA claims as outlined
24 below are not substantially greater than the gross settlement amount of the proposed settlement
25 (\$3,000).

26 10. I am informed that Defendants do not concur or assent to the factual allegations
27 underlying Plaintiff's claimed civil penalties or the calculations of such penalties described below.
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11. Plaintiff estimates that the civil penalties recoverable with regard to the primary PAGA claims on behalf of herself (i.e., GKI's alleged failures to pay her all wages due and owing, to pay her meal period premiums, and to pay her rest period premiums) is approximately \$4,950 calculated as follows:

Nature of Claim	Type Of Claim	Amount	Description
PAGA Claim o/b/o Ms. Garcia	PAGA Penalty For Unpaid Wages (Per Pay Period Penalty)	\$1,650	\$50 for the initial pay period + \$100 for each of the subsequent 16 pay periods = \$1,650 (25% payable to Ms. Garcia and 75% payable to the LWDA)
PAGA Claim o/b/o Ms. Garcia	PAGA Penalty For Meal Period Violations	\$1,650	\$50 for the initial pay period + \$100 for each of the subsequent 16 pay periods = \$1,650 (25% payable to Ms. Garcia and 75% payable to the LWDA)
PAGA Claim o/b/o Ms. Garcia	PAGA Penalty For Rest Period Violations	\$1,650	\$50 for the initial pay period + \$100 for each of the subsequent 16 pay periods = \$1,650 (25% payable to Ms. Garcia and 75% payable to the LWDA)
Total PAGA Penalties Recoverable o/b/o Ms. Garcia		\$4,950	

Plaintiff further estimates that the civil penalties recoverable with regard to the primary PAGA claims on behalf of the other 3 aggrieved employees (i.e., GKI's alleged failures to pay them all wages due and owing, to pay them meal period premiums, and to pay them rest period premiums) is approximately \$7,425 calculated as follows: \$2,475 (50% of \$4,950) per aggrieved employee X 3 aggrieved employees = \$7,425. This calculation is based in part on Plaintiff's contention that, relative to the other 3 aggrieved employees, she performed the vast majority of the housekeeping and/or janitorial services at the Good Knight Inn Motel during the relevant time period.

12. For settlement purposes, it is reasonable to discount Plaintiff's estimate of the civil penalties potentially recoverable with regard to the primary PAGA claims at issue (\$12,375) by 50% to reflect the benefits of avoiding the delays associated with continued litigation and by another 50% to reflect the uncertainty of obtaining a favorable verdict at trial. Moreover, for settlement purposes, it is reasonable to discount the resulting figure after the aforementioned

1 discounts (\$3,093.75) to \$3,000 given the Court's wide discretion to reduce the civil penalties
2 potentially recoverable by Plaintiff with regard to her PAGA claims.

3 13. On February 2, 2022, I submitted copies of Plaintiff's Ex Parte Application For an
4 Order (1) Approving the Settlement of Plaintiff's PAGA Claims Against the Defendants and (2)
5 Dismissing Those PAGA Claims With Prejudice ("Plaintiff's Ex Parte Application") and all related
6 papers to the LWDA (via online filing with the LWDA) contemporaneously with the filing of those
7 papers. A true and correct copy of the February 2, 2022 email I received from the DIR PAGA Unit
8 on behalf of the LWDA confirming my submission of those papers to the LWDA earlier that day is
9 attached hereto as Exhibit 1. Of note, I have not received any objection or other communication
10 from the LWDA regarding the relief requested in Plaintiff's Ex Parte Application.¹

11 14. On February 11, 2022, I submitted copies of Plaintiff's Motion and all related papers
12 to the LWDA (via online filing with the LWDA) contemporaneously with the filing of those papers.
13 A true and correct copy of the February 11, 2022 email I received from the DIR PAGA Unit on
14 behalf of the LWDA confirming my submission of those papers to the LWDA earlier that day is
15 attached hereto as Exhibit 2. I do not anticipate receiving any objection or other communication
16 from the LWDA regarding the relief requested in Plaintiff's Motion. I will advise the Court
17 whether I have received any such objection or other communication from the LWDA during the
18 hearing on Plaintiff's Motion.

19 15. I respectfully submit that Plaintiff's Motion is warranted in light of the following
20 factors, among others: (1) the parties are prepared to consummate the aforementioned settlement
21 immediately after the Court approves of the settlement of Plaintiff's PAGA claims against the
22

23 ¹ On February 9, 2022, shortly after I received the Court's tentative ruling on Plaintiff's Ex Parte Application
24 filed on February 2, 2022, I discovered that I inadvertently failed to submit to the LWDA Plaintiff's original
25 ex parte application and related papers that sought the Court's approval of the settlement of Plaintiff's
26 individual PAGA claims, dismissal of Plaintiff's individual PAGA claims with prejudice, and dismissal of
27 Plaintiff's PAGA claims on behalf of the other aggrieved employees without prejudice. Such requested
28 relief was based on the parties' original Settlement Agreement. Given that the parties have executed a First
Amended Settlement Agreement as described more fully herein, Plaintiff seeks relief different from the relief
she originally sought. Specifically, Plaintiff now seeks the Court's Order approving the settlement of all of
her PAGA claims (i.e., her PAGA claims on behalf of herself as well as the other aggrieved employees) and
the corresponding dismissal of those PAGA claims with prejudice. For the foregoing reasons, and with the
Court's approval stated during the February 9, 2022 hearing on Plaintiff's Ex Parte Application, I will not

1 Defendants and dismisses those PAGA claims with prejudice; and (2) there is no just reason to
2 delay the consummation of the aforementioned settlement, particularly in light of significant health
3 and financial difficulties that Plaintiff has been experiencing recently.

4 16. Notice to the other aggrieved employees of the proposed dismissal described herein
5 is not required because, among other reasons, this is not a putative class action, notice of this
6 representative action has not been required to be provided (and has not been provided) to the other
7 aggrieved employees, and the proposed dismissal described herein will not prejudice any of the
8 other aggrieved employees. *See, e.g., Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122
9 (9th Cir. 2014) (“PAGA has no notice requirements for unnamed aggrieved employees, nor may
10 such employees opt out of a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110,
11 1134 (N.D. Cal. 2016) (“PAGA does not require class actions procedures, such as notice and opt-
12 out rights.”); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 134077, at *5 (N.D. Cal. Apr.
13 2, 2010) (“Unnamed employees need not be given notice of the PAGA claim, nor do they have the
14 ability to opt-out of the representative PAGA claim.”)

15 17. The following factors, among others, support the conclusion that the proposed
16 dismissal described herein will not prejudice any of the other aggrieved employees: (a) the
17 *Baumann*, *O’Connor* and *Ochoa-Hernandez* cases cited above support the propositions that
18 unnamed aggrieved employees need not be given notice of the PAGA claim and have no right to
19 opt-out of the PAGA claim; and (b) I am unaware of any other aggrieved employees’ reliance on
20 the Plaintiff to prosecute this representative action for his or her benefit.

21 18. The parties have executed a First Amended Confidential Settlement Agreement and
22 Mutual Release of All Claims (“First Amended Settlement Agreement”) reflecting the settlements
23 of Plaintiff’s PAGA claims against the Defendants as well as Plaintiff’s individual non-PAGA
24 claims against the Defendants that are at issue in the Action. A true and correct copy of the parties’
25 First Amended Settlement Agreement is attached hereto as Exhibit 3.

26 19. Under the First Amended Settlement Agreement, Defendants shall pay a Gross
27 Settlement Amount (“GSA”) of Fifteen Thousand Dollars (\$15,000) as follows: (a) Nine Thousand

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submit to the LWDA the original ex parte application and related papers that sought relief no longer sought.

**DECLARATION OF DANIEL V. SANTIAGO IN SUPPORT OF PLAINTIFF’S MOTION FOR AN
ORDER APPROVING THE SETTLEMENT OF PLAINTIFF’S PAGA CLAIMS**

1 Three Hundred Seventy Five Dollars (\$9,375) to Plaintiff (including his equal percentage or *pro*
2 *rata* share of One Hundred Eighty Seven Dollars and Fifty Cents [\$187.50] to be received by each
3 of the aggrieved employees in connection with the PAGA settlement); (b) Two Thousand Two
4 Hundred Fifty Dollars (\$2,250) to the LWDA in connection with the PAGA settlement; (c) Five
5 Hundred Sixty Two Dollars and Fifty Cents (\$562.50) to the other aggrieved employees in
6 connection with the PAGA settlement; and (d) Two Thousand Eight Hundred Twelve Dollars and
7 Fifty Cents (\$2,812.50) to Plaintiff's counsel's firm in connection with the settlement of Plaintiff's
8 individual non-PAGA claims against the Defendants. Upon receipt of notice of the Court's entry of
9 an Order granting the relief requested in Plaintiff's Motion, Plaintiff's counsel will file a Request
10 for Dismissal of Plaintiff's individual non-PAGA claims against the Defendants (such dismissal
11 will be with prejudice pursuant to the terms of the parties' First Amended Settlement Agreement).

12 20. The First Amended Settlement Agreement requires that the GSA of Fifteen
13 Thousand Dollars (\$15,000) be funded via settlement checks sent by Defendants to Plaintiff and
14 Plaintiff's counsel. The First Amended Settlement Agreement does not require that Good Knight
15 Inn, Corporation (the first of the two named defendants) or Dipankar Roy (the second of the two
16 named defendants) pay certain portions of the GSA. This is consistent with Plaintiff and Plaintiff's
17 counsel shared desire that the GSA be paid in full (not that certain portions of the GSA be paid by
18 particular defendants).

19 21. The First Amended Settlement Agreement reflects certain revisions of the settlement
20 agreement described in Plaintiff's previously filed *ex parte* application and related papers. Those
21 revisions include, *inter alia*: (a) the amount of the PAGA settlement has been increased from \$1,500
22 to \$3,000; (b) the beneficiaries of the PAGA settlement have been enlarged to include all 4
23 aggrieved employees (not solely Plaintiff); and (c) the amount to be received by Plaintiff's counsel
24 in connection with the settlement of Plaintiff's individual non-PAGA claims has been decreased
25 from \$4,500 to \$2,812.50.

26 22. With regard to the settlement funds to be received by the other aggrieved employees,
27 the First Amended Settlement Agreement provides in part in paragraph 1.a. on page 2:
28

1 “Defendants will send to Plaintiff’s counsel’s office . . . checks payable to each of
2 the allegedly aggrieved employees of GKI (including the Plaintiff) in the amount
3 reflecting his or her equal percentage or *pro rata* share of Seven Hundred Fifty
4 Dollars (\$750) which Plaintiff’s counsel will subsequently mail to each of the
5 allegedly aggrieved employees of GKI (including Plaintiff) at their last-known
6 addresses to be disclosed in GKI’s Responses to Plaintiff’s Amended First Set of
7 Special Interrogatories (served by Plaintiff’s counsel on January 20, 2022). It is
8 understood and agreed by the Parties that there are a total of four (4) allegedly
9 aggrieved employees of GKI (including Plaintiff) and, therefore, each of them
10 will receive One Hundred Eighty Seven Dollars and Fifty Cents (\$187.50) (i.e.,
11 his or her equal percentage or *pro rata* share of Seven Hundred Fifty Dollars
12 [\$750]) in connection with the settlement of Plaintiff’s PAGA claims against the
13 Defendants.”

14 23. The parties have agreed that the Court’s Order granting the relief requested in
15 Plaintiff’s Motion shall provide in part:

16 “3. The settlement checks issued to the aggrieved employees shall
17 remain valid and negotiable for 180 calendar days from the date of their issuance.

18 4. If any mailing of such settlement check is returned as
19 undeliverable, then Plaintiff’s counsel will: (a) perform one skip trace on the
20 returned mailing and re-mail the settlement check to an updated address (if any)
21 as soon as possible upon return of the undeliverable mailing; and (b) attempt to
22 notify the aggrieved employee of such settlement check (by phone call, voicemail,
23 text message and e-mail to the fullest extent possible) that such settlement check
24 has been returned as undeliverable and that Plaintiff’s counsel is prepared to send
25 such settlement check to the aggrieved employee in accordance with his or her
26 instructions. In that event, Defendant’s counsel will assist Plaintiff’s counsel with
27 attempting to notify the aggrieved employee in the manner set forth herein by
28 providing Plaintiff’s counsel (via e-mail) with the aggrieved employee’s last-
known cell phone number, email address, home phone number, work phone
number, home address, and work address.

5. If any such settlement check is uncashed within 180 calendar days
from the date of its issuance, then Defendants are required to distribute the funds
represented by such settlement check to the Controller of the State of California to
be held pursuant to the Unclaimed Property Law, California Civil Code Section
1500 et seq., for the benefit of each aggrieved employee who did not cash such
settlement check until such time he or she claims his or her property.
Accordingly, the entire amount of the PAGA settlement payable to the aggrieved
employees (i.e., \$750) will be paid out to the aggrieved employees, whether or not
they all cash their settlement checks.”

24. I respectfully submit that I have conducted sufficient investigation and discovery of
the facts underlying Plaintiff’s claims that support my conclusion that the proposed settlement of

1 Plaintiff's PAGA claims is fair and reasonable. Such investigation and discovery have included,
2 *inter alia*: (a) engaging in numerous, detailed conversations with my client (in person and by
3 telephone) regarding the facts underlying her claims and the status of the parties' settlement
4 discussions; (b) drafting, finalizing and serving Plaintiff's verified responses to Defendant Good
5 Knight Inn, Corporation's First Set of Requests for Admission; (c) drafting, finalizing and serving
6 Plaintiff's First Set of Requests for Admissions to Defendants Good Knight Inn, Corporation and
7 Dipankar Roy and analyzing their verified responses thereto; (d) drafting, finalizing and serving
8 Plaintiff's Form Interrogatories to Defendants Good Knight Inn, Corporation and Dipankar Roy and
9 analyzing their verified responses thereto; (e) drafting, finalizing and serving Plaintiff's Amended
10 First Set of Special Interrogatories to Defendant Good Knight Inn, Corporation and analyzing its
11 verified responses thereto that identify the number, names and addresses of the aggrieved
12 employees (4, including Plaintiff); and (f) drafting, finalizing and serving Plaintiff's Notice of
13 Deposition of Defendant Good Knight Inn, Corporation's corporate representative and, shortly
14 thereafter, obtaining all parties' agreement to settle all claims in this Action.

15 25. I respectfully submit that my background and experience summarized below support
16 my conclusion that the proposed settlement of Plaintiff's PAGA claims is fair and reasonable.

17 26. As to my educational background, I am a graduate of The University of Michigan
18 Law School in Ann Arbor, Michigan (J.D. in 1996) and Northwestern University in Evanston,
19 Illinois (double-majors in Economics and Political Science in 1993).

20 27. As to my professional background, I have more than 25 years of experience handling
21 a wide variety of complex civil litigation. Additionally, I have substantial experience handling
22 wage and hour litigation including wage and hour class actions, as described more fully below.

23 28. Before I established the Law Offices of Daniel V. Santiago, P.C. in 2012, I practiced
24 law for 10 years with Kaplan, Massamillo & Andrews, LLC, one of the leading aviation litigation
25 firms in the world. Previously, I practiced law with the litigation departments of Sullivan, Hill,
26 Lewin, Rez & Engel ("Sullivan Hill") in San Diego, California and Skadden, Arps, Slate, Meagher
27 & Flom ("Skadden Arps") in Los Angeles, California. Sullivan Hill is a well-respected, mid-sized
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1 law firm in San Diego. Skadden Arps is one of the world's largest law firms whose reputation
2 speaks for itself.

3 29. I have had substantial experience prosecuting class actions including, *inter alia*:
4 *Brian R. Maston et al. v. Prima Pizza, Inc. et al.*, Los Angeles County Superior Court, Case No.
5 BC508046 (wage and hour class action settlement – final approval granted); *Neerav Jadeja et al. v.*
6 *American Para Professional Systems, Inc. et al.*, San Diego Superior Court, Case No. 37-2013-
7 00040592-CU-MT-CTL (identity theft class action settlement – final approval granted); *Anyah M.*
8 *Jagne v. Williams-Sonoma, Inc.*, Sacramento Superior Court, Case No. 34-2017-00212574 (wage
9 and hour class action settlement – final approval granted); *Christopher L. Battle v. Fastrucking.com,*
10 *LLC*, San Diego Superior Court, Case No. 37-2014-00020611-CU-OE-CTL (wage and hour class
11 action settlement – final approval granted); *Alejandro Hernandez v. Golden State FC, LLC*, San
12 Diego Superior Court, Case No. 37-2018-00025550-CU-OE-CTL (wage and hour class action
13 settlement – final approval granted); and *James Avilez v. Gorlitz, Sewer & Drain, Inc.*, Los Angeles
14 Superior Court, Case No. 20STCV21169 (wage and hour class action settlement – final approval
15 granted).

16 30. I have had substantial experience in the following cases for which courts have issued
17 reported decisions or orders: *Spanair S.A. v. McDonnell Douglas Corp.*, 172 Cal.App.4th 348 (2nd
18 Dist. 2009); *International Ins. Agency Services, LLC v. Revios Reinsurance U.S., Inc.*, 2007 WL
19 951943 (N.D.Ill., March 27, 2007); *Lie v. Boeing Co.*, 311 F.Supp.2d 725 (N.D.Ill. 2004); *Lie v.*
20 *Boeing Co.*, 2004 WL 1462451 (N.D.Ill., June 29, 2004); and *Bax Global, Inc. v. Federal Express*
21 *Corp.*, 2004 WL 1447940 (D.Minn., May 26, 2004).

22 31. I estimate that I have invested at least 110 hours in the prosecution of Plaintiff's
23 claims in this Action (i.e., at least 30 hours investigating the underlying facts, preparing and filing
24 Plaintiff's Individual and Representative Action Complaint; at least 40 hours conducting discovery;
25 at least 20 hours engaging in settlement negotiations; and at least 20 hours preparing, filing and
26 attending the hearings on Plaintiff's previously filed ex parte applications as well as this motion
27 seeking the approval of the settlement of Plaintiff's PAGA claims).

1 32. My hourly rate is \$375 which the Los Angeles Superior Court has approved in
2 connection with class action settlements. Accordingly, the reasonable value of my legal services in
3 this action (more than \$41,250 [\$375 per hour X at least 110 hours] far exceeds the settlement funds
4 to be received by my firm in connection with the settlement of Plaintiff's PAGA claims (\$0) and the
5 settlement funds to be received by my firm in connection with the settlement of Plaintiff's
6 individual non-PAGA claims (i.e., \$2,812.50). Therefore, as a practical matter, I have handled this
7 case on a *pro bono* basis.

8 33. On February 9, 2022, I provided Defendants' counsel with drafts of this Motion and
9 related papers in almost-final formats. Additionally, I spoke with Defendants' counsel, Frank
10 Agello, on February 10, 2022. During my phone conversation with Mr. Agello on February 10,
11 2022, I discussed in detail the relief requested herein including, *inter alia*, the additional steps to be
12 taken to ensure that the aggrieved employees actually receive their portion of the settlement of
13 Plaintiff's PAGA claims. Mr. Agello advised me that there should be no difficulty with ensuring
14 that the aggrieved employees actually receive their portion of the settlement of Plaintiff's PAGA
15 claims, partly because the aggrieved employees other than Plaintiff are still employed by Good
16 Knight Inn, Corporation. Later on February 10, 2022, Mr. Agello confirmed by follow-up email
17 that he does not oppose the relief requested herein.

18 I declare under penalty of perjury under the laws of California that the foregoing is true and
19 correct, and that this declaration was executed on February 11, 2022.

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21 Daniel V. Santiago
22 Attorney for Plaintiff, Kim D. Garcia
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EXHIBIT 1

 Reply all   Delete  Junk Block ...

Thank you for your Proposed Settlement Submission



DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Wed 2/2/2022 1:33 PM

To: dvs@dvslawoffices.com



02/02/2022 01:32:52 PM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

LWDA | Labor & Workforce Development Agency

State of California

labor.ca.gov

Reply **Forward**

EXHIBIT 2

EXHIBIT 3

FIRST AMENDED CONFIDENTIAL SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF ALL CLAIMS

This First Amended Confidential Settlement Agreement and Mutual Release of All Claims (hereinafter referred to as "this Agreement") is made by and between the Plaintiff, Kim D. Garcia (hereinafter referred to as "Plaintiff"), on the one hand, and the Defendants, Good Knight Inn, Corporation (hereinafter referred to as "GKI") and Dipankar Roy (hereinafter referred to as "Mr. Roy"), on the other hand. GKI and Mr. Roy are hereinafter collectively referred to as "Defendants." Plaintiff and Defendants are hereinafter referred to as "the Parties."

WHEREAS, Plaintiff has filed a civil action against Defendants in the Superior Court of California, County of Los Angeles, Van Nuys Courthouse East, Case No. 20VECV00968, captioned *Kim D. Garcia, individually and as representative of the State of California on behalf of herself and all aggrieved employees v. Good Knight Inn, Corporation, a California corporation, and Dipankar Roy, an individual* ("the Action");

WHEREAS, Plaintiff, individually and as representative of the State of California on behalf of all allegedly aggrieved employees of GKI, asserts individual claims against Defendants as well as representative claims against Defendants for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §2698 et seq., in the Action;

WHEREAS, as used in this Agreement, the term "aggrieved employees" means all California residents who worked for GKI as housekeepers and/or janitors at the Good Knight Inn Motel in North Hills, California, at any time within the one-year time period of August 31, 2019, to August 31, 2020 (the date of filing of the Plaintiff's Complaint in the Action);

WHEREAS, Plaintiff's claims against Defendants in the Action arise from: (a) Defendants' alleged failure to pay all wages due and owing in violation of Labor Code §§204(a), 510(a), 1194(a) and 1197; (b) Defendants' alleged failure to furnish accurate itemized wage statements in violation of Labor Code §226(a); (c) Defendants' alleged failure to provide meal periods under Labor Code §512(a) and IWC Wage Order No. 5-2001, §11(A) and to pay meal period premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 5-2001, §11(B); (d) Defendants' alleged failure to authorize and permit rest periods under IWC Wage Order No. 5-2001, §12(A), and to pay rest period premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 5-2001, §12(B); (e) Defendants' alleged failure to timely pay all wages due upon termination of employment in violation of Labor Code §§201-203; and (f) civil penalties under the PAGA, Labor Code §2698 et seq., for the aforementioned violations;

WHEREAS, Defendants deny all material allegations in Plaintiff's Complaint in the Action and further deny any liability or wrongdoing whatsoever;

WHEREAS, the Parties wish to resolve all disputes, claims, complaints, grievances, actions, and demands that Plaintiff may have against Defendants and all Defendant Releasees as defined below including, but not limited to, any and all claims arising out of or in any way related to Plaintiff's prior work for Defendants, or any of them; and

WHEREAS, the Parties wish to resolve all disputes, claims, complaints, grievances, actions, and demands that Defendants may have against Plaintiff and all Plaintiff Releasees as defined below including, but not limited to, any and all claims arising out of or in any way related to Plaintiff's prior work for Defendants, or any of them.

NOW, THEREFORE, in consideration of the mutual promises and releases made herein, the Parties hereby agree as follows:

1. Consideration to Plaintiff. Defendants will send to Plaintiff's residence (*Kim D. Garcia, 9133 Sepulveda Blvd., North Hills, California 91343*) and Plaintiff's counsel's office (*Daniel V. Santiago, Law Offices of Daniel V. Santiago, P.C., 355 South Grand Avenue, Suite 2450, Los Angeles, California 90071, phone: 760-652-9801*) via overnight delivery reasonably calculated to arrive at Plaintiff's residence and Plaintiff's counsel's office within two (2) days of the designated dates listed below the following settlement checks in the total amount of Fifteen Thousand Dollars (\$15,000) to settle all of the Plaintiff's claims against the Defendants and Defendant Releasees as defined herein (whether or not asserted in the Action):

a. Settlement of Plaintiff's PAGA Claims Against Defendants. Within seven (7) calendar days of Defendants' counsel's receipt from Plaintiff's counsel of written notice of the Los Angeles Superior Court's entry of an Order approving the Parties' settlement of Plaintiff's PAGA claims against Defendants and dismissing such claims with prejudice, Defendants will send to Plaintiff's counsel's office (*Daniel V. Santiago, Law Offices of Daniel V. Santiago, P.C., Torrey Reserve North Court, 11622 El Camino Real, 1st Floor, San Diego, California 92130, phone: 760-652-9801*) via overnight delivery the following settlement checks in the total amount of Three Thousand Dollars (\$3,000) to settle all of Plaintiff's PAGA claims against Defendants as follows: (1) one check in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250) payable to "Labor and Workforce Development Agency" ("LWDA"); and (2) checks payable to each of the allegedly aggrieved employees of GKI (including the Plaintiff) in the amount reflecting his or her equal percentage or *pro rata* share of Seven Hundred Fifty Dollars (\$750) which Plaintiff's counsel will subsequently mail to each of the allegedly aggrieved employees of GKI (including Plaintiff) at their last-known addresses to be disclosed in GKI's Responses to Plaintiff's Amended First Set of Special Interrogatories (served by Plaintiff's counsel on January 20, 2022). It is understood and agreed by the Parties that there are a total of four (4) allegedly aggrieved employees of GKI (including Plaintiff) and, therefore, each of them will receive One Hundred Eighty Seven Dollars and Fifty Cents (\$187.50) (i.e., his or her equal percentage or *pro rata* share of Seven Hundred Fifty Dollars [\$750]) in connection with the settlement of Plaintiff's PAGA claims against the Defendants. The aforementioned payments to the LWDA, Plaintiff and the other allegedly aggrieved employees of GKI are civil penalties paid for the settlement and release of Plaintiff's PAGA claims against Defendants.

b. Settlement Of All Other Claims By Plaintiff Against Defendants. As to the settlement of Plaintiff's individual non-PAGA claims against Defendants (whether or not plead in the Action), Plaintiff and Plaintiff's counsel will take all steps necessary to ensure that those claims are dismissed with prejudice within five (5) calendar days of the Los Angeles Superior Court's entry of an Order approving the Parties' settlement of Plaintiff's PAGA claims against

Defendants and dismissing Plaintiff's PAGA claims against Defendants with prejudice. Additionally, as to the settlement of Plaintiff's individual non-PAGA claims against Defendants (whether or not plead in the Action), Defendants have sent to Plaintiff's residence and will send to Plaintiff's counsel's office via overnight delivery the following checks in the total amount of Twelve Thousand Dollars (\$12,000) within the following timeframes:

i. On or before Thursday, December 23, 2021, Defendants sent to Plaintiff's residence (*Kim D. Garcia, 9133 Sepulveda Blvd., North Hills, California 91343*) the following two (2) checks in the gross amount of Seven Thousand Five Hundred Dollars (\$7,500): (1) one check payable to "Kim D. Garcia" in the amount of One Thousand Five Hundred Dollars (\$1,500), less payroll deductions and withholdings, paid in settlement of her wage-related claims; and (2) one check payable to "Kim D. Garcia" in the amount of Six Thousand Dollars (\$6,000), without any deductions or withholdings, paid in settlement of her non-wage-related claims and general damages.

ii. Within seven (7) calendar days of Defendants' counsel's receipt from Plaintiff's counsel of written notice of the Los Angeles Superior Court's entry of an Order approving the Parties' settlement of Plaintiff's PAGA claims against Defendants in the Action and dismissing such claims with prejudice, Defendants will send to Plaintiff's counsel's office (*Daniel V. Santiago, Law Offices of Daniel V. Santiago, P.C., 355 South Grand Avenue, Suite 2450, Los Angeles, California 90071, phone: 760-652-9801*) via overnight delivery the following two settlement checks: one check payable to "Kim D. Garcia" in the amount of One Thousand Six Hundred Eighty Seven Dollars and Fifty Cents (\$1,687.50), without any deductions or withholdings, paid in settlement of her non-wage-related claims and general damages and one check payable to "Law Offices of Daniel V. Santiago, P.C." in the amount of Two Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$2,812.50) as payment for attorneys' fees and costs.

iii. Plaintiff and Plaintiff's counsel shall take all steps necessary to ensure that the Los Angeles Superior Court enters an Order: approving the settlement of Plaintiff's PAGA Claims against Defendants in the Action; and dismissing such claims with prejudice. Plaintiff's counsel shall provide Defendants' counsel with timely written notice of all such steps taken by Plaintiff and Plaintiff's counsel to obtain the Los Angeles Superior Court's entry of such an Order. Such steps may include, but are not limited to, Plaintiff's Ex Parte Application for the Los Angeles Superior Court's Entry of an Order: (1) Approving the Settlement of Plaintiff's PAGA Claims against Defendants; and (2) Dismissing Plaintiff's PAGA Claims against Defendants With Prejudice.

iv. Defendants shall report the aforementioned settlement payment of \$1,500, less payroll deductions and withholdings, paid to Plaintiff in settlement of her non-PAGA, wage-related claims on an IRS Form W-2 and its state and local equivalents.

v. Defendants shall report the aforementioned settlement payments totaling \$7,687.50, without any deductions or withholdings, to be paid to Plaintiff in settlement of her non-PAGA, non-wage-related claims and general damages on an IRS Form 1099 and its state and local equivalents.

vi. Defendants shall report the aforementioned settlement payment of \$2,250, without any deductions or withholdings, to be paid to the LWDA in settlement of Plaintiff's PAGA claims against Defendants on an IRS Form 1099 and its state and local equivalents.

vii. Defendants shall report each of the aforementioned settlement payments of \$187.50, without any deductions or withholdings, to the allegedly aggrieved employees of GKI (including Plaintiff) in the total amount of \$750 in settlement of Plaintiff's PAGA claims against Defendants on an IRS Form 1099 and its state and local equivalents.

viii. Defendants shall report the aforementioned settlement payment of \$2,812.50, without any deductions or withholdings, to be paid to Plaintiff's counsel as payment for attorney's fees and costs on an IRS Form 1099 and its state and local equivalents.

c. Plaintiff agrees to pay federal, state, and/or local taxes, if any, that she is required by law to pay with respect to this Agreement. Plaintiff agrees to indemnify and hold Defendants harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Defendants, or any of them, for any amounts claimed due to Plaintiff on account of this Agreement or pursuant to claims made under federal or state tax laws with regard to any amounts claimed due to Plaintiff on account of this Agreement, and any costs, expenses or damages sustained by Defendants, or any of them, by reason of any such claims, including any amounts paid by Defendants as taxes, deficiencies, levies, assessments, fines, penalties, interest or otherwise.

2. Effective Date. As used herein, the term "Effective Date" refers to the date on which all of the following conditions have occurred and/or been satisfied: (a) Defendants' counsel receives executed copies of this Agreement, an IRS Form W-4 for Plaintiff, and IRS Form W-9s from Plaintiff and Plaintiff's counsel (Law Offices of Daniel V. Santiago, P.C.); (b) the Court enters an Order approving the settlement of Plaintiff's PAGA claims against Defendants; and (c) the Court enters an Order dismissing Plaintiff's PAGA claims against Defendants with prejudice.

3. Mutual Releases of All Claims.

a. Plaintiff hereby and forever releases Defendants and their respective current and former directors, officers, members, employees, agents, attorneys, insurers, heirs, family members, executors, agents, assigns and all related entities (collectively, the "Defendant Releasees") from, and covenants not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that she may possess against any of the Defendant Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the Effective Date of this Agreement, including, without limitation:

i. any and all claims relating to or arising from Plaintiff's prior working relationships with Defendants, or any of them, and the terminations of those relationships;

ii. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; failure to prevent discrimination, harassment, or retaliation; hostile work environment; breach of contract, express and implied; breach of covenant of good faith and fair dealing; promissory estoppel; infliction of emotional distress; fraud; misrepresentation; interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion; and disability benefits;

iii. any and all claims for violation of any federal, state, or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; the Fair Labor Standards Act, except as prohibited by law; the Fair Credit Reporting Act; the Plaintiff Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Family Rights Act; the California Private Attorneys' General Act ("PAGA"); the California Labor Code; and the California Workers' Compensation Act, except as prohibited by law;

iv. any and all claims for violation of the federal or any state constitution;

v. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination;

vi. any claim for any loss, cost, damage, or expense arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds received by Plaintiff as a result of this Agreement; and

vii. any and all claims for attorneys' fees and costs.

b. Defendants hereby and forever release Plaintiff and her heirs, family members, executors, agents and assigns (collectively, the "Plaintiff Releasees") from, and covenant not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that they may possess against any of the Plaintiff Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the Effective Date of this Agreement.

c. The mutual releases contained herein shall remain in effect in all respects as complete general releases as to the matters released. The mutual releases contained herein do not extend to any obligations incurred under this Agreement or to enforcement of this

Agreement. Nothing in this Agreement shall be construed to release claims arising after execution of this Agreement, or claims that, by law, cannot be waived.

4. California Civil Code Section 1542. The Parties to this Agreement acknowledge that they have been advised to consult with legal counsel and are familiar with the provisions of California Civil Code Section 1542, a statute that otherwise prohibits the release of unknown claims, which provides:

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

The Parties, being aware of said code section, agree to expressly waive any rights they may have thereunder, as well as under any other statute or common law principles of similar effect.

5. Dismissal of Lawsuit and No Future Lawsuits. Other than the Action by Plaintiff against Defendants (to be dismissed), the Parties have no lawsuits, claims, or actions pending in any Party's name, or on behalf of any other person or entity, against any Party. The Parties represent that they do not intend to bring any claims on their own behalf or on behalf of any other person or entity against any other Party. All Parties agree that they shall request dismissal of any actions or charges if a third party or agency institutes such claims on their behalf.

6. No Liens. Plaintiff warrants and represents that she is the sole owner of her claims, she has not assigned any claims, and there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein. Plaintiff agrees to indemnify Defendants for any demands made on the consideration set forth above.

7. No Cooperation. Plaintiff agrees that she will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so. Plaintiff agrees both to immediately notify Defendants upon receipt of such subpoena or court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, or complaints against any of the Releasees, Plaintiff shall state no more than that Plaintiff cannot provide counsel or assistance (or words to that effect). Nothing in this Agreement is intended or shall limit or interfere with Plaintiff's ability to communicate with any government agency or otherwise participate in an investigation or proceeding that may be conducted by a government agency, including providing documents or other information without notice to Defendants.

8. Non-Disparagement. Plaintiff agrees to refrain from any disparagement, defamation, libel, or slander of Defendants or any of them. Similarly, Defendants agree to refrain from any disparagement, defamation, libel, or slander of Plaintiff.

9. No Admission of Liability. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims. No action taken by the Parties, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of actual or potential claims or (b) an acknowledgment or admission by either Party of fault or liability.

10. Strict Confidentiality. Except as is required to satisfy the conditions in Paragraph 2 above, Plaintiff agrees that she will keep the terms of this Agreement and the settlement amounts stated herein strictly confidential and will not hereafter disclose information concerning this Agreement to any person or entity except for the following persons and entities: Plaintiff's family members, attorneys or accountants or any person or entity who assists Plaintiff with the preparation and/or filing of her federal or state taxes.

11. Resolution of Disputes. Any disputes between the Parties regarding the validity of this Agreement or any claims arising out of or related to this Agreement or its breach, shall be resolved in a court of competent jurisdiction in Los Angeles County, California.

12. Attorneys' Fees. Except for the consideration to be paid to Plaintiff's counsel as set forth above, the Parties shall bear their own costs, attorneys' fees, and other fees incurred regarding the Action and the review, negotiation and preparation of this Agreement. The Parties expressly agree not to sue the other for malicious prosecution or other claims arising from the Action.

13. Payment of Compensation and Receipt of Benefits. Plaintiff acknowledges and represents that, other than the consideration set forth in this Agreement, Defendants have paid all wages, bonuses, accrued vacation/paid time off, leave, severance, reimbursable expenses, interest, and any and all other benefits and compensation due to Plaintiff.

14. Authority. Defendants represent and warrant that the undersigned have the authority to act on their behalf, and to bind them and all who may claim through them to the terms and conditions of this Agreement. Plaintiff represents and warrants that Plaintiff has the capacity to act on her own behalf and on behalf of all who might claim through her to bind them to the terms and conditions of this Agreement.

15. No Representations. Plaintiff represents that she has had an opportunity to consult with an attorney and has carefully read and understands the scope and effect of the provisions of this Agreement. Plaintiff has not relied upon any representations or statements made by Defendants that are not specifically set forth in this Agreement.

16. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

17. Entire Agreement. This Agreement represents the entire agreement and understanding between the Parties concerning the subject matter of this Agreement and

supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement.

18. No Oral Modification. This Agreement reflects certain amendments to the original Confidential Settlement Agreement and Mutual Release of All Claims previously executed by the Defendants on December 17, 2021, and by the Plaintiff on December 20, 2021. The amendments, in turn, reflect certain concerns that the Court expressed during the January 11, 2022, hearing on Plaintiff's Ex Parte Application for an Order: (1) Approving the Settlement of Plaintiff's Individual PAGA Claims Against Defendants; and (2) Dismissing Those PAGA Claims With Prejudice. This Agreement may only be further amended in a writing signed by Plaintiff's and Defendants' counsel.

19. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice-of-law provisions.

20. Counterparts. This Agreement may be executed in counterparts and by facsimile or pdf, and each counterpart and facsimile or pdf shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

21. Voluntary Execution of Agreement. Plaintiff understands and agrees that she executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of Defendants or any third party, with the intent of releasing all claims against Defendants and the other Releasees. Plaintiff acknowledges that: (a) Plaintiff has read this Agreement; (b) Plaintiff has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of Plaintiff's own choice; (c) Plaintiff understands the terms and consequences of this Agreement and of the releases it contains; and (d) Plaintiff is fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

KIM D. GARCIA

Dated: January ____, 2022

DIPANKAR ROY

Dated: January 20, 2022

Dipankar Roy

GOOD KNIGHT INN, CORPORATION

Dated: January 20, 2022

By: Frank P. Agello, Esq.

Printed Name: Frank P. Agello, Esq.

Title: Corporate Counsel

of this Agreement or any claims arising out of or related to this Agreement or its breach, shall be resolved in a court of competent jurisdiction in Los Angeles County, California.

12. Attorneys' Fees. Except for the consideration to be paid to Plaintiff's counsel as set forth above, the Parties shall bear their own costs, attorneys' fees, and other fees incurred regarding the Action and the review, negotiation and preparation of this Agreement. The Parties expressly agree not to sue the other for malicious prosecution or other claims arising from the Action.

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20. Counterparts. This Agreement may be executed in counterparts and by facsimile or pdf, and each counterpart and facsimile or pdf shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below:

Dated: January 20, 2022

KIM D GARCIA

Dated: January 20, 2022

DIPANKAR ROY

Dipankar Roy

Dated: January 20, 2022

GOOD KNIGHT INN, CORPORATION

Dated: January 20, 2022

By: *Frank P. Agallo, Esq.*
Printed Name: *Frank P. Agallo, Esq.*
Title: *Executive Counsel*

