

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Lizbeth Garcia v. The Bay Clubs Company, LLC.

(San Diego County Superior Court, Case Number 37-2018-00029247- CU-OE-CTL)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“**Agreement**” or “**Settlement**”).

This Agreement is made by and between (a) Defendant The Bay Clubs Company, LLC (“**Defendant**”), and (b) Plaintiffs Lizbeth Garcia, Allyson Klipa, Carolina Salazar, Jeyson Pineda and Patricia Calderon (together, “**Plaintiffs**”), for themselves, individually, and on behalf of the State of California and Aggrieved Employees, and the law firms defined below as “Plaintiffs’ Counsel” and “Defense Counsel” (Defendant, Plaintiffs and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the “**Parties**”).

The Parties agree that the Litigation (defined below) shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant, to pay the total gross sum of Two Million Four Hundred Fifty-Five Thousand Dollars and zero cents (\$2,455,000.00) (hereinafter referred to as the “**Settlement Sum**”) for settlement of the Private Attorneys General Act (“**PAGA**”) penalties, which shall be inclusive of Plaintiffs’ Counsel’s attorneys’ fees and costs, any and all enhancements to Named Plaintiff Service Payments, the settlement administrator’s costs, any and all payments to the State of California, and any and all payments to Aggrieved Employees.

Article I.

Definitions.

Section 1.01 **Definitions.**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “**Aggrieved Employees**” means all non-exempt employees of Defendant currently or formerly employed in California at any time between April 9, 2017 to the date of Court approval of the Agreement or March 31, 2022, whichever is later.
- (b) “**Attorneys’ Fees Amount**” means \$859,250.00, or 35% of the Gross Settlement Amount.
- (c) “**Complaints**” means the Complaints filed by Plaintiffs, which are:

- ***Lizbeth Garcia v. The Bay Clubs Company, LLC, San Diego Superior Court (Case No.: 37-2018-00029247- CU-OE-CTL)***
- ***Allyson Klipa v. The Bay Clubs Company, LLC, San Francisco Superior Court (Case No.: CGC-20-587892)***
- ***Carolina Salazar v. The Bay Clubs Company, LLC, et al., Los Angeles Superior Court (Case No.: YC073022)***
- ***Jeyson Pineda, et al. v. The Bay Clubs Company, LLC, et al., San Mateo County Superior Court (Case No.: 18CIV05996)***

These actions are also collectively referred to as the “**Litigation**” or “**PAGA Matters.**”

- (d) “**Court**” means Superior Court for the State of California, County of San Diego.
- (e) “**Cost Amount**” means the amount Plaintiffs’ will seek in unreimbursed costs, not to exceed \$70,000.00.
- (f) “**Defense Counsel**” or “**Counsel for The Bay Clubs Company, LLC**” is:

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- (g) “**Effective Date**” means that (i) in the event that the Settlement has received approval by the Court and there are no timely objections or motion to intervene filed, or that any timely objections or motion to intervene have been withdrawn, then the date the Court’s order of approval of the Settlement; (ii) in the event that one or more timely objections or motion to intervene has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector and/or intervenor to seek appellate review of the Court’s order of approval of the Settlement and denial of the motion to intervene, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court’s order of approval and denial of the motion to intervene has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court’s order(s) without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.
- (h) “**Named Plaintiff Service Payment**” means the amount that the Court may authorize to be paid to each Plaintiff over and above their individual payments from the PAGA

Settlement Amount, in recognition of their work and efforts in obtaining the benefits of the Settlement Sum for the State and Aggrieved Employees, for undertaking the risk for the payment of costs in the event this matter had not successfully resolved, and for executing a General Release of all claims against Released Parties, including all claims that are not being released by other Aggrieved Employees. Plaintiffs will request, and Defendant will not oppose, a Named Plaintiff Service Payment in the amount of \$10,000.00 to plaintiff Lizbeth Garcia, and \$7,500.00 to each of the four remaining Plaintiffs for a total of \$30,000.00. The Named Plaintiff Service Payments shall be paid out of the Gross Settlement Amount.

- (i) **“Settlement Sum”** or **“Gross Settlement Amount”** means the all-inclusive sum of \$2,455,000.00 which represents the total maximum amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs’ attorney fees and costs, payment of Named Plaintiff Service Payments, and the Settlement Administrator’s costs.
- (j) **“Net PAGA Settlement Amount”** is the amount remaining to distribute to the LWDA and Aggrieved Employees after subtracting these amounts (if approved by the Court) from the Gross Settlement Amount: (a) Plaintiff’s attorney fees up to thirty-five percent of the Gross Settlement Amount; (b) Plaintiffs’ costs according to proof; (c) Named Plaintiff Service Payments; and (d) Settlement Administrator costs.
- (k) **“Plaintiffs’ Counsel”** is:

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- (l) “**Release Period**” means the time period between April 9, 2017 and the date of Court approval of the Settlement or March 31, 2022, whichever is later.

“**Released Claims**” means any and all past or present claims, complaints, demands, liabilities, debts, obligations, liens, costs, attorneys’ fees, promises, losses or damages for civil penalties under the Private Attorneys General Act alleged in the PAGA Matters or could have been alleged in the PAGA Matters based on the facts, theories, and/or claims alleged in PAGA Matters, including, but not limited to, unpaid wages, unpaid minimum wages, unpaid overtime wages, failure to provide meal or rest periods, failure to pay meal and rest period premiums, split shift premiums, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to pay commissions, failure to provide signed commissions agreement, failure to reimburse business expenses, failure to maintain accurate payroll records, all Labor Code sections and Wage Order sections alleged in the PAGA Matters, civil penalties or other damages that were alleged or could have been alleged in the PAGA Matters (including but not limited to violations or damages relating to meal periods, rest periods, pay stubs, wage statements, failure to reimburse, unpaid sick time, unpaid split shift premiums, regular rate of pay issues, rounding, time-shaving, time record alteration, unpaid vacation time, off the clock and other unpaid regular and overtime wages, unreimbursed expenses, violation of Labor Code section 2802, unpaid overtime, unpaid double time, unlawful deductions, and waiting time penalties).

- (m) “**Released Parties**” means Defendant and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, including Matthew Stevens, Kevin Klipfel, and Erin Rucker Oto, as well as all of their respective parent companies, affiliated companies, owners, investors, sponsors, subsidiary companies, affiliates, client(s), client(s) facilities, consultants, agents, insurers, attorneys, predecessors, assignors, and/or assigns and/or any other individual or entity that could be liable for the claims raised in the PAGA Matters.
- (j) “**Settlement Administrator**” means the third-party administrator agreed upon by Parties to administer this Settlement, ILYM.

Article II.

Background.

Section 2.01 Background.

- (a) On or about April 9, 2018, Plaintiff Lizbeth Garcia transmitted a letter to the Labor & Workforce Development Agency and Defendant in compliance with the exhaustion requirements of PAGA. On July 13, 2018, Plaintiff Lizbeth Garcia filed a Complaint in the Superior Court of the State of California for the County of San Diego, entitled *Lizbeth Garcia v. The Bay Clubs Company, LLC*, case number 37-2018-00029247- CU-OE-CTL. The Garcia Action was brought by Lizbeth Garcia, on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code §§ 201-203, 204, 210, 218.5, 226, 226.6, 226.7, and 512.
- (b) On May 14, 2018, Plaintiff Carolina Salazar transmitted a letter to the Labor & Workforce Development Agency and Defendant in compliance with the exhaustion requirements of PAGA. On July 19, 2018, Plaintiff Carolina Salazar filed a Complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Carolina Salazar v. The Bay Clubs Company, LLC, et al.*, case number YC073022. The Salazar Action was brought by Carolina Salazar, on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code §§ 201-203, 204, 210, 218.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1102.5, 2715, and 2802.
- (c) On or about August 1, 2018, Plaintiffs Jeyson Pineda and Patricia Calderon transmitted a letter to the Labor & Workforce Development Agency and Defendant in compliance with the exhaustion requirements of PAGA. On November 6, 2018, Plaintiffs Jeyson Pineda and Patricia Calderon filed a complaint in the Superior Court of the State of California for the County of San Mateo, entitled *Jeyson Pineda, et al. v. The Bay Clubs Company, LLC, et al.*, case number 18CIV05996. The Garcia Action was brought by Lizbeth Garcia, on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code §§ 201- 204, 210, 226, 226.7, 500, 510, 558, and 1194.
- (d) On or about September 15, 2020, Plaintiff Allyson Klipa transmitted a letter to the Labor & Workforce Development Agency and Defendant. On November 20, 2020, Plaintiff Allyson Klipa filed a complaint in the Superior Court of the State of California for the County of San Francisco, *Allyson Klipa v. The Bay Clubs Company, LLC*, case number CGC-20-587892. The Klipa Action was brought by Allyson Klipa, on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code §§ 201- 203, 226, 406, 510, 558, 1174, 1194, 1194.2, 1197.1, 1198, and 2802.
- (e) During the course of the Litigation, the Parties engaged in discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Litigation and potential defenses thereto. The Parties have reached this Settlement only after discovery and investigation was performed.

- (f) On October 1, 2021, the Parties engaged in mediation with Honorable Lisa Cole and further engaged in additional negotiations resulting in a Memorandum of Understanding, which serves as the basis for this Settlement Agreement.
- (g) Defendant disputes and denies any liability or wrongdoing of any kind associated with the claims alleged in this matter. Defendant contends, among other things, that it complied at all times with the local, state, and federal laws, and that the claims alleged in these matters generally are without merit. Further, Defendant denies Plaintiffs, individually and as representatives of the Aggrieved Employees, are owed any wages or penalties, as alleged, but does recognize that litigation will be protracted and expensive. As a result, Defendant has agreed to pay a reasonable amount in order to resolve this matter. Any statements made by Defendant in this Agreement are made for settlement purposes only.
- (h) The Parties believe and agree that this Agreement provides a fair, adequate, and reasonable resolution of all of Plaintiffs' individual claims, the PAGA claims, the Litigation, and all Complaints, after doing their own independent investigations and evaluations of the claims alleged in this matter. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

Article II.

Approval and Implementation of Settlement.

Section 2.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion an Order from the Court approving the payment of PAGA penalties as described in this Agreement at the earliest possible date. Plaintiffs' Counsel shall request and be paid up to \$859,250 for attorneys' fees from the Settlement Sum, which Defendant will not oppose. Defendant will further not oppose Plaintiffs' Counsel's request for reimbursement of litigation costs to be paid from the Settlement Sum. Plaintiffs shall each request the Named Plaintiff Service Payment (defined above) from the Gross Settlement Amount in consideration for a general release and resolution of their individual claims; Defendant will not oppose these requests. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. Plaintiffs' Counsel will use their best efforts to fully defend this Settlement and to secure and protect the Court's unconditional approval even at the expense of other cases making the same or similar allegations. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 2.02 Court Approval.

The Parties will seek to obtain the Court's approval of this Settlement and the conditional payment of PAGA penalties as described in this Agreement by way of a stipulation or motion to be filed by Plaintiffs' counsel as soon as practicable following the execution date of this

Agreement. Plaintiffs' Counsel and Defense Counsel will jointly lodge this Agreement with the Court for its approval. The Court's approval of the payment of PAGA penalties as described in this Agreement shall be embodied in a written order and judgment. Should the Court not grant approval of the payment of PAGA penalties as described in this Agreement, then the entirety of this Agreement shall be null and void.

As part of the Court's approve the Settlement, Plaintiffs shall submit a proposed order and judgment which enters judgment in the Litigation in accordance with the terms of the Agreement, retains jurisdiction over the Litigation for the purpose of enforcing the terms of the Agreement following approval of the Agreement, and enjoins the prosecution of any of the Released Claims against Released Parties. The judgment will release and bar the PAGA Released Claims as to Plaintiffs, the State of California, and Aggrieved Employees, and Plaintiffs' released claims.

Section 2.03 Settlement Administration.

The Parties have mutually selected ILYM to handle the administration of this settlement, subject to approval by the Court. Defendant will not oppose Plaintiffs' request for payment in the amount up to \$17, 500.00 to the Settlement Administrator for administering the settlement. All of the Settlement Administrator costs in administering this settlement will be paid from the Gross Settlement Amount. In the event the Court approves a payment of less than \$17,500.00 for settlement administration costs, the difference will be a part of the Net PAGA Settlement Amount. Settlement administration costs will be reported on an IRS Form 1099 issued to the Settlement Administrator.

Section 2.04 Notice to Aggrieved Employees.

No later than fifteen (15) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, and Social Security number, to the extent available from Defendant's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the settlement in conformity with the Court's orders. Defendant will in good faith compile from its records the Aggrieved Employees List and provide it to the Settlement Administrator in a computer-readable format, such as a Microsoft Excel spreadsheet.

No later than twenty-one (21) calendar days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will mail the Employee Payments under cover letter, substantially in the form attached hereto as "**Exhibit A**" ("Cover Letter"), to each of the Aggrieved Employees identified on the Aggrieved Employees List. Prior to mailing the Cover Letter, the Settlement Administrator shall check the addresses provided in the Aggrieved Employees List using the United States Postal Service's National Change of Address database, and update the addresses for known address changes.

Should any of the mailings to the Aggrieved Employees of their Cover Letter and Employee Payments be returned as undeliverable within thirty (30) calendar days of mailing, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and re-mail the Cover Letter and Employee Payments to any alternative or updated address obtained by the Settlement Administrator.

The Settlement Administrator shall distribute payments for the Named Plaintiff Service Payment, the Attorneys' Fees, the Costs, the Settlement Administrator costs, the Employee Payments, and the LWDA Payment within twenty-one (21) calendar days Gross Settlement Amount is deposited with the Settlement Administrator's qualified settlement account. All payments provided for by this Agreement shall be made by the Settlement Administrator in accordance with this Agreement and the Court's order approving this settlement.

Section 2.05 Settlement Payment Procedures.

(a) Deposit of Settlement Sum with Settlement Administrator

Defendant shall pay as the Settlement Sum the total gross amount of Two Million Four Hundred Fifty-Five Thousand Dollars (2,455,000.00) in full and final Settlement of this matter within 30 days of the Effective Date.

(b) Payment of PAGA Penalties.

Seventy-five percent (75%) of the Net PAGA Settlement Amount shall be paid to the LWDA; the remaining twenty-five percent (25%) of the Net PAGA Settlement Amount (the "Employee Net Settlement Amount") shall be paid to Aggrieved Employees pro rata based on the number of pay periods worked during the Release Period. The entirety of the Net PAGA Settlement Amount shall be considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the settlement administrator (in compliance with IRS guidelines). Plaintiffs will be issued IRS Forms 1099 for payments received by them under this Agreement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days after issuance. Thereafter, all uncashed checks shall be transmitted to the State of California Controller's Office – Unclaimed Property Fund, to be held in the names of the respective Aggrieved Employees.

(c) Tax Treatment of Settlement Sum.

The Settlement Administrator shall be responsible for preparation and issuing all necessary IRS form 1099s, including to Plaintiffs' Counsel, who shall assume full responsibility and liability for the payment of taxes due on the payments to Plaintiffs' Counsel. Plaintiffs and Aggrieved Employees are solely responsible for all appropriate taxes due and any penalties assessed on any and all amounts paid to them under this Agreement. Aggrieved Employees shall hold the parties

free and harmless from any claims resulting from treatment of such payments, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Aggrieved Employees assume full responsibility and liability for the payment of taxes due on their individual shares of the Settlement Sum. Nothing in this Settlement is intended to constitute legal or tax advice regarding local, state, or federal tax obligations and the parties make no representations or warranties with respect to the tax consequences of any payment under this Agreement.

(d) Attorneys' Fees and Costs

Defendant will not oppose Plaintiff request for an award of the Attorneys' Fees Amount and Cost Amount to Plaintiffs' Counsel. In the event the Court approves a payment of less than the Attorneys' Fee Amount and/or Cost Amount, the difference will be a part of the Net PAGA Settlement Amount. The Attorneys' Fees and Litigation Costs payments will be reported on an IRS Form 1099 issued to Plaintiffs' Counsel. Except as set forth in this Paragraph, the Parties shall each bear their own attorneys' fees and costs.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiffs' or the Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiffs, the Aggrieved Employees, or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation, or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce this Agreement.

Section 4.03 Nullification.

Payment of the Settlement Sum is conditioned on the Court's approval of this Agreement. To comply with the requirements of Lab. Code Section 2699(l), Plaintiffs shall prepare and submit, after Defendant's approval, a Motion to Approve Settlement Pursuant to the Private Attorneys General Act, together with a supporting declaration and proposed judgment, within the time frames required by this Agreement. However:

- (a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Agreement, then the Parties shall request leave and work jointly to attempt to revise the Agreement consistent with the Court's expressed concerns, if any, in order to obtain the Court's approval. In the event that the Court does not finally approve the settlement contained herein, enter judgment, and otherwise dismiss the PAGA Matters with prejudice as permitted by law: (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Release by Aggrieved Employees.

Upon entry of the order and judgment approving this settlement and specifically including payment of the PAGA penalties as described in this Agreement, and subject to Defendant's full payment of the Gross Settlement Amount, Plaintiffs, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from each and all of the Released Claims.

Section 5.02 General Release by Plaintiffs

Upon the Effective Date and subject to Defendant's full payment of all sums required by this Settlement, Plaintiffs shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, liabilities, and previously unsatisfied judgments, orders, and arbitration awards against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the date they sign this Agreement, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief arising from or related to their employment with Defendants. Without limiting the generality of the foregoing, the release of claims by Plaintiffs is a complete general release. The claims released herein by Plaintiffs include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil

Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; the Age Discrimination in Employment Act and all of their implementing regulations and interpretive guidelines; claims for harassment, discrimination, retaliation and allegedly unpaid wages. Plaintiffs have reviewed the manner in which they were paid. Plaintiffs believe that after accounting for the consideration they will receive under this Agreement, they will receive more than any amounts, if any, that Plaintiffs contend they are even arguably owed or could claim to be owed, even after accounting for all allegedly unpaid wages, penalties, interest, and attorneys' fees. With respect to these released claims as described in this Section, Plaintiffs shall each be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

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.

Plaintiffs each understand and acknowledge that the significance and consequence of this waiver of California Civil Code Section 1542. Plaintiffs acknowledge that they consciously intend these consequences even as to claims for injuries that they do not know exist and which, if known, would materially affect their decision to execute this Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Article VI.

Miscellaneous Provisions.

Section 6.01 Notice, Default, Cure, Acceleration, Time is of the Essence.

If Defendant fails to pay any portion of the Settlement Sum on the date due, it shall be in default of its obligations under this Agreement. Plaintiffs shall e-mail notice of the default to Defense Counsel at the e-mail addresses listed in hereinabove or the revised notice in the event representation has changed. Defendant will then have ten (10) business days from the date notice is e-mailed to cure the default. If the default remains uncured for ten (10) business days from the date notice is sent, then all sums remaining unpaid under this Agreement shall be accelerated and become all due and payable and begin to accrue interest at the legal rate. Plaintiffs may thereafter move the Court to enforce the judgment contemplated herein, pursuant to Code of Civil Procedure section 664.6 and all other applicable law. Time is of the essence with respect to all provisions of this Agreement.

Section 6.02 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity. All Parties acknowledge that they had the opportunity to consult with legal counsel prior to entering into this Agreement.

Section 6.03 No Other Actions.

Plaintiffs represent that they have not filed any complaints, claims, or actions against Defendant with any court or administrative agency other than the Litigation, and the related notices filed with the LWDA. If any agency or court has or assumes jurisdiction of any complaint, claim, or action against Defendant on behalf of any of the Plaintiffs, the applicable Plaintiff will request that agency or court to withdraw from or dismiss the matter. Plaintiffs and their Counsel agree to fully defend this Agreement and this settlement in the event that a third party objects to, undermines, attacks, or attempts to otherwise intervene or interfere with the process and approval of this settlement or this Agreement.

Section 6.04 Non-Disparagement.

Plaintiffs agree to not make, or encourage anyone else to make, any disparaging words, comments, or remarks, verbally or in writing, or engage in any conversation that disparages Defendant in any way. This includes, but is not limited to, any negative or disparaging comments, posts, review, opinions, or the like on any social media platform whatsoever at any time presently or in the future. While nothing will prevent Plaintiffs from complying with a lawfully issued subpoena, Plaintiffs will not voluntarily cooperate with any other current or former employee seeking to bring a claim against any party released by this Agreement. Defendants shall provide Plaintiffs with neutral employment references upon inquiry, stating only their dates of employment and job titles held.

Section 6.07 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiffs and Defendant and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.08 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiffs' Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.09 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.10 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation.

Section 6.11 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.12 Necessary Acts.

The Parties agree to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

Section 6.13 Electronic Imaging and Signature.

The Parties intend to allow for the electronic imaging and storage of this Agreement, and the admissibility into evidence of such an image in lieu of the original paper version of this Agreement. The Parties stipulate that any computer printout of any such image of this Agreement shall be considered to be an “original” under the applicable court or arbitral rules of evidence when maintained in the normal course of business and shall be admissible as between the parties to the same extent and under the same conditions as other business records maintained in paper or hard copy form. The Parties further warrant that all DocuSign and/or SignRequest signatures were authorized by the parties to this Agreement and carry the same weight and legal effect as any wet ink signatures. Any party using DocuSign and/or SignRequest waives any claim that the signature affixed to their name is not authentic for purposes of approval and authorization in the understanding or execution of this Agreement. The Parties agree not to contest, in any proceeding involving the parties in any judicial or other forum, the admissibility, validity, or enforceability of any image of this Agreement because of the fact that such image was stored or handled in electronic form. The Parties agree to allow the use of DocuSign and/or SignRequest, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7. Electronic signatures shall be deemed originals.

Section 6.14 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiffs shall each and all bear their own attorney's fees and costs in connection with this Agreement, the Settlement Sum, the Litigation and the negotiation and execution of this Agreement (other than as expressly provided in this Agreement).

Section 6.15 Ambiguity.

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

Section 6.16 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.17 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.18 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

Section 6.19 Successors and Assigns.

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors, and assigns.

Section 6.20 Waiver of Right to Appeal.

Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiffs and their respective counsel hereby waive any and all rights to appeal the approval of the settlement, and the Order therefore will become non-appealable at the time it is entered.

Section 6.21 No Impact on Employee Benefit Plans.

Neither the Settlement Agreement nor any amounts paid to Plaintiffs, any Aggrieved Employee, or the LWDA under the settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Defendant benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: February 15, 2022

THE BAY CLUBS COMPANY, LLC

By 

Its CFO

Dated: _____, 2022

By _____
Lizbeth Garcia, individually

Section 6.20 Waiver of Right to Appeal.

Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiffs and their respective counsel hereby waive any and all rights to appeal the approval of the settlement, and the Order therefore will become non-appealable at the time it is entered.

Section 6.21 No Impact on Employee Benefit Plans.

Neither the Settlement Agreement nor any amounts paid to Plaintiffs, any Aggrieved Employee, or the LWDA under the settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Defendant benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: _____, 2022

THE BAY CLUBS COMPANY, LLC

By _____

Its _____

Dated: 2/8/2022, 2022

DocuSigned by:

 By _____
 3BEBFEB79070455
 Lizbeth Garcia, individually

Dated: 2/7/2022, 2022

DocuSigned by:
Allyson Klipa
367C40EF6C9A43E...
By Allyson Klipa, individually

Dated: 2/8/2022, 2022

DocuSigned by:
Carolina Salazar
050FFA72F615470...
By Carolina Salazar, individually

Dated: 2/8/2022, 2022

DocuSigned by:
Jeyson Pineda
A8184458D4A84EC...
By Jeyson Pineda, individually

Dated: _____, 2022

By _____
Patricia Calderon, individually

APPROVED AS TO FORM:

Dated: 2/9/2022, 2022

DocuSigned by:
Jeffrey L. Hogue
0A280E99E7ED420...
By Jeffrey L. Hogue, Esq.
Tyler J. Belong, Esq.
HOGUE & BELONG, Attorneys for
Plaintiffs

Dated: 2/9/2022, 2022

DocuSigned by:
Devon Roepcke
E6535048F2574A4...
By Devon Roepcke, Esq.
LAW OFFICES OF DEVON K.
ROEPCKE, PC, Attorneys for Plaintiffs

Dated: _____, 2022

By _____
Ernesto Sanchez, Esq.
Arlo Uriarte, Esq.
LIBERATION LAW GROUP, P.C.,
Attorneys for Plaintiffs Jeyson Pineda and
Patricia Calderon

Dated: _____, 2022

By _____
Allyson Klipa, individually

Dated: _____, 2022

By _____
Carolina Salazar, individually

Dated: 02-08, 2022

By 
Jeyson Pineda, individually

Dated: 02-08, 2022

By 
Patricia Calderon, individually

APPROVED AS TO FORM:

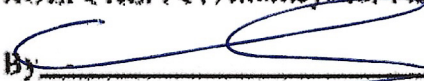
Dated: _____, 2022

By _____
Jeffrey L. Hogue, Esq.
Tyler J. Belong, Esq.
HOGUE & BELONG, Attorneys for
Plaintiffs

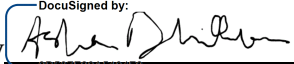
Dated: _____, 2022

By _____
Devon Roepcke, Esq.
LAW OFFICES OF DEVON K.
ROEPCKE, PC, Attorneys for Plaintiffs

Dated: 2/9/, 2022

By 
Ernesto Sanchez, Esq.
Ario Uriarte, Esq.
LIBERATION LAW GROUP, P.C.,
Attorneys for Plaintiffs Jeyson Pineda and
Patricia Calderon

Dated: 2/9/2022, 2022

DocuSigned by:
By 
90537F20A3104F2...
William Turner, Esq.
Asha Dillion, Esq.
JONES BELL LLP, Attorneys for Plaintiff
Carolina Salazar

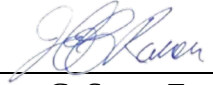
Dated: _____, 202

By _____
William C. Sung, Esq.
Jeffrey S. Ranen, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
LLP, Attorneys for Defendant

Dated: _____, 2022

By _____
William Turner, Esq.
Asha Dillion, Esq.
JONES BELL LLP, Attorneys for Plaintiff
Carolina Salazar

Dated: February 16, 2022

By  _____
William C. Sung, Esq.
Jeffrey S. Ranen, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
LLP, Attorneys for Defendant